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Wed, 2/17 4:26PM • 37:38

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To be refreshed, we are now on question 5.3 on the agenda and examining authority shedule of changes to the draft decio. And requirement 26. Mr. Jarvis at what the applicants views on these proposed changes here.

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They're acceptable, and they'll be made to the DCR deadline. Thank you, sir. Excellent. Thank you very much.

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Mr. Smart, I see that your hand is raised again.

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Yes, sir. Thank you. Good. Two matters. Firstly, can I suggest in light of the passage of time, and the debate we had briefly with Mr. Jarvis, that item 22 dot four

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can be taken as read on the timetable, because that's already been canvass. And we'll make submissions in relation to the dispute between the parties about the extension.

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Yeah, right. Okay, then. Fine. Thank you. And then, and then secondly, in relation to

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requirement 26.

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Again, given the time available, and that we made submissions, I wanted to do my best to summarise the position in relation to 26. One, as a technical point, we would propose please to delete comments and put begin so as to align it with the language of the statute, and not with the definition of the commence in the decio. itself, because that would then operate as a advance bar to do anything separately afterwards. Okay. And secondly, in relation to the criteria,

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a number of points arise.

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I think in this order.

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Firstly, can I make crystal clear that the

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the funding statement supplied by the applicant is both opaquely expressed in its language,

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Delphic and incomplete. So we provided in our funding statement, a more complete and express iteration of it using information from the applicant to a variety of parties. So you have that in the funding statement in one of the dependencies. And we've highlighted in red are inclusions, the short point is that they finally spelt out after Christmas that they have no money at all, for the scheme. Whereas up to then we were trying to ask him whether they had money and assume they had some money. So so if I may just conclude on this point, so you'll understand it, clearly. And that's why we proposed something like requirement 26 because it appeared at that time, that in the same way, RF Manston decio use that kind of requirement that might assist the applicant going forwards. But Manston had both an applicant who had some money, and who had next gives you a development agreement. We hadn't yet concluded our analysis, and it was only made clear after the event by the applicant that it had no money at all. So it shouldn't be taken that we've accepted the principle that a requirement like this can indeed supply a proxy to satisfy the requirements. So that's actually state's

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plan, CPA guidance, paragraph eight, sir. So that's our start point. The second point is that the figure of 4.9 7 million

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is fundamentally wrong and too low. And you'll have seen from our funding note from deadline seven see in the evidence of Mr. Scott and Mr. Bryce independencies, seven and eight, two matters. The first is that Mr. Bryce assess his compensation in the no scheme world under the CPOE provisions at x. And he's then notionally scale that up to try and arrive at a different figure completely separately, this distort has evaluated in the scheme world, a separate figure, which you add on to it to get an aggregate figure. So the short point says if you read that evidence carefully, the 4.97 is not only way too low, but it's for the applicant to evaluate what the upper figure is. And if they can't do that, sir. We're struggling to see how they can have requirement 26 at all, as a proxy in some way to seek to satisfy

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paragraph nine of the CPO guides the secretary state.

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So that's why it goes in two steps. So our start point is a

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Originally, we thought they hadn't valued the land enough, but now we understand co funding now that they've got no money at all. And that's why ultimately opposition of deadline seven C is on behalf of the carpenters to delete part five CPI requirements from the decio completely.

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And that raises considerations for you on your funding recommendation, sir, in relation to paragraph, I think it's 19 of the CPO guidance and financial impediments to implementation which this feeds back into. So sir, our note sets out the position, there is a

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clear financial impediment to implementation.

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In a nutshell, again, if I could just summarise up until the end of 2020, the applicant was relying upon regulatory exemption under the aegis of the EU, in order to render viable its project, post Brexit, the UK is no longer a member of the EU can't satisfy that position. Therefore, we're dealing with a non viable project. If we can, we'll come on to that. And the other consents part of the agenda in terms of

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the other parts that have happened in there, if we could try and just keep this to a requirement 26 at the moment, if possible, please, I'm very happy to

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take your lead on that. So but you have our point, then the requirements may sits as it were fall back from the paragraph 19 considerations.

06:37

Understood.

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Miss Jarvis Now, obviously, is quite a few points raised there. And we've obviously accepted the changes to requirements since 26. As the examiner authority put,

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I'm quite happy for you if you wish to leave the compulsory acquisition related elements of the funding to the compulsory acquisition hearing on Friday. But if you want to make any comments on funding security, in in the general terms in relation to requirement 26, if you could put them to us now, please.

07:15

And I'm just not clear whether Mr. zwar has taken into account your amendment commenced is for the purpose of Section 1551 of the Planning Act 2008. And whether in light of that amendment, his content, the form of the requirement is appropriate or if he would still be looking for amendments such that it's clear on shore site preparation works can't be undertaken. I thought that was the reason why that had been included. So.

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Okay, and I'll get Mr. Jarvis' view on that first and then I'll go to my colleague, Mr. Roscoe, Mr. Sharp

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said the reason we had the debate about comments originally was twofold. One because my clients Land Rovers to be affected early. And we were keen to ensure that they could benefit from protections in the order from the earliest possible moment.

08:04

Secondly, the point about requirement 26. One is to preclude implementation of the scheme absent funds. And therefore no with respect to Mr. Jarvis. The statute does not use the word commands uses the word begin. So we're not talking about pre commencement conditions and planning language of pre commencement we're talking about statutory terms begin. And it's all fine and dandy for Mr. Jarvis to have his commencement carved out, but that's for the decio statutory instrument, not for the statute. So to avoid confusion, ambiguity, and so forth, we would please submit and we'll we'll we'll amend it accordingly to have begin so that a spade does not go in the ground absent funding. That's before we get to the question of paragraph 19. Sir, thank you. Okay. Thank you. Before I go back to Mr. Jarvis. Mr. Roscoe, do you wish to take any points on this?

08:58

Yes, please. I mean, it was just on what's been said recently on this, and I think we're both we're all as a panel well aware of the party's positions on this. We now have the form of the requirements. Obviously, there are differences of opinion as to the wording on the requirement, but you've we've, we've got your positions on this. I just like to take a step back as to the position of this matter as a requirement. And this is a question for Mr. Jarvis.

09:24

It is it seems to us to be slightly unusual to put this matter forward as a requirement in other made DC O's. It has been as an article and we were wondering on the applicant's reasoning for putting it in as a requirement rather than an article. Is there anything that you can give me on that? Mr. Jarvis?

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I'm not sure I agree that it's included as an article specifically related to the requirements that were put to me in the examining authorities written questions. They were requirements. They weren't articles from my memory.

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I think there was recently an article proposed

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stimulation to the world with dceo. But that was in relation to slightly separate points around other consents that wasn't in relation to CPOE guarantee.

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Right.

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Right. Wrong. Yeah, I thought there might have been odd. I wonder if you could, if you could, outside, it has to be outside of the hearing, of course now, I wonder if you could check on that. And then when you come back a deadline eight, if you do see examples of where it has been an article, if you could actually respond as to why in our case here, you've put it forward as a requirement and not an article.

10:38

Mr. Jarvis, that's fine. I will have a look at that again. And if I think it makes sense to be an article, I'll move it to be an article. That's not a problem. Thank you. Thank you. I'm just I just going by by what we had seen, I believed in the previous made vcos. But it could be that I'm incorrect on that. But your clarification would be useful.

11:01

The Was there anything else? I had some other other matters relating to the submissions by Portsmouth on this requirement. But before I put those in, Mr. Wallace, was there anything else you wanted to deal with on this requirement? between the two parties at the moment? No, no, I'm fine for you to continue on this on this line of inquiry. Thank you. So really, it's it's a question to Mr. Jarvis. Again, it's been put forward by Portsmouth city council that

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the requirement for security should be in place before the dcl is made effectively. Is there anything that you can give me in response on that?

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Before the DCR is made as there's no powers available? So I don't agree. Right. Okay. Thank you.

11:53

And in terms of Portsmouth them was, was there anything? Miss Calhoun? Was there anything that Portsmouth wanted to come back on that matter, sir? Yes, I mean, the comment tree was not that there was a power to to make the The Undertaker now

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prior to the DCI being being formally made to require them to do something before for that time. What we're saying is that

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if if they are willing for that, to to, to go through with putting forward a security why why not do it now, so that the issue of funding

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can in effect be

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resolved from at least from from Portsmouth's point of view. I have to say, however, that Portsmouth has not expressed a view or carried out any form of analysis on the

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of the sum that is referred to in the requirement and

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would defer to

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Mr. Swartz clients who clearly carried out and and advisors have clearly carried out a more detailed assessment. And so we can, as Mr. Swartz said, we can come back to this under CA, but that Portsmouth's view is that there are serious concerns about the funding issue, and therefore welcome the notion of a bond. But we'd like would would suggest as a solution, that if there is going to be one, do it now. And therefore,

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you user could say that that at least The Undertaker's complied with the relevant ca guidance, because they have been able to show that the funding is available.

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And thank you, Mr. Jarvis, anything in response at the moment,

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just that that's not the CA test that applies. We don't have to evidence that we've got the funding in place now. And we don't have to provide a guarantee. And that's the reason for the guarantee being there is in relation to the exercise of the powers and it's appropriate to be in place before the powers are exercised. The examining authority will make its own recommendation as to whether or not it considers as a reasonable prospect of funding. And the Secretary of State will make his decision on that also. Thank you, sir. Thank you. Thank you. That was also a point from Portsmouth relating to the sufficiency of the 4.9 7 million in respect of blight, amongst other things. I'm aware of your previous position, Mr. Jarvis on this point. But is there anything to to change that position?

14:29

And no, we still don't consider that there's any sort of blight that arises on the basis that we don't see how the project could reduce property values or make them unsaleable such that blight notices could be served. Right. Okay.

14:44

Mr. Wallace, those are the only points that I had to bring into this particular requirement. I haven't asked for any other general points at the end of this particular item. Do you wish to do that?

14:57

Okay. Yes, thank you very much.

15:00

Does anyone else wish to raise anything under question? 5.3 on the agenda?

15:09

Okay, nothing heard. Mr. Jarvis. Any further comments from Mr. Oh, Mr. Scratch, your hand is raised. Yes, sir. Thank you just for completeness to wrap up this particular item, I'm picking up the direction of travel, that these matters may have opportunity to be canvassed by ourselves more fully on Friday at that ch hearing is that understood? Which case aren't contentious to proceed on that basis. Thank you. So thank you very much. Yes. Let's do that. Mr. Jarvis. Anything else before we move on?

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No, thank you, sir.

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Okay, then we'll move on to the next question. 5.4

15:47

Winchester city council to provide an update regarding the requirement for employment and skills plan. Obviously, that requirement is now in the decio. And we've had some comments of believe it deadlines seven C, as well as deadlines seven.

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Mr. Cornwell, is there anything you wish to add on this point?

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Thank you so simply that we welcome its inclusion.

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We're looking to do a little bit of fine tuning for it. But I'm sure we can resolve that with the applicant in this out of hearings meeting that we've been discussing previously. Thank you. Thank you very much. I've only got one supplementary question on this for the for the applicant.

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Whilst the the employment skills plan will no doubt state when the new plan is to come into effect and be implemented. And should the end of requirement 27 also include a time limit clause in relation to the implementation of the plan?

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Any views on that Mr. Jarvis?

16:57

Sorry, I was just meeting. I'll just need to give that some further thoughts. Just because the plan does predominantly cover construction related matters. And but there are some operational references in there also. So I wouldn't want it to be curtailed earlier than is actually proposed. Course. Excellent. Thank you. If you could do that. That's much appreciated. Any other further comments on question Five, four from anyone?

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Okay, nothing heard.

17:27

Moving on then.

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Next point, Portsmouth city council to set out its issues for the use of language within the onshore outline camp in relation of must and well. I will note that the applicants D seven c submission does actually resolve this, I believe, and an amended

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decio is, of course, expected that deadline eight, but Miss Cahoon, have you had a chance to look at that. And do you have any further comments to make? Really? I must apologise No. So I'm afraid I've not but but if you say it's been resolved, and that sounds good, so

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I can confirm that or we can confirm that in a written response if that's acceptable.

18:17

that that would be fine. Thank you very much and yes, fit I think we're okay on that matter.

18:26

Moving on then to the next question five six.

18:31

How does the applicant respond to Portsmouth city council suggestion, that requirement should be written into the decio to ensure that there not be any stored materials or joint bays within flood zone free be Mr. Jones

18:47

Thank you sir. So in relation to store materials during construction, the onshore outline construction environmental management plan paragraph 571 for lesson number of construction principles and state that the appointed contractor and any subcontractors must ensure that works within flood zone two or three do not introduce significant structures IE temporary site compounds, or spoil storage in the fluvial floodplain. Furthermore, all works within flood zone two or three would be subject to flood risk activities permit. These principles are agreed with the Environment Agency as reflected in the onshore statement of common ground between the Environment Agency and the applicant. And accordingly the applicant

considers necessary controls in this regard are already provided for. And so that's in relation to storage with regards to the location of Joint Base. The onshore outline construction environmental management plan paragraph 5714 lists a number of construction principles again, including a statement that were practicable locations for joint bays and link pillars link boxes are to be located outside of flood zone two and three are areas of risk of surface water flooding, where this is not practicable. Any works in flood zone two or three will be subject to the approval of a flood risk activities permit or an exemption and works within areas at risk of surface water flooding.

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subject to an approval

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of an ordinary watercourse consent or an exemption no impediments are foreseen to any such approvals or objections being obtained taking into account the nature of the works and the infrastructure proposed. Again, this principle is agreed with the Environment Agency as reflected in the final onshore statement of common ground between the Environment Agency and the applicant submitted deadline seven. It should, however, be noted that as this is a design principle, this statement has been moved to the section 643 of the tasks that will be submitted deadline eight, and therefore will be required to be complied with when designing the cable route and the Joint Base in the future.

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And essentially, the point is, is that that mitigations already embedded, so there isn't seem to be a need to include an express requirement to cover it also. Thank you.

20:46

Thank you very much. Miss Cahoon, does that provide the reassurances that Portsmouth city council would require? So I'm going to take that away, but I'm just going to ask Mr. McGuire if he's actually got any comments on that at the moment? Of course. Thank you, Mr. McGuire. Thank you, I think we can assess I don't think there's much difference really within the position between Portsmouth and the applicant. The we've noted this in our responsibility to one of your questions, stating how best to achieve that reassurance. It is normal practice in TCP applications to impose a condition in this sort of form of words, as Mr. Jarvis has said, they already have a degree of control arising from the need to approve sense your mind with the LM send me arrows m doesn't include any quality care 51214, which covers the storage of I think it's oil materials from recollection. Now, of course, devil doesn't cover all those materials, but easily could be covered by the Senate approval by the local planning authority. So we can we can secure it in an alternative way. It's just obviously less transparent for third parties. Because of that, we're not particularly worried. Either way, obviously, we would ensure there is no where it isn't especially functional floodplain, which is less directly relevant to Paul Smith. We would obviously use that to guide our approvals for under the sender, if any, Will any such applications were made to store materials.

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Thank you very much, Mr. Garre. Thank you for that. Mr. Jarvis. Anything to come back on?

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Thank you, sir.

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Excellent. Thank you very much. Anyone else wish to comment on item five, six.

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Okay, nothing heard.

22:36

Moving on. Then the next point that I wish to raise is regarding the HGV movements on day lane.

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And whether or not there could be a cap secured within the do CEO. I'm aware that this was a point raised by Hampshire County Council originally and I'm aware that at deadline seven c if not a deadline seven the applicant has clarified that there would be 142 hgvs per day leaving the converter station site either the converter station works or the other onshore cable related works. And they are content to include a cap on that within the decio. Is that a fair assessment? Mr. Jarvis?

23:21

Yes, that is a fair assessment. And I have discussed this matter with Hampshire County Council. And I've explained to them a proposed requirement which would provide that notwithstanding anything contained in any approved construction traffic management plan, working on the to B B, which is the access junction and associated gated highway link shall not be used for more than 71 two way HDTV movements. So 130 142 in total per day, in connection with the construction of the authorised development land Woods would mean high water springs. So essentially, you can have no more than 71 hgvs going through the converstation access on any given day in connection with the construction of the onshore elements at the development.

24:03

Thank you very much. Thanks for clarifying that, Mr. Attorney. Does that satisfy hampshire's point on this? Yes. Thank you. Excellent. Thank you very much. Does anyone else wish to raise anything on five seven?

24:18

Okay, nothing heard. Moving on then. Portsmouth City Council have proposed several changes. I think we've already touched on those requirements. Finally, 568-912-1318 22 and 27. I think we've already covered most of these in an earlier discussion.

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Mr. Jarvis. Was there anything else that you think was needed to raise here?

24:46

No, I agree with you. I think we've we've covered them and there isn't anything else I think I need to raise. Thank you, sir.

24:55

Thank you, Miss Cohn anything further you wish to raise?

24:59

No, sir.

25:00

I think we've covered it. So, just coming back, just for your note for to the discussion we've had about requirement 26. So your recollection was correct that article nine of the draft Manson decio

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did reflect this form formal security bond in a very similar tone to requirement 26. So that's where perhaps Mr. Jarvis needs to look, accept that, that the Manson decio has been quashed, but if you look at the draft, that's where it is. But, sir, going back to the principal question,

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the

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the we are dealing sorry, we are at gender 5.8, not six, aren't we? Correct? Correct. So now I have nothing further. Thank you. So

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thank you very much. And thanks for that, that reference on on that.

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And I'm sure Mr. Jarvis will look into that in due course.

26:04

Continuing just on item 5.8, on the agenda

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in relation to this part of the decio. Hampshire County Council did make a suggested additional requirement

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in respect of a maximum number of construction gangs

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across the phases at any one time.

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That was a deadline D seven, see.

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Mr. Jarvis, have you had the opportunity to look at that? And are you able to respond at this time? Well, yes, I have also discussed that with HCC before today. And I've agreed to add that as a paragraph to requirement 17 in relation to actually Sorry, sir requirement 25, which relates to traffic management strategies to confirm there can be no more than six working gangs on the route at any one time. I haven't yet had the opportunity to consider how I'm going to define working gangs. But I will seem to agree that with Hampshire County Council in due course. Excellent. Thank you very much. And is there anything you wish to add Mr. Attorney on that?

27:12

No. Thank you, sir.

27:14

Thank you very much. Before I move on, Mr. Conwell, I see your hand is raised. Yes, thank you, sir. Winchester city council has proposed two new requirements that haven't been discussed so far this afternoon. The first one is a no start until the whole scheme is approved. This is a effectively a Grampian type requirement. We've been proposing this since I believe our local impact report.

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This would ensure that no work starts on the UK side until the French side's got whole lease approvals resolved. Clearly, the concern by the Council is that

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we could end up with a building, which is redundant before it's even started to be used. And that's obviously something we would we would clearly wish to avoid. The second requirement relates to a decommissioning bond that we'd like you to consider

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in the event that the undertaker

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is unable to complete the decommissioning at some stage in the future, or they may go into liquidation. So there is a sum of money that the council could call on to at least undertake certain basic works

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to him to remove the building from the landscape. Thank you. Thank you very much, you know, from memory, I believe that was a bond in the region of 16 million pounds if I remember correctly, set right. It was so the reason why we we chose that amount of money is we we've been unable to get any further detail from the applicant with regards to the construction costs to converters station, and we just adopted a 10% value of the whole scheme. But we're obviously happy to discuss once the principles agreed to discuss the precise amount required. Okay, thank you. Thank you very much.

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Mr. Jarvis. I proposed that we deal with the French side of the interconnector later on in agenda item 21 under the other consents area, but are you able to comment at this time just on the proposed requirement for a decommissioning bond please, just to confirm further to my previous submissions that the applicants not agreeable to a decommissioning bond being provided. This is not considered necessary to mitigate the effects of the proposed development and therefore this has not been included.

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in reaching this conclusion, we've considered other projects of a similar scale and complexity for which decio has been made. And note that so far as we are aware, none are subject to the need to provide a decommissioning bond. The types of projects which are usually subject to such requirements are nuclear power stations in landfills, reflecting the long term contamination liabilities associated with those such contamination liabilities are not a matter relevant to the proposed development or indeed a matter which falls within the remit of the Planning Act 2008 regime. On that basis, there's no proposal to include a decommissioning bond, sir, thank you. Okay. Thank you very much. That's most useful. I propose we leave that there, Mr. Sparta. So your hand is raised again.

30:45

Thanks. So yes, I just very briefly to support Mr. Caldwell's analogy of requirement 24 being regarded as a Grampian type requirement, and simply on the basis that he's quite right to point out that in effect, the applicant should need to demonstrate it's good for the money to decommission today, somehow, and we know the outcomes responses. Thank you.

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Thank you very much.

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Mr. Jarvis. Is there anything you want to say on that pipe?

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No, thank you, sir. Okay. Thank you.

31:19

So just to stay with this agenda item, just one more question, if I may. And it's for the the applicant in relation to something that Hampshire County Council briefly raised earlier. It's about the control of haich d. g. So HDTV movements to the converter station, and restricting their access to that, until the Broadway farm access

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base subject to a 3.5 tonne weight restriction.

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It's basically the timing of when hgvs can start to access the converter station.

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In relation on that Broadway farm access. I don't know if you've had a chance to see that correspondence, a deadline seven car if you have any comments on that, Mr. Jarvis?

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If I may, I may just try and refer out to Chris Williams, who's been specifically dealing with this issue with Hampshire so that he can confirm what the current position is on that weight limit restriction.

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Okay, not a problem at all. Mr. Williams.

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Hello, Chris Williams.

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As Martin suggested, we've been discussing this with

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Hampshire County Council.

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We have submitted a draft update to the ctmp which included

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some additional wording on how construction traffic may be managed, when it is when it needs to use Broadway farm access.

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My understanding is that a 3.5 tonne weight limit would

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be impracticable to actually construct the the site access which which is part of the intention during use of the Broadway farm access. We know that it is used already by large vehicles to access the grains grains store

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on a farm, and we think that the the access by hgvs could be managed in a similar way to where as we are proposing for the the wider construction period and HDTV access along along the wider part of day lane. So that'll be through use of traffic marshals, when vehicles would be entering and exiting the vehicle they farm access.

33:56

Thank you very much, Mr. Williams.

33:59

Mr. Attorney, is there anything you wish to come back on that point? Yes, Sir Richard tourney for Hampshire County Council. Again, I don't know if you want to return to this tomorrow. But in short, there's no assessment of the impacts of these HTTP movements provided by the applicant. There are concerns about them and their management. And of course, these are part of the pre commencement works and therefore, predate the management plans, which are proposed to be put in place, the management today lane and so on. So there would have to be a whole separate system of regulation to allow he he movements in this location

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in that through that route. So we are very concerned about it. And we repeat the request that it's limited to exclude HGV movements or the applicant finds another way to deal with things. Okay. Thank you very much, Mr. Williams, or I'll come to you in the first instance before coming to Mr. Jarvis.

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I just like to say we'll continue discussions with Hampshire County Council on that we submitted some draft wording

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in relation to the ctm p update to Hampshire yesterday, we'll consider that as need be to ensure that access is appropriate.

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So thank you very much. Mr. Cornwell, I see that your hand is raised, is it?

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No, no, that's wrong. I think it's Mr. Attorney. Your hand is is still raised.

35:35

Thank you very much. Okay. I propose to bring that agenda item to a close, I believe my colleague, Mr. Mohn wishes to address you all shortly. Before the next agenda item. Thank you.

35:50

Yes, we just had a message from Dr. Peter has to leave us quite shortly. So if it's acceptable to talk to Peter, could you just Make your contribution now? I mean, along the lines of the email you sent to the case team, if that helps you.

36:06

This relates to agenda item 18.1. And should your 15 which is the deemed Marina licence.

36:17

Good afternoon. It's Dr. Peter here, thank you very much for making this opportunity available to me, I have provided confirmation of an exchange with the applicant regarding the detail of environmental statement addendum to and we are satisfied by its content, and also a supplementary explanation, which we understand has been supplied to you, as an appendix to a draft statement of common ground. And in summary, we are entirely satisfied by the consideration of the historic environment within that within a year or two. And we have no further comments or other advice to offer at this stage. So thank you very much. And thank you very much for your patience during the day. We will take that into account when we get to agenda item 18. Thank you very much. Mr. Wallace. We're about to take a break.

37:13

I am happy before we go on to the next agenda item just to have a short break. Five minutes, perhaps and we'll return at 16 2020 pass for when Mr. Roscoe will take on for agenda item six. So see you at 20 past four. Thank you