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Wed, 2/17 5:53PM • 1:19:12

00:02

Right, the time is now 20 past four and this hearing is resumed. Moving on then to agenda item six, which is shedule. Three, we dealt with this earlier in the hearing, but under items 6.1 and 6.2. Is there anything else that any any parties wish to raise at this stage on it?

00:24

Okay, nothing hurt. Thank you. Now in terms of agenda items, seven to 11. We don't have any matters as a panel to raise under these items. But what I'll do, I'll work through them quickly, just to check that there aren't any contributions from others. So dealing first with agenda item seven, are there any matters that parties wish to raise under this agenda item?

00:49

Looking around, nothing heard. Agenda Item? This is what?

00:59

Thank you. So can you hear me? I can? Yes, yes, thank you in relation to all the matters concerning the plans under agenda item seven, and eight, and nine, just just for your note, you recall, the carpenters have unresolved concerns in relation to access. There's a mismatch in relation to certain coloration of land and access from Broadway lane. And in relation to the order limits. You recall, we've already raised a point that sternick a cop is currently outside the order limits, not inside it, and therefore the plans currently formulated show the incorrect position as at today. But well, I think the cameras that on Friday, thank you. Thank you.

01:38

So I got as far as agenda item seven, and there was nothing more on that list as well. I think your hand is still raised. I'm not sure if that is still to be the case. No, thank you. Agenda Item eight. Anything on that from anybody? Okay, nothing heard. Agenda item nine, which is sheduled. Six. anything from anybody?

02:03

Nothing on that. Thank you. Agenda Item 10, which is sheduled. Seven. Mr. SWAT, I can see your hand raised.

02:12

Thank you, sir. Yes, can we there's two matters. One is it will be really helpful if if the when they use the rocheleau envelope, the the applicant might be asked by yourselves to provide a one stop shop parameters document rather than a plethora of documents that could then be bound into the decio as a parameters plan document, because that's going to have the content of the decio. And to include such

parameters volumetrically as the applicant wishes to provide or not, we already know it's not interested in providing any constraints simulation and the extension for substation. We also note from the requirement and table w or to something rather, that there are heights but no volumes and so forth. And that gives you the opportunity to come back. I told you that these are matters that we've already discussed. And so we have a request at the moment is for the bound document that you spoke of. Is that correct? Yes, sir. But it was to give the applicant the opportunity to put those in if he was going to do it. That was Thank you. Thank you, Mr. Jarvis, anything in response to that?

03:13

I would just refer Mr. svart to the decio parameters index that was submitted at deadline one that contains all of that information.

03:21

Thank you.

03:24

Anything else on agenda item nine?

03:28

Okay, nothing heard. On to agenda item 10. Anything on that which is sheduled. Seven.

03:35

Nothing on that. Thank you agenda item 11, which is sheduled. Eight.

03:40

anything on that?

03:43

Nothing heard. Thank you. Amen to agenda item 12, which is shedule. Nine and agenda item 12.1. And that is basically the examination, the examining authorities sheduled of changes to sheduled nine, paragraph Two, one. Mr. Jarvis. Any comments on that?

04:05

Just to confirm that those amendments will be included at deadline eight. And safe is determined at paragraph three of those amendments is not necessary, and therefore that won't be referred to

04:18

in that respect. So just bear with me.

04:29

I should say that I'm happy with what you've said so far in terms of taking it as a response. And obviously, you're coming up with the decio information that we talked about at the start of this hearing, which presumably will cover maybe what you're just about to speak about. Yeah, that's fine, sir. I can deal with it in their post hearing now. Thank you. Thank you.

04:50

Right.

04:52

Was there anything else on agenda item 12 one from anybody.

04:57

Okay, nothing heard.

04:59

On two

05:00

12 two, then I just had two additional items to raise and the generality of agenda item 12. And really, they obviously relate to shedule. Nine. And Mr. Jarvis. It's for you, really. And it is the

05:19

purpose of paragraph three in sheduled, nine.

05:26

Paragraph I'm deleting, sir. That was the point I just made.

05:30

Oh, right. Right. I am i right. Right. I wasn't I wasn't sure whether it was just the reference, because the reference might be somewhere else, or whether it was the paragraph being taken out. Thank No. Paragraph to be taken out, sir. Thank you. Thank you. Thank you.

05:48

Right. And just while we're there, there is a point that that in the draft decio provided a deadline seven, that paragraph is shown in square brackets, as are other elements of the draft decio. Is the reasoning for that because they're under still under consideration in some way, or indeed, they are a matter for the Secretary of State to amend if necessary. Or is there another reason if you could just clarify the purpose of those square brackets, please? The reason for that is because they were still under consideration. There won't be any square brackets of that nature included in the decio submitted deadline, sir, thank you. Thank you. Right still on shedule nine, and I now come to the purpose of paragraph seven.

06:37

Now that you've referred to that being similar to the Hinkley, decio, and that obviously was some time ago. That paragraph doesn't seem to appear in recently made orders. I wonder if you can, if there's anything that you can give me on that.

06:54

None of that's been deleted as well alongside paragraph three, which it relates to f. So all of that's coming out. Right. Right. Okay. Thank you.

07:04

Right. Okay. So that is the end of the panel's points on this. Are there any other matters under agenda item 12. To the parties wish to raise on schedule nine.

07:16

Just looking around quickly, okay. Nothing heard. Thank you.

07:20

Right. Similarly, we have no matters, the panel have no matter to raise under agenda items 1314 or 15. But I'll just take those quickly. agenda item 13. anybody anything on that?

07:34

Okay, nothing heard. Agenda Item 14, which is sheduled 11. anything on that?

07:41

Nothing heard. And agenda item 15, which is sheduled 12.

07:47

Nothing heard. Amen to agenda item 16, which is shedule 13. And agenda item 6.1.

07:57

We have already discussed the

08:02

submitted protective provisions

08:07

in respect of the carpenters earlier on in this hearing. But the point there was really to attempt to identify during the examination situations where similar protective provisions for private individuals had been included in the CEOs

08:29

misters award then was there anything that you can give me on if you like, precedents for those protected provisions for private individuals? No, sir, not presently.

08:42

Rather, if I could summarise the position. You recall the just before just before you do in terms of the the panel now I think we we believe that we have the positions of parties on this matter now. We've had the protective provisions that you've put in so far

09:05

earlier in the examination, and they were referred to in the most recent submissions. But in skimming through, I didn't actually see another set of protective provisions. I don't know if that's going to come out in your track changed dcfs sheduled eight or not. That is obviously for you to to decide. I have there we have the applicants response on that. If there isn't anything more, where the two positions are moving closer together in any way. We've effectively got to where we can get to on this. Yes, anything further you want to add?

09:50

He Yes sir. In this way.

09:55

You will you will often see So firstly, the statutory scheme for protecting money.

10:00

revisions covers any persons. So in principle what Mrs. White trancas just told you that this is what you've already said earlier on in the in the hearing, I believe I'm sorry. I appreciate your time tail and I'm trying to give you a summary and answer and read important so I can whilst question. Your concern is a private individual who on earth are you? Why are you coming to me with the protect provisions? My response is, the statutory compass is not confined to exclude individuals. That's the start point. The next point is that it's common for utilities to have protective provisions because obviously, they are needed by a developer to de risk the project as it goes forwards. The same doesn't necessarily apply to a printer to an individual. Normally, there'll be active engagement by a developer with a key landowner such as my clients from the outset in order to see if something can be done in this case, unusually and unprecedentedly, and hence, our proposed protective provisions. Aqua has simply not engaged with the carpenters pretty much at all. And you'll hear from Mr. Bryce on Friday about that. So in facilitating neighbourly relations, we're doing what we can to engage proactively through protective provisions to facilitate the far as we can, without queens, enabling the construction of their proposal, and then enabling restoration of the land. We can't compel. As we're trying to be compelled by aquin. We can't compel at Queens to negotiate with us not in terms of buying the land, but simply to discharge the onus which lies on exclusively on them to show that they have explored all reasonable alternatives, rather than having a closed mind to saying we're going to take your land, forget it. So we are trying our best to facilitate their proposal. And they're just saying, No can do. So all we can do so in that situation, is promote what we think are practical, straightforward, protective provisions that have their objective, give them to you, you can then take your view, sir, whether or not the act Queen has discharged the obligation on them to take to explore all reasonable alternatives or not. And that it may be they haven't, and that's a further reason why you can say no, you can't have that side, sorry, either over and above funding. So that's what we're trying to do. So far, I don't require I've seen any comments adversely at all, by Aqua and about our protective provisions, they've not even engaged with us on them. And they've been lying there for them. For weeks. The same with our job planning obligation, we're fine with access, no comments at all, they've had an opportunity to save you don't like it, there's a problem, nothing. So we're taking it from that they're entirely happy with the principal and the content of them, subject to the XA recommending whether or not to include them.

12:50

going forwards, we will continue to refine those protective provision terms to align with the iteratively evolving DCF decision turns until such point as we get to a set we think works with all the different requirements. And then give them to you, sir, to think about, if in the meantime, you have questions for us about them and their operability, please raise them. This is not the first time this kind of approach is adopted. The same thing happened on the horn z,

13:23

one z three

13:25

wind farm, where you have an operator trying to engage with an applicant they refuse to and so in order to protect their position, they put forward a proposal to try and achieve a neighbourly solution. And it's in a protective provision because it's simply more complicated than a requirement can sustain. So that's all similarly in terms of government consent obligation, sir. In ordinary CPOE parlance, you'll be familiar that if you can show a rational alternative means then that helps to undermine the situation of the requirement for the for the CPO, one of the rationales, as you know, for the maintenance of a permanent access road through the land is as needed for maintenance access, we provide a complete solution with a DCA planning obligation in relation to land we already own that will provide an answer to maintenance access. But it's just been completely ignored back when so were we then have to give it to you, sir, to say this is the alternative. What we're anticipating doing with the draft obligation is making it contingent on findings by you in due course. So it can then trigger into place as an alternative access means and that's why the debaters have access in the hall road and temporary sir. So I hope that's enough in advance of Friday to make it clear where we are, sir. Thank you. Thank you, Mr. Jarvis, anything in response at this stage? And I would just highlight that we did submit a submission at deadlines seven c regarding our efforts to negotiate and to make contact with Mr. Schwartz client and it's not as Mr. salters characterised today that

15:00

There's been no efforts to make contact, there have been many efforts to make contact.

15:04

Unfortunately, the applicant is not able to negotiate for less land than it requires. And we've set out very clearly why the land, which Mr. Schwartz clients own is required for the project, it's not agree that this board has set out a complete solution to maintenance access. And we've been very clear as to why that's the case, taking into account the protective provisions, then the reason why we haven't commented on the protective returns is because there is no need to because they are creating a situation which provides that in wouldn't be able to acquire the land is required for the project. And quite simply, without all of that land, the project won't be able to operate, so we can't engage in negotiations on those sorts of terms. And we've been very clear about that with Mr. Zwart or rather, with his clients solicitors that that's not the basis on which we're negotiating. We're seeking to negotiate for the land that's required. With regards to the draft planning obligation. We haven't commented on that. But what I would comment is that it's completely invalid. It's a planning obligation given to no one. A unilateral undertaking is normally given by a landowner to a local authority, as is the formalities of Section 106. Whereas the only parties to this agreement are Mr. Carpenter and Mr. Carpenter. So it goes nowhere,

really. But in any event, it's still not agreeable. It doesn't provide the land that's required for the project, and therefore, that's why we're not taking the time to engage with those matters. Thank you, sir.

16:29

Mr. Ward, I don't want to get into a tooting and froing on this. And I say again, that that's, I mean, just even in that conversation, now, I have both parties positions on this. But is there anything that you would wish to say in terms of what you've just heard at this stage? Thanks. And certainly two points. The first is, is that you yourself may wish to is for on Friday, what what is occurring in relation to the protective provisions? And any questions you may have, we may then take away think about. Secondly, the decio planning obligation is crystal clear is cast in unilateral terms. So it will bind the landowner, my clients to effectively prevent them treating aquin as a trespass on its land. That's an orthodox approach. We don't have to have an agreement with anybody because the decio unilateral.

17:17

It's that simple into a planning authority. Thank you, Mr. Mr. Jarvis, you you came in there? I'm not sure if your microphone is on in error, or not. I wasn't sure whether this has finished or not. This is what have you finished? I was just going to say so that, of course, that the development consent planning obligation, it's got nothing to do with a local planning authority because the German consent plan obligation, it's enforced by secular state, not i a local planning authority. And because it's casting unilateral terms, it would become, in essence part of the decio itself. Thank you. Thank you, right. I'm not sure now, whether it's Mr. Jarvis or Mr. Bird, because Mr. Bird you came onto camera partway through there, but let's start off with Mr. Jarvis. Mr. Jarvis, please. It's missing.

18:06

Yes, planning obligations, development, consent obligations are given to local planning authorities. They are given in accordance with the terms of Section 106, which provides for them to be given to local planning authorities. And in any event, the draft planning obligation that has been produced for Mr. And Mr. Carpenter isn't given to the Secretary of State unilaterally. It's not given to anyone. It's just drafted as a unilateral undertaking between themselves.

18:32

Right. Okay.

18:34

This is what was there anything else that you wanted to say in finality to this? Or have you made all the points that you wish to make? No. So we made all the points we need to do. We can clarify some issues if necessary. Thank you, sir. Thank you. Right.

18:49

Was there anything else in terms of the agenda item? 16.1?

18:58

No, thank you. I'll now go on to agenda item 16.2, which is really the applicant to briefly summarise the positions reached with respective parties subject to protect protective provisions. Now,

19:14

realistically, and really this is to ask whether there is any update to the response to the examining authorities further questions ca 2.3. point one, or is that still the current situation? This may this item may be better dealt with in a written response, but I'm happy to take something verbally first if there are any significant aspects that have changed since that response to ca 2.3 point one. I can see you on screen. Mr. Bird, is it you to respond to that? Sorry for the slight premature of neuron. So I think we think it's best that we deal with these in writing, so we can update you as to the position in writing

20:00

Right. And just on that subject, are there are there any positions which have changed significantly?

20:07

I could ask Mr. Jarvis just to deal with those updates. Yeah.

20:18

Yes, thank you, sir. So in terms of updates, I'm not looking at a whole list here, Mr. Jarvis is

20:26

doing what particularly causing causing difficulties at the moment if you like that looked. Okay, so a position is agreed with national grid. And a private agreement is in circulation, a position is agreed with certain gas networks and a private agreement is in circulation. We're at very advanced stages, the GTC infrastructure, and I anticipate that agreement will also be agreed very shortly. And highways England, we've agreed to protective provisions there. So there's nothing further to deal with in that respect. SSC and indigo, we're seeking to progress with their solicitors and we're going as quickly as we can with that.

21:01

And Portsmouth water, we have responded to them. We're just waiting for their response, I understand that there'll be coming back to you shortly to confirm their position in relation to their requests, and when if necessary, for deal with a point that's been raised around, essentially, their status under the new rules and streetworks act and how that deals with compensation, which we've confirmed will clarify whichever way is required. And so they're the key updates. Okay, that's great. Right. Okay. Anything else from anybody on agenda item? 16.2?

21:31

Okay, nothing heard. Thank you. Agenda Item 16.3, then it's on the same subject, and it's considering the same organisations. And it's if agreement isn't reached with the parties listed in the response to that further question, Ca 231. In rep seven, zero 38. Would any changes need to be made to the draft? dcl. To Jarvis.

21:57

Just to keep it very short, sir. In summary, no, the position is the protective provisions ensure there's no serious detriment to those persons where an objection isn't removed, and therefore we'd submit that there wouldn't need to be changes made to the DCA. Thank you.

22:11

Anything else from anybody on agenda item? 16.3? Okay, nothing heard. Thank you. Agenda Item 16.4. This actually refers again to the responses to the further questions ca 2.3. point one that I've just spoken off. It refers many times to it, the first number refers a number of times too many made vcOs. Are there examples that can be given, and possibly single examples of recently made vcOs to support the protective provisions that are in the draft? dcl. At the moment, Mr. Jarvis, I can give you a single example today. So and I can give you multiple examples in writing, if that's helpful.

22:57

I I'm not asking for a lot of work on this. It's, it's simply if there is a if there is a single example that I can be given. And I'm happy to take both of these in writing in terms of a post hearing note, a single example will suffice. But if you wish to put more in, then that's fine. What it would actually cover would it would be grouped into the organisations that are listed in the response to that question, so that each of those organisations have a track back to if you like a precedent of a, let's just call it a very similar protective provision.

23:31

Yes, I've already done the work.

23:36

Essentially, Riverside energy Park appears in the same form for all apart from part six which is highways England, and in relation to highways England as a similar form in the SLP decio. Bit right. Read with highways England, ah, I would mention somewhat bespoke to the nature of the scheme that's proposed, given the interaction with highways England assets. Right. Okay. If that can be confirmed to us then at deadline eight. Thank you.

24:06

Right, anything else on agenda item? 16.4. Just looking around, okay, nothing heard.

24:15

on there to gender item 16.5. And, Mr. Jarvis, these could almost be yes, no single sentence responses to these agenda items. applicants have to confirm in relation to requests for protective provisions from the Environment Agency.

24:34

No, thank you.

24:39

Are you aware of any British Gas limited? leak networks water or Akiva services utilities are assets within the within the water within the order limits at this time? British Gas no Arqiva no leap networks. Were aware of an interest in land which we think is it

25:00

Land other than the land that's in the plot, ie the same title, we're just confirming that we expect the answer to be no in relation to that as well. So

25:08

right okay, bearing in mind the could that could that be confirmed bearing in mind the situation with with leap, it will be confirmed and the book of reference and the statement of reasons will be updated at deadline. So,

25:22

thank you

25:25

terms of 16.7

25:29

applicant to explain how the framework Traffic Manager management strategy and the measures are secured by part five of the protective provisions set out in the draft decio. And the relationship of that between the strategy part five of the provisions and the Sainsbury's carpark.

25:53

reference to part five of the protected versions is an error and that's a reference to an old version of the audit that included protective provisions which were focused on traffic management strategies. And I'm going to ask Mr. Chris Williams if he's still available to just give you a brief sort of overview of how the F TMS applies in relation to the Sainsbury store and carpark if that's okay. So, yes, thank you Mr. Williams.

26:19

Hello, so, the ftms References

26:24

Sainsbury's access in relation to the a 2030 fits that road sainsburys access traffic signal junction and the installation of the the cable route along Fitzherbert road.

26:39

Along Fitzherbert road itself construction would be accommodated through the use of single lane closure, owing to the fact that the existing Highway in this section provides two lanes in each direction.

26:52

And therefore, meaning that the highway can remain open at all times during construction,

26:58

that the actual access of sainsburys itself will be facilitated through temporary traffic signals

27:08

during construction of the onshore cable route,

27:12

again to ensure that access is maintained at all times.

27:18

The ftms also makes provision to allow for work to be completed on 24 hour basis if necessary, to minimise disruption to Sainsbury's store. Noting that where this occurs and noises activities will be avoided between 10pm and 7am.

27:36

The ftms also prohibits work

27:39

in the month of December to mitigate the impact on trade. And an update to the F TMS which has been submitted at deadline also excludes work at the Easter period for similar reasons.

27:56

Thank you, Mr. Williams. Thank you.

27:59

Are there any further comments from anybody else in agenda item? 16.7.

28:05

Okay, nothing heard.

28:09

And finally, then Were there any other comments on protective provisions as a whole agenda item? 16.8.

28:19

Okay, nothing heard.

28:21

At this point, then, I hand over to this demand for agenda item seven.

28:27

Thank you, Mr. Roscoe and agenda item 17, sheduled, 14 certified documents? We have nothing on that. Are there any matters the parties wish to raise?

28:39

Nothing? No, if that's okay, actually, I just had a point I'd like to raise a few further to a discussion we had at the hearings in December with regards to how we are certifying as just noting the number of documents that that can prizes,

28:54

have been thinking about the best way to do that. And what I'm intending to do is to insert a definition of the environmental statement into the ies and to define that by reference to the shedule of the documents forming the environmental statement. And then to include that document as the certified document. So that will list all of the documents that effectively form part of DDS that would, to me seemed the easiest way to deal with that logistically. But that doesn't express the list out all of the individual documents in the shedule. So I'm just wondering if I could canvass your views on whether you think that would be an appropriate approach or not.

29:33

I think one of the things we've got to raise tomorrow is that there are a few additional documents that have been put in to examination in support of the s which are present. I'm not listed as part of the s so therefore not certified documents. And I think it's important that everything that's been put in, in support of the findings is becomes part of the certified documents. So I think I followed what you just said. And I'm happy to look at that way.

30:00

Perhaps it's something we could look at tomorrow, when we come to look at the environmental issues. That's that's fine, sir. Thank you. Thank you.

30:10

Is there anything else on certified documents?

30:15

Which case move on to agenda item 18, which is sheduled 15, which is the deemed marine licence.

30:23

Huge apologies to the representatives from the marine management organisation terribly sorry to keep you waiting all day. But now is your moment.

30:32

18.1

30:34

we don't have natural England with us. We've had an opinion from historic England. So I think that just remains the marine management organisation please, to let us know with your content with the addition of the crossing of the proposed cross channel fibre fibre optic cable to the deemed relicense. And the

extent of the additional environmental assessment work that was set out in ies addendum two, which was document rep seven oh 67.

31:01

Ford.

31:03

Thank you, sir. And yes, I can confirm that the MMA have requested some further clarification from the applicant on cumulative impacts with regards to aggregate dredging areas, and the applicant has sent us three. There's clarification today, which we'll be reviewing and will respond on this in time for deadline eight. Apart from this clarification, the MMO is content with the environmental statement attendant.

31:30

Thank you very much. Do you see any problems with that? Mr. Jarvis?

31:34

No, sir, thank you. Thank you. We do have one more additional point if we may on this agenda item. We know there's a minor difference in the wording for the proposed condition 14 of the team or a licence. And that wording put forward very recently in MMOs deadlines seven c submission. So my question, Mr. Jarvis is do you intend to update the team marine licence to reflect the wording that MMO is now suggesting?

32:07

So I said And so, my so natural power Sara Lister has liaised with the MMO in relation to the word, I believe the wording that's going to be included is going to reference the licenced activity or any part of those rather than construction. And I also understand that after I put that wording forward that has been agreed with the MMO. So that is what will be reflected.

32:31

So there will be a change to the DML when it comes in. Yes, there will sir. So it won't reference construction, it will reference licenced activities. So it more clearly refers to the rest of the DM and that will reflect MMOs negotiations with you.

32:47

Yes, sir. Thank you. Thank you very much. Are you happy that misfold?

32:53

Yes, I can confirm we're happy with it referencing licenced activities. Thank you very much. And with the exception of the appeals procedure, which is the next item on the agenda, are there any other matters which the MMO or in indeed anybody else wishes to raise about the D Marina licence?

33:12

Yes, yes, we did have a matter that we'd like to raise around sampling for contaminated material. Please go ahead.

33:20

And say we would just like to state that we maintain our position that sampling of HDD location should take place, if dredging hasn't commenced within five years of the original sampling. This type of condition is appropriate of any dredging and disposal works to ensure data on which risks based decisions are made is timely enough. And we're only requesting something that is in line with our guidance. And we have been proportionate as well, and we haven't requested a sample plan for the whole of the cable corridor. But due to the location and the physical nature of the settlement at this site, the MMO cannot deem the risk low enough to not have a sample plan if dredging does not occur within five years or samples. And we would also like to say that our section 56 response, we stay to concern that only seven PCPs have been tested for rather than the full suite. This is a contributing factor which lowers the confidence that the MMA can have, and the workers that the works are sufficiently low risk and not warrant further repeat analysis. The mme must consider impacts on the environment, human health and other users of the sea and consider that the risk of not sampling would exceed the acceptable levels. We appreciate that the applicant may not be content with this requirement. However, we do not believe that it is a good enough reason to risk the environment or human health due to the risks of contamination. However, I would like to stress that we are only asking for a sample plan requests to be made. We may not actually require the sampling to be undertaken. But the sample plan request allows the elevated to assess the risk at the time. And the applicant has provided a draft licence condition to us yesterday. We reviewed that and the MMA strongly objected to the timings that the animal is healthy under this condition however,

35:00

I understand that this will be your address at point 19 of the agenda.

35:04

Thank you very much. I think again, it's one of these situations now where the examining authority is quite clear where the two parties lie.

35:12

And we do appreciate your positions for nammos position on this. Is there anything that's changed in terms of the applicants positions to jobs? No, sir. It's as set out in the statement of common ground with the memo submitted on Monday. Okay, well, we're aware of both of those positions. Now. That's something we can just take forward in our deliberations in that case. Thank you, sir. Is there anything else on agenda item 18? Please?

35:40

Nothing heard on that. So can we move on to agenda item 19, which relates to shedule 16, which is the deemed marine licence procedure for appeals.

35:51

Apologies.

35:53

It's going to take some makes may take a while I'm

35:57

examining authority has made some suggestions in the schedule of changes in relation to schedule 16. In first instance, Mr. Charles, any comments on those?

36:07

I did inquire about this with the case team as to whether this was a correct agenda item because there weren't any changes proposed. And I was informed that it was not a correct agenda item. So I haven't seen any proposed changes to shedule 16 to comment on, sir. Indeed, you're very you're correct. Because if I hadn't changed my so that's mine. My fault. Thank you very much for pointing that out.

36:29

Okay, so we've got two positions, which are clearly quite strongly opposed. Again, here.

36:37

with Mr. Mo like to summarise, we have your we have your some of your submissions was four, would you like to summarise your position? As you've submitted at seven, see?

36:48

If that's the case, I'd like to party to my colleague, Eva check. That's fine. Thank you very much.

36:58

Thank you for that. us advice. We have as you've just confirmed, we have provided our detailed position at deadline six representations. So I would not like to excessively labour the point other than just to highlight how alarmed we are. And it is a major concern that the appeals process in its current format is included within the draft this year. We just need to reinstate that this is not broadly consistent with the existing statutory process. There is already an existing appeals route under the marine licencing and licenced application appeals regulations 2011. This process does not apply to any decisions or timescales in relation to the memo for any application to discharge conditions of a marine licence. Now, what the applicant is effectively proposing and what the amended wording and schedule 16 is offering is a completely new and enhanced appeal process, which is fundamentally different to any other mechanism available to other marine licence holders for my licences issued under Marine and Coastal access Act, or for the existence of existing team marine licences. We cannot see any justification for such a major change, particularly since the purpose of the deemed licence regime under the Planning Act is essentially to remove the need for a separate licence application, we are finding that extremely disturbing and extremely concerning. This seems to also go against the annex B of the pins guidance note 11, which states clearly that the MMR would seek to ensure wherever possible that any deemed licence is generally consistent with those issued independently by us. And input offering such a completely new and fundamentally different process would basically create an unlevel playing field across the regulated community. And anyone who obtained a licence from directly from the MMO or through any other the marine licence would be disadvantaged by that had the parliament intended the

appeals process to extend to such decisions, whether in relation to N sips or the marine licences granted by the MMO, then the wording of the appeal regulations would have been drafted differently. This proposed process is also completely inconsistent with the recent decisions made on Norfolk Vanguard and Hornsey three, and we have quoted the exact wording from the examining authority for those decisions in our deadlines six representations, since its inception, and the MMO has undertaken licencing functions on over 130. This years, comprising some of the largest and most complex operations globally, we're not aware of a single occasion where any dispute which has arisen in relation to the discharge of conditions under DML has failed to be resolved satisfactorily between the animal and such licence holder without any recourse recourse to an appeal mechanism. Basically, we believe that the applicant engineer the solution to a problem that just simply doesn't

40:00

exist and provided no compelling justification or evidence for this major departure. And we again strongly suggest and request the examining authority to remove any appeals process altogether contained in schedule m 16. Because we believe it will just lead to major disparities, poorly inappropriate. There's the existing process for for challenging on a judicial review, we do have existing internal complaints procedures. And what is proposed is just a mechanism that is completely inconsistent with what is available to others. Thank you very much.

40:38

As I say, we've had your deadline 70 submission, which includes a lot of what was that? The reason for my confusion in terms of changes to schedule 16 was actually we took them out of our schedule changes, because we wanted a much wider conversation about it today. So we felt it was better to do it today. So please, MMO don't don't think that just because we didn't have it in the shoe to change that. That means that we've accepted it. It doesn't we do what that by the conversation today.

41:06

So please don't interpret that as being just being satisfied with the proposed procedure in a draft DC as it stands.

41:16

I want to ask a very general question. I'm pretty sure I know the answer, Mr. Jarvis, but I'm, I'm assuming you don't intend that they deemed marae deemed marine licence appeal process would fall into the general appeal process that we discussed earlier. It will have its own bespoke process. Is that correct? Yes, sir. It will sit on its own in sheduled 16 and be directly referred out to from the deemed marine licence itself. And in some way, when we come to some sort of conclusion on the general appeal process in Article 46, and sheduled, three, we'll need to find some you'll need to find some way of excluding the de marine licence from that process. Really?

41:57

Yes, and I believe that's the point was Ford raised earlier about article 46, too. And I'm happy to clarify that that's not the appeals process that applies to the MMI. Okay, that's helpful. Thank you. So you're going to be relying on what is going to be condition 32 and sheduled 16 of the game marine licence, to

set out that bespoke approach to appeals? Can we just explore for a minute how that would be engaged in the development consent order?

42:27

At the moment, as far as I can see, shedule 16 is only engaged through condition 13. Is that sufficient? Do you believe for it to know so I don't there are further amendments that I needed to refer out to your 16 in relation to all of those conditions that are referred to at the start of it says there are amendments that are proposed to meet the deadline, eight more clearly refer to the position. And that would presumably include some specific reference in Article 37.

42:57

Yes, it can do, sir.

43:00

At the moment, at the moment, where agreed is not properly engaged the way it's written.

43:06

Yes, I think when it was previously, in part three of the de marine licence it followed, but it's since I've made that change to shedule 16. It's just some further tweaks that are needed to make sure it is properly engaged. Okay, so that covers my concerns in relation to what's actually in there at the moment. Do you have any comments on what you just heard from MML in terms of the principle of the the bespoke approach you're intending to take?

43:33

I do so but it's really going over the points we've raised before. And I think opposition is very clearly set out in the statement of common ground. Ultimately, we don't agree with the MMO. With the point they're making, we think it is appropriate for nationally significant infrastructure to ensure there are no impediments to it and for clear appeal process to be included. That's why it's included in relation to all of the consents and approvals in a decio. It's not understood by the MMO. Consider they need to be exempted from that sort of scrutiny. I fully appreciate what the statutory scheme is in relation to marine licences, and how conditions can't be challenged pursuant to them. But that doesn't mean that you cannot include provisions of that type in a decio. I've also previously set out my views on the rationality of Vanguard and the recommendation there was considering whether judicial review would be an appropriate remedy. I've clearly set out that judicial review is not an appropriate remedy. One could not necessarily judicially review a challenge not taken and the ultimate result of a judicial review is you go back to the original decision that wasn't made. So ultimately, you you save no time there, it's a worse situation for you. It's costly, unnecessary and just not that helpful.

44:42

Clearly, my clients concern is that there are delays to the scheme which have cost implications where things are not dealt with in a timely manner. And we've specifically set out timescales that ensure there are or there is rather as an available amount of time which is appropriate in relation to the details that are to be approved in many

45:00

instances formance it would be incredibly disappointing if a decision can't be taken on a proposed plan within formance. And that's the situation where an appeal may arise. And it feels entirely appropriate to cater for that situation, should it not be addressed. I do note the comments that the MMO make in relation to the DCR is not being subject to this, and matters not being resolved between the parties. Of course, the matters have been resolved between the parties in relation to those circumstances, there's no other route of resolution. That's the only way you can deal with it. There isn't a confirmation that those things have been dealt with in a timely manner or haven't caused delay and cost implications. And that's the principal concern of my client and including the proposed appeal processor. Thank you.

45:45

Thank you. I think we're at the same conclusion that there are no precedents you can quote to us of similar novel approach to an appeals process. Well, we've got a deemed marine licence enter granted DC at

46:01

this point in time, sir, no, but I will review the situation to see if there's anything further I can provide. But I am conscious that, you know, the MMO do oppose this approach on all schemes, it's not that they're treating aquent. Individually, I'm aware of their approach. I just think that it's from our clients perspective, we're not happy for the MMO to not be subject to scrutiny in relation to the discharge of these conditions. Okay, well, we have both parties. Is there anything else you wish to come back along? If

46:28

we understand your position, we understand the applicants position. Is there anything you've just heard, though, which, yes, if that's okay, if that's the case, as you've pointed out, this is an unprecedented approach. And even for much larger and complex cases, linked to offshore wind farms, like Vanguard and Hornsey three, were, arguably, the applicants could argue even even stronger terms, that is even more justification for them to have those timescales. These approaches have not been taken, and they have been deemed entirely inappropriate. Now, we completely understand the applicants desire for certainty. And we do empathise with this approach. However, the reason why it is in a completely inappropriate to put a timeframe on decisions of such nature, it's because the amount of time it takes it takes to determine m such as opposed consent return depends on many factors, many factors such as the quality of the submission, the complexity of the issues of whether we need to consult with any other advisors, the availability for those advisors, that's why having those strict timeframes in in that this year, would be entirely inappropriate. Now, the MMO does not deliberately take longer to determine those cases, it is not in our interest, we do have external, we do have some internal customer complaints procedures. So it wouldn't be in our interest at all, to deliberately take longer than absolutely necessary. And, you know, the deadlines that have been quoted, you know, in most of the cases, it would be sufficient time, but for the factors that I've just listed, the timing might not be sufficient. And that's why it will be completely inappropriate to have the stick timeframes. So we do not deliberately delay and providing the elimination, so those conditions, but sometimes there will be aspects beyond our control that will need to be considered. Yeah, I think we have that. Thank you very

much. For those we understand your position completely. Thank you very much. Was there anything else anybody had on this agenda item?

48:30

Why was just like that those comments would would seem to intimate that Mmm, acknowledge there are often delays. If they've got a complaint process to deal with them, they must be happening quite often. And they've just clearly confirmed that they can't be held to timescales, because there are reasons why they won't meet them. So I think actually, their submissions may justify the applicants position.

48:51

Thank you, Mr. Jarvis. Not sure that's a helpful comment. Shall we move on that case? If there's no other comments on sheduled 16. Anything else? Okay, anybody else on shedule? 16. And, sir, if I may, just very briefly, it's Russ Hudson, representing the applicant. And I just wanted to flag up my understanding of instances of an appeals process. My apologies, it's not an appropriate time. And my understanding, and I'm happy to be corrected by the MMO. If they are, if I if I'm incorrect, but But actually, approval time they approval timeframes were included under the marine licence issued as part of the tideway

49:30

tunnel project. So that's basically schedule 15, I believe, which covers the DML and does set out for approvals, specific timelines for discharge, and the process for that. So I'm, I may have misunderstood and that this doesn't do what I guess, I think it does. So I would welcome any comments from the MMO is to and they're approached on the Thames tideway tunnel and this clearly defined times for approval of the AML requirements of

50:00

conditions.

50:02

Does anybody if an MMO want to come back quickly on that, or would prefer to follow up a deadline eight, we will be happy to follow this up by deadline night. But as previously outlined, the whole appeal process that has been suggested is completely inconsistent with what's available to all the other licence holders, whether it's under the coastal access Act, or whether it's a de marine licence, but we'll be happy to address it. The deadline is very, very helpful. Thank you very much.

50:28

Thank you, Mr. Hudson. So can we move on to agenda item 20, please. And that's sheduled 17, which is the arbitration rules, but we have dealt with this earlier. So unless anybody has anything further on that, I'm happy to move on. Anything on agenda item 20, that we haven't already covered earlier.

50:48

Which case I'm going to move on to agenda item 21. And hand back to Mr. Wallace.

50:55

Thank you very much, Mr. Man. I propose that we continue. Plan forward as time has gone on, we may take a break after this item, but let's continue. Agenda Item 21 relates to planning obligations.

51:10

Question 21.1. Can the applicant report and positions regarding any open live or finalised obligations that the examiner authorities should be aware of? Mr. Jarvis, I'm not expecting chapter on verse on this, as you can imagine, but if you could just give us a quick commentary where you are at with any

51:31

obligations, please? Oh, yes, that's fine, sir. So there's a proposal section 106 agreement planning obligation with Hampshire County Council. And that's reasonably well progressed, there was a further draft issued this week, because they're in a third that matter that's in discussion between us. And it may be that following the discussions, I believe, which are tomorrow in relation to PERS mitigations there might be some further updates to that. And there's a draft section 106 agreement with Portsmouth City Council. And we've received some headline comments from Portsmouth City Council, but no actual detailed comments on the drafting or the principles of those

52:06

further updated draft was issued, taking into account those headline comments earlier this week. And so that's with them. And then lastly, there's a proposed section 106 agreement with the South Downs National Park to secure two contributions, one in relation to additional woodland planting within five kilometres of the converse station, and want to secure improvements to public rights of way within two kilometres of the converse station, in light of further discussions regarding the residual impacts, and a draft of that agreement has been provided to the south downs and I'm aware that there's less traffic on their behalf has been in touch with me today to progress that, sir, thank you. Excellent, thank you and do anticipate that all of those would be in a finalised position come at the close of the examination.

52:48

I'm hopeful, sir, certainly Hampshire and southdowns. We're really waiting for engagement from Portsmouth.

52:57

Okay, excellent. Thank you very much.

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In that respect to Portsmouth City Council, does Miss Cahoon wish to address anything at this time? I'd prefer to keep that out of the hearing and continue up discussions outside.

53:11

And

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obviously, discussions are continuing on this. But that one of the issues, clearly that's been raised, and it's in our as 061 paper is how

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the matter is to be dressing. And obviously, I've laid it out when we were discussing the earlier article eight, four. Yeah. I don't know whether you want to deal with that now or

53:36

later.

53:39

Let's do have that now. If we make it so that now I'll be I'll be very short. And so if you have open as 061 Forgive me that the point is dealt with?

53:52

Or was it not dealt with? Sorry, that may be me.

53:56

Confusing myself?

53:59

No, sorry. That's just no one

54:01

brighter than so the position has been? Oh, yes, sir. It is. It's in the last part page 23 of as 061.

54:11

Okay. So, when we noted that, Article eight, four came forward, there was reference in the explanatory memorandum to this coming out of Thames tideway, which is absolutely correct. It is reflected in a schedule schedule 19, which deals with modifications. There was, however, another article or a specific article within Thames tideway tunnel decio, which dealt with what I've called the gap earlier, which is the issue of the fact that prior to and until the decio, is made, any deeming provision that is addressed through article eight for doesn't, doesn't work

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and therefore, the process

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The solution that was adopted through the ttt decio, was to have an agreement to agree.

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And so we think that there is force in that because otherwise,

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you will, you won't know, you won't have firm and agree DCs in front of you. I mean, they can purport to be firm, but they don't have any force because they can't.

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And, and also, there is another issue that

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that Portsmouth has with and has had with the applicant, which is how to reflect some of what it requires through section 106 in financial

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excuse me, financial agreements or financial provisions, that again say should should only be addressed through a PPA. Now, I know that the excise view is to encourage parties to agree things through ppas. But that is clearly in relation largely to pre application works and and examination expenses, there is it is difficult to

56:14

I say justify having something important as discharging or fee does discharging requirement fees, and such matters and post discharging requirement, expenses. If that's not dealt with through something as clear and as firm as a section 106. And all that it's made that there is a clear connection between any undertaking or agreement about such expenses. So we think that there is clear force and should be supported from from precedent, in terms of having both a 106 that can be supported by an article and a further agreement, if necessary, that sets out that there will be that any financial provision can be made. It may or may well get over any of the concerns that acronym has as to

57:09

whether it's appropriate for Section 106 to contain particular two kinds of statutory, sorry, particular kinds of financial provisions. But

57:19

we have flagged these up in our dl deadlines, seven c submission. But

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so there are others, obviously, time to consider what we've put forward. But I wanted to put that matter and explain those things to you. And suggest as we say that one of the additional matters that is on the face of the of the decio is a formal article that deals with this matter. Okay. Thank you very much for that. That's, that's understood. And, Mr. Attorney, your hand is raised. Is that a point on what you've just heard from Portsmouth? Or is this a separate point?

57:58

So yes, which attorney for Hampshire County Council, it follows on from what Mr. Calhoun has said. And I raised it in part because I have to leave shortly to go on to say now rather than if you don't mind me, me, taking the board.

58:11

We recognise that the approach that it's been identified by Portsmouth and the concern about making sure the 106 agreements are effective. As you know, we're progressing towards completion of those agreements. But certainly nothing that we're saying contradicts the point that Portsmouth is making that respect.

58:32

in respect of ppas, there is an additional point really, which is that these, like the 106 does need to be concluded by the end of the examination, such that we can say to you as the examining authority, that the economic impacts on the County Council have been appropriately addressed through private agreement, because otherwise there's a vast job of work ahead, which won't be compensated for under the provisions of the DCA. So it's really just to emphasise for these purposes, the similar urgency to concluding ppas is there is to concluding 106 agreements. And then I just echo Mr. Jarvis's point that there is the ongoing issue about bus contributions, which I think we'll hear about more tomorrow. But that is something which I hope will be resolved through the one to six process and something we can discuss in substance tomorrow.

59:34

Thank you very much, Mr. Attorney. And if you have to shoot, thank you very much for your contributions today. Mr. Jarvis. Is there anything that you wish to come back on there and clarify on those points? Not at this time, sir. I'll consider the point on Thames tideway. But I'm not entirely sure that the point that's being made in relation to Article 60 is correct. And I think there were different unilateral undertakings

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Given on that, in addition to the section 106 obligations being entered into, and what I may well do is to set up my understanding of Thames tideway when I confirm how the matter has been dealt with in connection with this order. Thank you, sir. Thank you very much.

1:00:15

Before I move on to the next question, assume Mr. Sparks Your hand is raised again.

1:00:21

I am aware of your point about earlier about the DCM obligation and it we don't necessarily need to revisit that entirely. But is there any point she wants to raise on 21?

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Yes, sir, to endorse Portsmouth approach and analysis is quite correct. Obviously. piggybacking on ours piggybacking on this,

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Miss, Mrs. Calhoun makes the point about how to bridge the chronological gap

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in relation to deeming provisions.

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The the only option, lawfully in our respectful submission to the XA is to have an article coupled with a shedule and the shedule to include terms. And the reason for that is this that section 1061, as modified by the 2008 is crystal clear, whatever land interest, not a contract. So an agreement on option two agrees for the birds, frankly, we ran into the same problem at South hook weather where the weather promoters for the promoter, we wanted to put a contract for some contribution. And the XA, quite rightly said it's immaterial, it's got to be a planning obligation can't take into account. So it's for the birds. So the only way through for

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aqualand to promote any form of planning obligation at all, to be taken into account lawfully, in a respectful submission, is to have it in some bounded by an article and the shedule in terms unless they have a land interest. Now, that's a perfect example. If they bought our land, they'd have an interest they could start, but they disabled themselves to have no land interest. So their host by their own petard. So we'll make submissions in front in advance of deadline eight on that. Lastly, sir, we would invite you

1:02:09

to ask the applicant to itself supply a note to the XA on why things lawfully, it can execute a planning obligation before the actual grant of a decio. And we'd like an opportunity to respond to their energy costs. Thank you, sir. Okay, thank you, Mr. Saar are just out of interest to have you in your response or your future response. Got any precedent the CEOs were the article in shedule, securing obligations has actually been been incorporated. No, sir. But but in common with the MMO and other contributors, that the common theme emerging from today is that this is an unprecedented decio. And so everyone is doing their best to try and put their thinking hats on to facilitate and assist the XA. And that's the only lawful route that that I can think of having had it spirits have the same problem.

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And it means that at the moment, you have to exclude from account anything which is going to be encompassed in a planning obligation.

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But but it is for the is for the aquent have convinced you, sir, to show you is lawful not to just arm wave and say Oh, so what? Thank you, sir. Thank you very much. Mr. Jarvis. Any thoughts on on that?

1:03:33

No, I can see a way of addressing it either way. And I'll confirm my thoughts on that. And my deadline a submissions. Thank you, sir.

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Thank you very much. Does anyone else have anything to raise on 21? One?

1:03:47

Okay, nothing heard. Moving on then to question 21. To and can the applicant report and the position with regard or other consents, since publication of rep six hyphens zero to four?

1:04:03

Again, I'm not expecting chapter and verse unless you may wish to do this in writing just to say I have to consent in hand or not. There are a couple of questions, but I'll ask those afterwards. Mr. Jarvis.

1:04:18

Thank you, sir. So there's no updates in respect of any of the UK or the consents and licences. They're all still in the same position. With regards to the consents required in France as the XA will likely be aware the French environmental throws ation application was refused on the 18th of January 2021. Reason for this refusal was that the applicant is not the owner of the land that does not have the right to carry out its project in all plots of land required for it. Taking into account the council that the municipality has has somehow objected to the applicants request to occupy public property which would have secured those rights. There are no other grounds for refusal. The applicant is appealing the refusal in the French courts on grounds of failure to provide reasons in relation to the decisions taken and other non compliance with French and EU law. In any event, to

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address the sole reason for refusal, the applicant will take further steps to acquire the relevant land and rights by the following means the applicant will continue to seek to acquire the rights voluntarily. The applicants discussions in relation to voluntary acquisition are affected by travel restrictions due to the covid 19 pandemic, which has meant it has not been possible for them to travel to France to discuss matters they would like to. It is hoped once the situation eases and more meaningful engagement can be undertaken, a more positive outcome can be achieved. Further, the applicant is continuing its efforts to obtain the relevant regulatory approvals. Whilst those approvals would not render the applicants to public utilities such approvals would allow the French central government to declare the project to be in the public interest, which would then allow for the pre fe the states representative to take a decision to confirm the rights required for the project may be provided to the applicant by either of these routes to sole reason for refusal can be addressed and the required environments authorization secured, and then whilst not a matter specifically addressed in the other consents and licences, but certainly of relevance Sykes back to the question. It's also relevant to explain the current position in relation to regulatory status. As discussed at the previous hearing aces Board of appeal are now reconsidering the previous exemption application following the applicants success in the general court of the European Union. It is anticipated a decision on this will be provided by the fifth of June 2021. In this regard, he remains the taste and need to take their decision as if it is 2018. So that if a decision is made, it will apply as though issued prior to the trade or trade and cooperation agreements being entered into on the 24th of December 2020. It is also prudence knowledge that in parallel Acer has lodged an appeal with the general court of the European Union, that this does not suspend the judgement of the general court and no request has been made to do so. So they are at this point in time, continuing to determine the previous exemption request. In addition, as explained in the applicants response to excise further written question with reference ca 236. The trading cooperation agreements agreed on the 24th of December 2020 dedicates specific attention to the cooperation between the UK and the EU on efforts to combat climate change. As part of this cooperation, the trade cooperation agreement established a

new regulatory framework energy infrastructure linking the member states of the European Union and the United Kingdom, including an exemption regime similar to that in regulation 2019 943, under which aquin submitted the previous exemption request, following discussions with the energy regulator commission, Cree, and it's British counterpart off gem, the ongoing request for an exemption in France under the previous regulation applicable has been discontinued application will be made in line with the new regulatory arrangements provided for by the trade cooperation agreement shortly. Thank you. So. So that's very useful, very useful in short summary, would you deem these just to be temporary setbacks, then in terms of the change of regulatory reform, and the the leave in the EU, and these are matters that will be resolved in due course? Yes, our view is that these are matters that will be resolved into course, thank you. Thank you very much Miss Cahoon, your your hand is raised.

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So, yes, thank you very much. I, I have to say in very short terms, I hear what Mr. Jarvis says.

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The The truth is

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that at this stage, there is there has been no progress with any of the French consents, that is the bottom line. In addition, off gem and crew have had to discontinue the partial exemption application that is now gone. So, you will have seen from Portsmouth's submission at seven see that sorry, deadlines, seven see that we've attached the both the off gem announcement of the dismissal, but also attach some of the requests and documentation, which make for some very interesting reading, in terms of what

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what what what Perforce might have justified this partial exemption which it would appear that?

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Well, it's not entirely clear what what is what aquin are still doing. But Mr. Jarvis tells us, in effect, that there are going to still be two running exemption requests. So I think it is bizarre to suggest that the the aces Board of appeal

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could somehow reconsider its exemption request, on the basis of it being of turning back the clock and as being 2018.

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Nevertheless, and notwithstanding the TCPA sir, which has a large section that deals with energy, makes it very clear and so the provision is set out or at least referred to with

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in Portsmouth, seven C's submission.

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What it says in very clear terms is all existing exemptions can continue. But it says nothing about applications that were ongoing. This is simply an ongoing application. And it would say that there is there is nothing within any particular part of the TCPA, let alone somehow for the regulations to apply, which they don't anymore, that would allow this to be continued. So, sir, we do not see that that previous exemption request will will have legs.

1:10:45

Now, with regard to again, what is within the TCPA that that quindell relying upon? Sir, there is no, it is an agreement, it is not a statute that provides a new exemption system. There is nothing sir, formerly that acronyms can point to and I'm very happy to be corrected.

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That that as far as I can see, there is nothing that they can rely upon to show that there is a new exemption regulatory system that applies comp following our exit from Europe. So, as of today,

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there is nothing upon which you sir, as the examining body can conclude and can say that it's all going to be alright, sir. So that is simply not a safe and legal conclusion as we stand today. And so, it is far more serious and far more fundamental than than at Quint are suggesting. So that that is Portsmouth's position.

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And suggest a follow up point on that when you say not a safe and legal conclusion. What implications just for the record, what are you saying that has for this examination in any determination the examiner 14 may have to make what's the

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one of the points that I made when Miss Greenberg was was making submissions and I refer to this point, but the fact that at Queen's position has been before the CJ, you and indeed Acer that without an exemption, they cannot operate in France.

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That position, therefore, is pretty fundamental. And so that is why you can't without these exemptions in place. Go it'll be right because it simply isn't the case.

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And But, sir,

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in order to be helpful. So you will have seen from again from as 061, that the suggestion that we make is that there is some form of Grampian requirement that says, unless and until the relevant consents, including these exemption requests, if if they can be if they can be applied, or can be granted, that until such time as those consents are in confirmed and lawfully confirmed that there can be

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no assumption that this dceo could continue in any form at all. So that it did I mean, it is a matter of fact, if there are if the French project can't continue, then this project is dead. So, but that I think would at least cover the position to say, Well,

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if these exemptions aren't allowed for then the project can't. Okay. Okay, that's understood. Mr. Jarvis, just coming back on that point, whilst

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whilst it would probably be unlikely that a developer would invest and start building one half of a project without securing the other half of a project, for fear of wasting money, perhaps if nothing else, what are your views on first of all that that safe and legal conclusion that misca hoon mentioned, and also the possibility of a Grampian style requirement that are not until all consents are in place should development commence? What are your views on that place, and there is an exemption mechanism in annex e are three of the trade cooperation agreements. And we'll provide further comments on that in writing in due course, and clearly addressed that point. And I have previously set out our views on the no start until all French consents are obtained. We start entering the world of dealing with French law and process which isn't what we're familiar with in the UK jurisdiction. As I've set out in my response to Winchester City Council, it's not as simple as you need all consents in place. That's there's many consents that are needed.

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timings for those differ depending on which consent you're obtaining, because of the lifetimes that they have, for example, the environmental authorization is obtained following which you obtain the building permit. Now, the building permit naturally follows the environmental authorization. So that wouldn't be rational to not allow any development to commence until you have both, it would actually be an unnecessary delay. That's one such issue that I'm aware of. I'm not an expert in French law, and I'm not really looking to start involving French law and process in a UK statute.

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Okay.

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Okay, fair enough.

1:15:38

We look forward to your comments. More deadline eight. Mr. shrouds, so your hand is raised. Is there anything further you wish to add on what's been discussed? Yes, at first he just to point out, it may be helpful if we address these points in more detail on Friday, because they they sound also under paragraph 19 of the CPO guidance. Secondly, we would endorse pccs approach. It wouldn't be safe, it wouldn't be legal and would no doubt be challenges in due course if that were the situation. Thirdly, we've set out in detail in our local funding the position, which may it's a complicated situation in some

ways, but very simply, and others and obviously, time needs to be taken to assimilate what it's actually saying. And fourthly, I think when you put to, Mr. Jarvis, the phrase you regard as a temporary setback, of course, we understood you not to be prejudging the outcome of what he was saying. But simply reflecting that he would say that, wouldn't he? And that entirely accords with the evidence that we provide nanotech and funding where the relevant decision maker, in fact, doesn't know the position. So obviously, you can't position any better. And in a nutshell,

1:16:48

there are basically

1:16:52

impediments to implementation of the project as a whole, for the reasons given by PCC. And in addition, for the reasons given by us international funding, the project, unfortunately, is another price of Brexit.

1:17:09

And we'll explore that in more detail on Friday. So when you've had a had a look, so in that context, when once considering a glamping star condition, because you're charged looking at requirements, and in that particular context, I suppose by analogy, one we'll consider in the in the domestic sphere, what do you do when you put a big scheme? And you've got to put a Grampian condition for a sort of motorway junction and it can't be funded? Would that kill the scheme?

1:17:38

And if so, could you not then put a cramping condition on it at all, unless the developer could show that they're good for the money in the event that they couldn't discharge the condition etc, cetera? So it's quite a complicated situation. But so we'll address the the TCPA. situation on Friday, because essentially, it falls in the scope of paragraph 19, the CPO guidance and as you and Mr. Roscoe will be, whereas it's not nearly as simple and straightforward, as Mr. Jarvis might try to persuade you. Thank you, sir.

1:18:12

Okay, fair enough.

1:18:16

Mr. Jarvis. Is there anything further you want to come back on at the moment?

1:18:22

No, sir, I think it's probably better if we deal with the matters on Friday and closer. Thank you. Okay. I'm happy to defer until Friday on that.

1:18:32

Is there anything else regarding agenda item 21. At this time?

1:18:39

Okay, nothing heard. What I propose then is just to take a very short break.

1:18:46

It's nearly 20 to six. So thank you for all for staying with us, particularly those on the live stream. If we take a brief break now. And come back for agenda item 22 at quarter to 6 17 45. That'd be much appreciated. see you shortly.