

# TEXT\_Aquind\_CAH3\_Session3\_19022021

Fri, 2/19 5:50PM • 1:40:23

00:04

The time is now five to four. And the hearing is resumed anything from anybody before we proceed? Okay, nothing. This is what, thank you very much. And we're just going to shortly hear from Mr. Scott, just to clarify some matters in his material, which will take as read, just to assist you in the examination. So before we do that, and can I just ask the question through you, sir. But if I ask you the question, and then maybe you can ask the applicant the question, because this is not a form of cross examination. This is simply for shedding light, more heat. I don't want to be thought at all that I'm asking cross examination questions, even if I ask questions in the sort of assertive way because I'm an advocate. So my apologies for that. In in the funding statement of the applicant, you will recall that they set out in Section seven funding claims for compensation. And they include section 7.9, you'll recall provision, or sentences, which describe what they might do in relation to blight. And at paragraph seven point 11, they say, quote, it is not anticipated that any claims for blight will arise, full stop, should any claims for blight arise as a consequence of the application. The cost of meeting such claims will be met from the sources of funding described above at section six to this statement, unquote. And section six, you might recall, so essentially, this is entitled project financing, and explains that they the applicant company has money to pay essentially consultants and to try and get

01:43

consents and permissions and then after that, it's going to anticipate getting funding on the back of the project as it were. So the question I would ask you, please to articulate to the applicant is what does the applicant mean, in Section 711, when it says it's not anticipated that any claims for blight will arise?

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Mr. Bird, is there anything you can give me on that at this stage?

02:08

Good was Mr. Jarvis to address that, please. Thank you. Jarvis.

02:16

Thank you, sir.

02:18

By that sentence, is that the land consultants on behalf of the applicant and have undertaken an assessment of where they consider blight may arise?

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considered that blight would arise in the circumstances and that based on which it's been concluded that it's not anticipated blight arise.

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Thank you.

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Thank you very much, sir. So with that, can I can I

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telegraph as it were to Mr. stopped to come in.

02:54

Mr. Stop.

03:00

Good afternoon, sir. Jonathan stopped representing Mr. Jeffrey and Mr. Peter Carpenter.

03:06

And I think the response that you've heard just now is quite helpful because it clarifies what I thought might be the case, which is unconcerned at the applicant, maybe misunderstanding what is meant by statutory blight and what is meant in that last sentence of paragraph 18 of the guidance, if I can just explain how statutory blight works, and I apologise if I'm setting out something that you're very familiar with, which I'm sure you are, but I think it's quite easy to do that. If you do it briefly. Thank you. We'll do yeah, so section 149 of Town and Country Planning Act. 1990 defines blighted land as land falling within any paragraph of schedule 13 of that act, and scheduled 13 includes any land where a DCR application has been made, which includes compulsory acquisition powers.

03:57

In that scenario, then under Section 150, of the town and country Planning Act, the owner of such land, which includes owners of any agricultural land or part of an agricultural unit, which is affected by the prospect of compulsory acquisition powers, may serve a blind notice requiring the applicant to acquire part or the entirety of their interest, even if only part of our land is proposed to be acquired or they can seek the acquisition of the entirety of it.

04:24

So as such, it's clear that the carpenters and quite possibly other parties as well may at any time since the DC application was submitted, serve applied notice on upwind but require them to, uh, to acquire their interest in the case of the carpenters interest. I've not been involved in the negotiations, but I understand that there's been some toing and froing on numbers at least. And certainly my understanding is that the applicant's assessment of the value of the carpenters landholding, certainly in its entirety, is considerably more powerful.

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Evaluate, it's considerably more than the amount of money that they have in their account at the moment. So whilst there's been some discussion this afternoon about the reasonable prospect of funds being available to serve as compulsory acquisition compensation in the future.

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What is clear is that there's a liability that exists now, which, as far as I'm aware, as far as I've seen, the applicant is entitled to service. And I think the response you just heard from the applicant probably explains why that is the case. I suspect that blight is being considered in relation to

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the diminution in value that may be caused to land in the future or to property in the future where part of an interest is acquired. And I think it may be mean being mixed up with injurious affection, for example, but blight is something that is a live liability for the applicant at this moment in time.

05:49

So that's the point that I wanted to address. And I think, given the that seems to be the position, it seems to me that the applicant isn't able to fulfil the requirements of the government guidance. And therefore, I think that calls into question whether or not the point about reasonable prospects of funding for the future is going to work wherever you fall on that point. I think the issue around glide raises the question as to whether or not compulsory acquisition, acquisition power should be granted at all.

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It's just not. Thank you. Was there anything else was to stop? In relation to blight specifically? Yeah.

06:33

I'm not in the context of blight directly. I don't think I only came in there because you seem to have stopped and I wasn't sure whether you'd finished or not.

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I think in relation to blight, I think that's the primary point.

06:49

Okay.

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Mr Zwart?

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Yes, thank you. I think Mr. Stott was also going to briefly summarise the position in relation to commercial telecoms, because he has experience in that field, as well as advising telecommunications operators themselves, and might express some frustration, the lack of availability of powers, which he'd like to articulate to you in relation to the 2008 Planning Act. Thank you. Thank you. Yeah, that's correct. Some, if that's okay, so, I mean, just before I come to that, whilst I have finished on blight, one of the points that I've done, I do think is worth mentioning, is that I do have concerns. And I've mentioned

them in my written evidence that the way that the land compensation estimate has been come to has been arrived at is perhaps not necessarily taking account of all of the compensation liabilities that could flow from this project. So the breakdown that's provided within the funding statement, for example, doesn't refer at all to temporary possession, compensation liabilities, and quite clearly, the applicant is seeking temporary possession powers. So there's nothing in there. There's no amount in there to cover temporary possession compensation, as far as I'm aware. So that's another point I just wanted to mention about the availability to service future compensation liability, but in the prospect in his story in relation to

08:13

telecoms, and the powers that are being sought there for commercial telecom uses.

08:21

I think there's a serious question mark about whether there's a compelling case in the public interest for compulsory acquisition powers to be promoted for that purpose. And I think that is because the DCR regime is not a regime that the government has ever intended to be used for the granting of consent development consent for commercial telecoms uses and certainly not compulsory acquisition powers for that purpose. And many other operators, telecoms operators, I act for a number, I'm sure would love to benefit from compulsory purchase powers and the ability to go and acquire land compulsorily, there is the EEC, the electronic communication code

09:02

that a number of operators are able to use to seek the imposition of agreements, but that isn't the same as compulsory acquisition powers that that Aquind is seeking in this scenario. So if Aquind is granted the ability to acquire land and rights for commercial telecoms uses, through the exercise of compulsory acquisition powers, it will serve to significantly reduce the amount of compensation they'll be required to pay to dispossessed parties, as compared to what they would likely expect to pay in the open market. So it feels to me as if Aquind are seeking to obtain powers for something that, frankly, no other telecoms operator is able to do so because I suspect there isn't a compelling case in the public interest. If the stock market just hold it there for a moment because this I believe, relates back to the paragraph 33 that I was talking about before, and so it was a little bit more of an explanation as to how that

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The suppression that is talked about in that paragraph, if you could give me some more on that, please in terms of a,

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a less detailed explanation, if you like, Well, I suppose if in very simple terms, the applicant doesn't benefit from compulsory acquisition powers, then they would be required to go and seek to negotiate, to acquire the land and the rights that they're seeking for that purpose, with every part of that the required land and rights from and that'll be a commercial negotiation. And I've speculated somewhat in my evidence, they have to say about what the value of those rights would be. Because without knowing precisely what the expected revenue streams are going to be, it's difficult to be very clear about what the what the value of the land and rights would be. But I've speculated that it's quite possible that in the

open market, Aquind [REDACTED], for example. Whereas if they benefit from compulsory acquisition powers, of course, compensation would be assessment of the compensation code. And you'd be in a no scheme world, including, if you grant or the secretary of state grants powers for telecoms and no telecoms world as well. Right. So the suppression that you talk about is in terms of the fibre optic cables that have been described, and the fact that if the fibre optic cables went across land, then they would not have may not have the benefit of compulsory acquisition powers. And therefore, those that do the acquisition of REITs would have to be done by negotiation. And so this the suppression that you're talking about, is the suppression from the value, if you like, or the negotiated value of those rights, down to compulsory acquisition?

11:46

Not, not from compulsory acquisition down further, in any way. No, no, no, two to three acquisition compensation. Thank you. That's the clarity that I was looking for. Thank you. Yes, sir.

11:59

And, Mr. Stott, what might be helpful is if in that light, you could just explain.

12:06

So I'm sorry, I don't mean to be pejorative. So. If you could shed light, please, on for Mr. Roscoe in relation to

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what might be described as the marriage value in relation to a linear project such as this, we've got a number of interests along the whole of the route. Thank you.

12:26

Yes. So

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if the applicant

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were not benefiting from compulsory acquisition powers, and had to go and negotiate with the parties from whom they acquired the required rights, for telecoms purposes, then the way that marriage value works is to basically to look at what the value of the hole is. So for a queen, I've speculated that perhaps the value of having the ability to operate commercial telecoms might be in the order of 60 to 80 million pounds, then, if they have to negotiate with only two or three parties, those two or three parties could expect through the application of marriage value, to receive a share of the like, of that of that value, because the applicant wouldn't be able to achieve that value without fail. And so the marriage of their land, and other land allows them to achieve that sort of value. So that's why I think in the absence of compulsory acquisition powers, the carpenters and other landowners from whom rights are required, would be in a much stronger while they would clearly be in a strong negotiating position.

13:38

And as opposed to other other submission refinement to that point, when in paragraph 33, the expression suppression is used is not a deliberate, devious suppression. It's rather the outcome of prejudging that the DCR will be confirmed in chronological advance of it actually being confirmed that results in the non-availability to exclude the scheme to engender the no scheme world result. Just if I could just come in there the words used on deliberate suppression and that's what that's what?

14:15

Yeah, right. Okay. Okay. Right. Yeah.

14:19

Thank you. Mr. Stott, is there anything else that you would like to add, by way of shedding light on what you said? And so you may have the opportunity to ask any questions about Mr. Evans at all at this point? I think that was possibly My only question. So I'm finally finished. Mr. Zwart.

14:38

Thank you. The only final point I would just make is to reiterate, I think what's been said before in terms of the future prospect of funding and certainly in my experience of promoting and acting for promoters of compulsory acquisition powers and compulsory purchase orders, in my experience, that the requirement today

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To demonstrate that funding is going to be available, has generally or in fact, always required more certainty than appears to be the case in this scenario. Thank you.

15:12

Thank you.

15:14

Thank you. I will give unconscious that you had said that you would probably be done or worked out, you'd probably be done by 24. But at this point, it's probably more useful for me to ask if there are any points that the applicant wishes to make following that particular section. Mr. Bird?

15:38

Just two points. I think Firstly, in relation to the blight issue. The applicant well understands the implication of the both provisions of the 1990 Act, and has taken into account the

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potential for blight in accordance with the guidance and concluded as we've set out in the funding statement that it does not anticipate any claims are likely to be made. So we've set out our position in relation to that. And as far as the issue related in relation to the telecommunications use of the fibre optic cables for commercial purposes,

16:12

you understand opposition in relation to the DCO and what and how and why the commercial use falls within the scope of the development consent order and falls within the scope of the Planning Act 2008. And I've no more to say on that at this stage and will respond in more detail at the deadline.

16:31

Thank you. Let's go ahead and

16:37

let's go here, and I can see your hand, right. Yes, yes, thank you, sir. So I'm really I'm wanting to know for your sake, but when you would like our interventions, because obviously, we were invited to give sort of

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vague intervening responses from this.

16:54

And that, and that is the first time that I've seen your or any of your teams Hands up, I think, right? Or did we see one before? I can't remember? Anyway, please go? Oh, you didn't? That would? That's absolutely right.

17:05

Is this the appropriate time? Or would you rather, we just dealt with our case, in one fell swoop. After everything is everything's done after the Carpenters' case is done. I know that you reestablished with Mr. Zwart that, that

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popping in now and again, might help but I just wanted, I just, I just come in at this point, I would like you to put your case in the best way that you wish to. And so it's your opportunity now to say whether you wish to pop in and out or whether you wish to put it together as one complete section. Sir I would prefer to put it all in in one, that's fine, then you've got it recorded, and we can find it very easily. And then we can deal with all the points at once. So what I will do, then, if you I will break yours down into the ISH issues, the change one and change two. And I'll invite you to come in at each of those after I've had the app, the applicant's responses of what Mr. Waters said, I and his team have said. Three notes. One is the ISH points. Yeah, there is for Mr. Cunliffe to give his views in addition, and then the third bit will be to pick up on the earlier points of the agenda, which deal with the plots 1014.

18:27

Okay, okay.

18:29

So the next point that you will come in is after Mr Zwart has finished with the ISH issues, Mr. Bird has responded to those. That will be your turn on the ISH, ISH issues. And Mr. Bird will then respond to you. And then we'll go on to the remainder. Am I correct in that? Doesn't look like it from the locker?

18:50

I will. I thought we would deal with our bit after Mr. Slaughter is finished with all his bit. Oh, that's fine. That's fine. Yes. If that's the way you wish to proceed, that is fine. Thank you, sir. Thank you. Right. Okay. I don't see other any other hands raised? I see. Mr. Zwart. hand raised. I'll go back to Mr. Zwart, first of all.

19:15

Mr. Zwart?

19:17

Right. I'll come back to you first of all, because I see that Mr. Stott's hand is raised. I'm not sure how you want to play that. I mean, your hand said Mr. Stott would like to

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help you better understand and examine the proposal then Mr. Stott something. Mr. Stott.

19:34

So just very briefly, coming back on the point of like, Can you see me hopefully you can. Yeah.

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interesting to hear from Mr. Bird that the potential for blight is understood. I think given that and given the fact that there's no doubt at all that the Carpenters are in a position where they could serve a blight notice tomorrow if they wish to do so. I think it may be possible

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interest to the examining authority to understand more from the applicant, how they would respond to such a notice, given that there does seem to be agreement between agents that the value of the Carpenters' interest is greater than the amount of money that Aquind have available to them at this moment in time. Right. Okay. Thank you. Thank you, Mr Stott Mr. Stott. Mr. Bird, you will have heard that point.

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Mr. Bird, so yes, just waiting. We have rather slow system they say. If no, no, no, that's that. That's all right.

20:38

Right. You will have heard that point made by Mr. Mr. Stott in that request effectively. I'm happy to have that in writing following the hearing if that is the best way of dealing with that. I think they're given where we are in terms of timing. we'll respond in writing. Thank you.

20:54

Mr Zwart

20:57



Thank you, sir. And just briefly now if I could introduce Mr. Brice, you heard from him this morning in the open floor hearing. He is the surveyor the architectural valuer who has been acting for the Carpenters before things got quite complicated. And you heard his material before you have an expert report from him. And unlike Mr. Stott, sir, who addresses the situation of the

21:26

approximate value in relation to the market value for commercial telecoms? Mr. Brice is an agricultural valuer and therefore has been valuing the land locally and is experienced in that. And you've got his evidence, you've heard what he said in it. And we would like him please to just shed light on two points. The first is to explain

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the extrapolation of his value that he's applied in relation to the approximated land value as a comparable so you can evaluate whether or not Aquind itself has accurately valued the land.

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And the second is in relation to the what he what he describes as a flawed approach to the value by upwind

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resulting in essentially an outcome of minimal take up of agreements for land sales, as opposed to options, which leads back into the point about it being a speculative application and so forth. So Mr. Brice, over to you. Thank you, Mr. Brice. Thank you.

22:38

Mr. Bryce. I think you're on mute.

22:40

Although it doesn't show.

22:43

Mrs. White your microphone is obviously still on.

22:49

And I seem to have lost Mr. Brice altogether now.

22:53

Can you hear me? I can hear you now. And I can see you. Thank you very much. Thank you.

22:58

The basic principle of CPA compensation is to put the landowners in the same position post scheme, as they were before the scheme

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Aquind's shared with us

23:11

compulsory purchase calculations back in May 2020. And within those calculations they've made on the continent and only this is I only speak on behalf no allowance for severance insurance affection or a number of heads of claims for disturbance. And as such,

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their estimate for the conference,

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compulsory purchase compensation to the Carpenters is significantly less than I anticipated, it would be as a as a local value of agricultural land, we're no we're not to go into land values

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that they haven't.

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If they've made deductions, or if their valuation is significantly too low, in the case of the carpenters is going to be too low across the entire scheme.

24:11

I estimate that they are about 100% out.

24:16

But just don't get undervalues there, I can see how you're relating this back to the 4.9 7 million in total in the requirement 26. And I can see the points that you're making.

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Yes, and that is a principal point that

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if they've made this error on the farm this land then it by assumption, they made the same error cost

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and the total

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value required to purchase land rights could be as much as twice as much as they've assessed.

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And that would go on to explain as to why they haven't reached agreement. voluntary agreement

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With 49 out of the 51 landowners occupiers, the heads of terms or that that we have seen, there is very little scope for negotiation other than consideration value. And

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my view is that if 96% of landowners are not close have not agreed to voluntary terms by month five of hearing, then the terms must be fundamentally flawed. And as a result, I can only assume that this is on a valuation basis. And

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they haven't got their sums. Right. Right. So what I've what I've done, Mr. Brice I've, I've seen this in there, but I believe I've seen this in the in the report.

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So I've got I've got that

25:58

in mind.

26:00

Was there anything else?

26:03

I don't think so.

26:06

Right.

26:10

This is what was there anything else? On this particular point?

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No, sir. That's very kind. Thank you. And if you're you, you've had the opportunity to ask Mr. Bryce questions about his material. That's the key, sir, I have I didn't I didn't have any particular questions. And like my paragraph 33 bit.

26:27

Thank you, sir. Mr. Price. Thank you very much. That's really helpful. Thank you. I just want to wrap up now in in, I won't give a time. But it'll be a few minutes only sir. And that will then I think, open the gateway not only back when to come back if they want to other than your writing also, but also Portsmouth City Council in relation to funding. So. So bringing all these strings together, we have therefore, come back to requirement 26. And requirement 26 was promoted by us to facilitate what do you do in the face of having some funds, or some form of available funding in the form of executed documents as RF Manston when we understood that it couldn't seriously be suggested that an

applicant was really foolish enough, frankly, to promote a DCM and capacity acquisition of land of third parties with no money at all.

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Which was just extraordinary. But now realise that is the position. So

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we can't see how even requirement 26 can have an objective foundation to provide essentially some objective architecture going forwards. But importantly, sir, for you, the very acceptance by Aquind of the need for some kind of objective framework is accepted by Aquind. And then it comes to well, what terms could satisfy that position.

27:57

And because we've looked at a number of different ECOs, where there were different kinds of funding situation so horizon, they had zillions of pounds Vanguard, they had, what 500 million pounds of assets behind them, either, Mr. Bird's project, the thought gas pipeline that had a parent company guarantee letter, we've got none of the above. You just got a piece of paper called Aquind, with a million quid in the bank sitting on a shelf in some office somewhere. And that's it. That's the reality. So faced with that reality, sir, and Aquind, accepting that it needs some kind of embargo on executing the project, because it's accepting the principle of needing some kind of requirement or terms that prevented the obvious solution. So in such circumstances, is as the secular state anticipates in just this kind of situation, is paragraph 16, sir, and to sever part five, and that's the simple, straightforward situation. So, sir, in relation to

29:05

funding, that's our outline situation. We've looked at it in detail, and we'll respond in due course. Thank you, sir. This is what Thank you, Mr. Bird.

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It was Mr. O'Sullivan, just to respond to the points Mr. Brice made, and then I'll just wrap up on behalf of Aquind. Thank you, Mr. O'Sullivan.

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Thank you, sir. I'll keep it brief. I think this morning, I gave an overview of the engagement previously, but as this has not been

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raised again, I'm not going to

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reiterate those points. And was I myself, not a chartered surveyor.

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I've carried out the necessary liaison and reviews of my colleagues that Avis and young and as would be necessary and prudent in advance of issuing heads of terms and the applicants offers which have been set out in the seven sets of heads of terms which have been sent and have been prepared by myself. And they've been reviewed by colleagues of mine who are registered values.

30:26

Amongst others. I'm going to name Miss Virginia Blackman,

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Miss Blackman, she holds a BSc honours in real estate and land management has been a member of the Royal Institute of Chartered Surveyors since November 2000. And as a registered valuer, I must Blackman is also the national head of the site assembly and compulsory purchase team at Davidson young.

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Notwithstanding this, you know, what we did in terms of

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putting together

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those calculations, we've assessed national, regional and local data. we've undertaken engagement with other agents practicing in the Hampshire area to seek their views on local land values, and to ensure that the basis of the offers made reward reasonable and above market. Right. So I think that's the main summary of my position, sir, I think just the other point is that in terms of the information that Mr. Bryce reference, which was sent to him last May and without prejudice basis,

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line 54 of that spreadsheet actually sets out in amount for injurious affection. And so I think he may need to revisit the results of the spreadsheet.

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Okay, thank you very much, Mr. Bird. Was there anything else on this particular section? You wanted to summarise

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three points as far as funding is concerned, the applicant has demonstrated it's a commercially fundable project, the potential risks and impediments are being managed in an appropriate way. And we've shown that adequate funding is likely to be available to enable both the compulsory acquisition within relevant period and delivery of the project. Thanks.

32:23

Thank you.

32:25

Right.

32:29

This is what does that that completes, then your business under the from the issue specific hearing? Is that correct? Yes, sir. Thank you. Thank you. Thank you, Miss Colquhoun.

32:43

Yes, sir. I just wanted to confirm from the from the discussion we had before it was my understanding that you were going to go after the carpenters had finished completely. Is that still correct? Yes, sir. Unless it would suit you differently. No, as as I've said before, at this stage in the proceedings, I'm happy within reason to take the order of cases as the party see fit. If you're happy to go at the end. That's fine. So Mr. Zwart. Now we'll continue with change requests one and two. So

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this is what

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Oh, thank you, sir. I'll leave you to take those in whichever, whichever order you want. I drove record you saying that we will work in reverse order. You can do two first or one first. Your break. Hi, sir. Thank you. Logically, we should do one first. If you just bear with me, I thought we're going to be funding. So if you just give me a moment, I will just right, right. Just

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this is what you can still hear me. I understand. You said that we were going to do funding. Right. Yeah. I was under the impression that we had completed funding you go through? Yes. Yes. I'm so sorry. I thought so you just asked me to proceed on to change requests one and two. Yeah, I understood that you were about to hear from Portland City Council on finding because I had nothing to say about change requests one and two, because they relate to Seneca cops. Yep. ports for the said previously that they would prefer to go at the end after your change request one and two. And I accepted that previous exchange with Miskin. Yeah.

34:16

Thank you. So I was just trying to shuffle my paper and work out where documents were without interrupting the audio. Yeah. I don't want you to proceed until you're ready. Thank you. So so in relation to change request to

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get there.

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You'll forgive me I'm sorry. You're struggling to understand procedure where we're at. But I want to go in small steps, at least for me to understand where it seems that we're at. And then maybe you can correct me on your understanding if I if I go wrong. Now. I'm just what for you do that. Just ask you

35:00

Hold on a moment. I think my wording in the past couple of minutes might have been a little bit confused. I said dealing with change requests one and two, your position would be dealing with changes one and two, within change request two, is that correct? I'm sorry.

35:16

It was my county language. We are concerned with change request which concerns Stoneacre copse, yeah, right. Okay, which is change, change to have change request to thank you. Okay. So that there, there are two, two topics, essentially, the first is the procedure one where we're at, and essentially, whether there's power to do what

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may or may not have been done. And the second is where we're at in relation to the compulsory Acquisition Regulations process.

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And, and how that plays out, given we're quite close to in the examination. So

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what we what we've been trying to do is to ascertain, in the absence of clear expressed terms, what your good selves have been doing in the examination, in relation to these change requests by reference to the various procedures that apply. And it made it as far as we understand the position that was on the 11th of

36:24

December a request by the applicant, to by email to, quote, change the order limits, quote, unquote, in connection with the DCO, accompanied by a letter from the lawyers. And then there was a something called a request for changes to the order limits documents, which looks like that thing.

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And then on the 18th of December, there was something called a procedural decision that came out of examining authorities. And that included a letter to the interested parties, which said, The examining authorities reasoning and decision it says

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we've reviewed the information they request, we will we don't the applicant believes the proposed changes not material. We think that they are but they don't materially alter the original application. However, there are some proposed changes etc. And it's then says nevertheless, decide to accept these proposed changes to the application for examination and then apply regulations 789, the CEA regulations, and we're struggling to understand what that means, because we on the face of it, it looks like you've accepted the order limits being extended beyond the red line area of the application. But we're going to understand it as a as an acceptance of you're minded to accept that

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proposal, because there is a procedure which falls to be applied in this way. So you will recall from

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advice note 16.

38:07

That there is guidance in relation to published by the client's factory in relation to material changes in paragraph two one speaks about when is a change material and the various tests you'll be familiar with. And it refers also to where a change request involves an extension to the order land, what your limits the order land, particularly whether to engage the compasses, acquisition powers for new plots, and so forth. And then it says there's further information about making material change request can be found in paragraphs 109 to 115 of the examination guidance. So the inspectors guidance takes one to that further guidance expressly.

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Now, if we then go to that guidance,

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March 2015, paragraph 113 says this in considering pose material change and application, and before making a procedural decision about whether to and how to examine the change application, the examining authority will need to ensure it's able to act reasonably and fairly in accordance with the principles of natural justice. And there are three bullet points you recall. And the second one is whether sufficient consultation on the change application can be undertaken to allow examination to be completed within the salary timetable of six months. So this is guidance saying that you can't take a decision until

39:29

you've

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considered that so the reference from the secretary of state

39:37

because it's his guidance, not the inspector's guidance

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under the principles of natural justice. footnote nine refers to Bernard Wheatcroft case, I knew be familiar from that with from your planning experience. But importantly, say you might also recall a burned wheat crop was a case about cutting down the extent reducing the extent of the red line area, not increasing it.

40:00



Therefore, the simple points there is that in an application before you to increase the area of the application, not reduce it to increase it. The second state's guidance is assuming it will only be reduced, not increased, and you've had an application to increase the area. So on the face of it, that's why we understood your material decision to be actually will entertain the application for the proposed change. But we want to hear what people got to say about making application area bigger.

40:34

So at the moment, our understanding is the order limits remain as the application was submitted originally. And there is currently no bigger order limit, because the guidance of the Secretary of State informs you, sir, before making a procedural decision, you've got to act reasonably and fairly and according to the principles of natural justice, which are, as you know, for the week, or test to give the public an opportunity to express a comment. So going back to the chronology, it's difficult to see how between the 11th of December and the 18th of December,

41:08

everybody who might be affected by the application was consulted to inform your decision. And that's why we assume that this is you're going to think about it rather than you've made the decision. If that makes sense. I think Mr. Ward, I think, probably best if you make submissions on this. Okay. Really, thank you.

41:28

Why don't we will do we will do it in it for the next deadline? Because the key point, sir, is that we will be submitting that there's no power to increase the red line area.

41:39

Beyond the application area, which is fatal. I can understand I can understand what you're saying. Yes, I can hear what you're saying and understand that you're using Yes, yes. Yeah. Yeah. The only rational conclusion would be that it is so changing application, that they have it they got to go back and withdraw, or they just refuse it in which case that has other consequences, which I'll come to. Right. Okay. So on this on this particular point? Yes. terms of submissions in this contact that context, then we're calling it a post hearing note.

42:14

Effectively, that would come in, as we've said, during this week, as soon as possible, hopefully in advance the death of deadline eight, so that it could be taken into account by deadline eight? Yes. Yes. Okay. Just on this, then. I see. Mr. Jarvis has indicated he wishes to speak. Mr. Jarvis.

42:33

Yes. So just a brief point, I wondered if it might just be helpful to point out the wording of regulation six of the infrastructure planning compulsory Acquisition Regulations, which provides that the Secretary of State reads the list by the end of the period of 28 days, beginning with the day after the day on which it receives details of the proposed provision, which is the change request, decides whether or not to accept the proposed provision as part of the application. My understanding is that the acceptance which is referred to in the examining authority to procedural decision, my understanding is that decision

was taken bearing in mind the timescale was in the rest of those regulations for notification to be provided before persons are given a fair hearing on those matters. And that the fair hearing given on those matters to discuss the change request, including change request to is today, sir. Thank you.

43:19

Thank you. I'd see now that was actually Mr. Jackson's hand raised. Right. So that is that is that particular point? Yes. So what we do is, is, as the letter said, it says to act and please comply with the provisions under the regulations, and

43:40

notwithstanding our submissions in relation to lack of power, which we'll come to because that's a matter of jurisdiction. So it's not a matter of whether you made a decision if it's out of jurisdiction as our jurisdiction continued along the line of what happens next, what happens then is regulation for engages five to 19 of the regulations, the carpenters self evidently come satisfy the criteria for being an additional affected person, because they have an interest in so naked cops, and therefore they qualify as requiring to be given notice of it. So they are qualifying individual

44:23

there is then a procedure and the procedure so as you recall, essentially is like a mini decio process, where stage one is you have relevant representations. Stage two as you have written representations, where you can refer particularization if your case, then there's a response, then there's comments or vice versa and then there's examination of it. And as we understand the current position, try to understand your timetable which Forgive me sir, but doesn't exactly facilitate understanding of this quite complicated process. In meshed in the overriding examination hearing.

44:57

We are only at the stage where we have some

45:00

The 500 word relevant representation, it remains the case that there's an obligation to on you under regulation 13, that you must provide all additional effective persons and interested parties with the opportunity to comment on any written representations responses and further information received by it. So there's a procedure in there to deal with this kind of situation, which remains unfulfilled at this time. So all we've done, and we understand we've done so far is to have submitted 500 word representations saying yes, please, we oppose this. We don't want it. So whether

45:38

in a theoretical world, one can submit to the points I made about jurisdiction even

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lawfully fairly, in a sense of natural justice in the available time.

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Evaluating consider and have regard the opportunity to comment on Stoneacre copse

46:00

is very challenging, if not impossible, sir, at this time, given the timetable we're at. And you recall from the advice note, nine.

46:11

Sorry, the advice that I've just referred to, which is 16. I'm sorry, that the inspectorates concern that changes coming in, is endorsed by figure three B, which requires a statement of quote, pressing need, unquote, for making the change.

46:33

We haven't seen anything in Aquind's statements of reasons that said there's a pressing need to do this, they've just said, they woken up and smell the coffee in relation to ash dieback, which they've refused an offer previously to purchase the land. So what's changed? So, at the moment, there's an outstanding

46:53

compulsory Acquisition Regulation obligation that still got to be ventilated.

46:59

We have to articulate that in the theoretical world that you're in there is jurisdiction, we say there isn't.

47:06

So far, we put in our own representation, bizarrely, frankly, Aquind have said we don't object to the inclusion, quite how they reached that conclusion is anybody's guess, because the regulations don't require objection, they require the absence of consent if you read the regulation. And there isn't consent on the face of our regulator of our representation, entirely consistent with our objection to the wider DCO CPO prisons. So in relation to your evaluation of the materiality of the change,

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this is obviously going to be problematic. So to be overcome, and if you go full circle, sir, to the,

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to the

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extensive guidance, if you'll just bear with me

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from the safety state, he explains at

48:00

paragraph

48:03

one on five

48:06

different applicants seeks to introduce a material change during the final stages of the examination period. While we are there, it is unlikely to be accepted on the basis that the application cannot be examined within the statute timetable, without breaching the principles of fairness and reasonableness.

48:24

So the simple point is, we don't have to push very hard at the guidance door, that you decide to act when I'm sorry, you're just too late.

48:32

That's even assuming theoretically, that you have jurisdiction anyway to make the change. So those are procedural points. So before I get on to as it were point two. So in terms of both of those points, then they can both be included. Yes. In addition to what you've done before. Yes, sir. And can I just endorse the point that comes out in the guidance, which is the approach of the guidance when dealing with these kind of changes, is to isolate the change being requested to be made? So you can consider as a freestanding change, rather than it being in meshed in the current situation? And there's a rider to that as well, the guidance is crystal clear that when the applicant is making promotions for change, it has to allow you to evaluate cumulative changes throughout the process. There's no evidence before you the moment it's even started to do that. Where is it showing you evidence of in this application with change to change one, part one or change to all the other changes? It's done?

49:31

So you can see whether on top of what we've said, this is a change too far.

49:38

So I can now address you on the last one, which is

49:41

right. I'll do that. I don't know if there's anything that's because the applicant came back on the first part of that change request section. I don't know if there's anything that Mr. Jones would wish to say on the second.

49:55

I would just highlight that I do not consider that the guidance that Mr. Zwart is

50:00

referring to is specifically referring to the timescales within the instruction frankenfoods for Acquisition Regulations, but it is of course incumbent on the examining authority to take into account that they can

50:12

sort of comply with the timescales they're in. I would note that regulation 15 of the infrastructure planning and poster position regulations does provide that the examining authority must notify persons who wish to be housed in post acquisition hearing, not less than 21 days after the date of the notification of the certificate pursuant to regulation nine, eight, that certificate was issued on the 29th of January 2020. And today is 21 days after the date of that notification. So as far as we're concerned, everything has been lawfully complied with in terms of the timescales. And with regards to explaining the change requests. There are, of course, change request statements in the examination, that the examining authority are able to take into account, both individually and together to identify the extent of all of the changes that have been made to the order limits throughout the examination. And it's expected that that is a matter that they will address as part of their recommendation. Thank you very much.

51:08

So Mr. Doyle. So what were we got to is that you will provide a note on these two aspects and that will come in as soon as possible so that if there are comments to be made on that note that can be made it there by net? Yes. And we would understand that you will ask the

51:23

applicant in due course, when it is they anticipate providing a timetable for us to provide written representations in with responses and frost have the opportunity to comment on their responses to us as well. So you can then take a view on whether to accept the change, assuming it's in jurisdiction, which we say, doesn't it? I can understand that. That is your position. Yeah. Thank you.

51:47

Sir, in relation to the second point is in relation to

51:53

the merits as it were, what they're seeking to do the applicant. And if I can summarise it very briefly in this way.

52:04

You heard from Mr. Bryce this morning that at Queen's specifically disavowed A number of years ago wanting to acquire Seneca cops. So the obvious question is What's changed? Why now while the rush they obviously need the rights over the land, why do they need the rights over land they didn't need earlier you know, what, what why condition, the,

52:34

the Seneca cops placed against the will of the carpenters and the spirit of their deceased father, when the before it was no problem. And to understand that one has to obviously bear in mind the EIA regulations. And the short point that seems to emerge which we will put into our submission, so that we foreshadowed in our relative rips the representation is this

52:58

you will recall that regulation for to the 2017 EIA regs has jaws which close and preclude the granting of a development consent order where the environmental information has not been taken into account. And in asking yourself so what's the core need? Why is Aquind so late in the day making this application at all at all? Why commit to something so dangerous is trying to extend the order limits so late in the day, and the conclusion that we have come to is because they recognise that the assessment of visual impact that they have undertaken in chapter 15 of Volume One, the landscaping visual amenity impact of the environment statement and therefore, of the EIA process that's required to satisfy the regulations

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has a problem. And the problem has resulted from ash die back and the ash die back essentially has resulted to reduce the baseline going forwards for their evaluation.

54:09

So practically, they would like they say they need to acquire rights over the land in order to ensure that the baseline of the visualisation analysis remains at a constant so that a light effect does not arise. And that's for this reason. So if you read carefully, and we'll put this in our submission in due course, the situation at Quinn's landscaping around the converter building relies on two things. One is the pre existing vegetation including trees, supplemented by further landscaping,

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which they call so called embedded mitigation, etc., etc. And those forms of mitigation obviously measures for the purposes of the EIA regs as you're recording

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So too is the management of ash die, that's also a measure.

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And without that measure,

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without the management plan in place to secure the maintenance of the baseline, by

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appropriately managing ash die back and maintaining the vegetative cover in front of the converter station,

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the result of the assessment of visual impact

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moods up to likely 16 effect or to assume about where before it was not at about year 1020, particularly in relation to footpath users. So, at the heart of this application is a recognition by the experts behind

the scenes, it seems to us if you track through the paragraph numbers, that there was going to be not a ceiling effect moves into the territory of becoming a different effect in the absence of a management

55:59

regime. But management regime can only itself be secured if they have the land.

56:07

Now you can see so I can see from your thought processes, that you're recognising now that they're wanting to acquire my clients land, in order that they can prevent the jaws of regulation for to closing on their application.

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That's the real need. Conversely, if they can't get that, then the default is regulation for to remains closing because they're very application for change to itself. Evidence is a a problem in the evaluation of landscape visual impact.

56:48

Which means that because you recall from the regulations, they're required to have at least a certain amount of information. And if they haven't got the mitigation measure comprised off the management of the Stoneacre copse, they haven't got that measure inside the environmental information. So they haven't got at least what they need to have environmental information satisfaction 14. That's the problem. That's the only logical conclusion we can draw from them saying we don't want Seneca cops, and suddenly, in December, we really, really want it.

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Now, that's the procedural situation, the practice situation, that's also over all of this. So you're seeing from the carpenters this morning. [REDACTED]. So there are self evidently,

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convention rights in relation to

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the protection of property conditionally, but also the article eight as well.

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So you can imagine the Carpenters are somewhat upset

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that somehow some developer who has been treating them with frankly, utmost disrespect, is now wanting to practically [REDACTED]. So those are my outline submissions, which we'll put in writing them in the form of notes. To join us all together, you only have to basically go through various paragraphs in the change request to see whether what the situation is and to see that without

58:32

this change. There is a evidenced floor gap in environmental information, which is potentially fatal, because it triggers regulation for to

58:44

Thank you, sir.

58:47

Thank you, what is the job is anything in response at this stage?

59:01

Mr. Bird just waiting for the scissors to catch up. Apologies for the slight delay that we've set out clearly in terms of the applicant's case why the changes is necessary and the circumstances in which the request has arisen. It's because of a change of circumstances the original landscape and visual impact assessment due to the progressive disease of ash diabetic, and that has led to the change request.

59:28

And in terms of the acquisition, which is being sought, as we explained earlier today, in the April floor hearings, the acquisition of REITs and the applicant is very sensitive to the family's sensitivities in relation to stay naked cops. Thanks.

59:43

Thank you.

59:47

This is what

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just wondering if there was anything else in terms of your

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anything else in terms of your representation to the hearing this afternoon or had you got

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The end your message relating to change requests getting a bit of feedback.

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Thanks. I know you've been very kind and very patient, and you've allowed us to shed some light rather than heat, which is the purpose of the ISHs. Thank you. And we think you now have the thrust of where we're coming from when our representations and evidence. Thank you, sir. And we'll be providing on dates and our submissions in due course. Thank you, sir. Thank you. And those, as we said previously, would be as soon as possible at



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any time. We're working hard behind the scenes for you, sir. Thank you very much.

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Right, let's go home.

1:00:41

Yes, sir.

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Right. You wanted to take your section after the Carpenters had finished. Yes, sir. Now is that time, marvelous. Thank you very much. So I'm dealing with Firstly, with the issues left over from ISH 4. We made submissions that day, with regard to the effect of the TCA and the

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the impediments issue. So I've listened very carefully to miss Grinberg, and you allowed me to question for you,

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I am going to wait to see the note from his Grinberg. But for the moment, my submission would still be on behalf of Portsmouth, that it would be unsafe still and unlawful to consider that everything is going to be in effect. All right. That may be the hope and expectation. But as we stand here currently, and I expect by the end of the examination, you cannot conclude, nor would the Secretary of State be able to conclude

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unless things change that they will be they will be

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a positive outcome from the exemption requests. That and indeed, we wait still to hear with regard to the French consents. Also, sir, I did have a request through you. I listened to Mr. Jarvis discussing the consultation responses from various French authorities. I wasn't sure that those were matters that already submitted and exhibited? I'm assuming not, but and if they're not, we would like to see them. Right. Okay. Let's I'll deal with your first point. First, in terms of responding to the note that we requested as a panel, drawing all these options and routes together.

1:02:38

That will obviously come in either at or before deadline eight, the wouldn't then be the opportunity for you to respond to that. Because effectively, it's what you've seen already.

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Because it's various parts of the examination. And it's what's been said this afternoon.

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Well, sir, Miss Jarvis, I believe gave evidence about various matters

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that he quoted, and I'm afraid I don't think I've seen those. Right. And I'm not in a position to deal with them on the hoof. No, no, no, no, no. Right. Okay. What we will do is, we'll have to have a look at the deadline. And what we will do we will consider will have a shorter German, and we will consider how do we incorporate those any responses? Right. Mr. bird came on then, Mr. Bird.

1:03:41

It's Mr. Jarvis, sir. Mr. Jones.

1:03:45

In advance of submitting the full post hearing notes requested, I would be happy just to provide a summary of the condition in France and the quotes that I read from earlier

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at the end of today, if that's okay. Right. Okay. I mean, the other thing that we went to in the issue specific hearings, is to have something from the applicant on this subject before deadline eight, in order other comments can be provided at deadline eight. That is a potential

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in this respect, that is potential set, and we will do our best to do that. I think that's probably just going to take a little bit more time to have it assessed, as I say, I can provide the French consent information earlier.

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as necessary in the post hearing note also. Yes. And so that would allow them Portsmouth to respond. A deadline eight. That's correct.

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Mr. Calhoun, your views on that.

1:04:42

So as long as we have an opportunity, we will turn it and turn around any response as soon as we can. Right. Okay. So that will be a response then a deadline date on what's been provided before deadline eight? Yeah. Okay.

1:04:57

So, um, thank you then in terms

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of the funding issue, if I can call it that. So we have considerable sympathy for you as an examining authority with regard to the situation that you're in.

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We agree with Mr. Swartz and his clients about the rather extraordinary position of having an applicant to DCO

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in the position where it is not denying, and I have not seen any evidence to the contrary, that's not denying the analysis put forward that it doesn't have the money

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in such circumstances, however, if we were this to be any other body or any other large company that I can think of that has been through the DCO process, they would need to be something considerably more than what perhaps I don't mean it pejoratively, but the jam tomorrow issue that will position that we're in the moment. So I do have concerns, listening to Mr. waterbird requirement 26 when you don't have anything more than, again, a jam tomorrow promise. So Manston as an example is rather difficult and different to the one here, although comparable, perhaps,

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because it dealt with a private company that was promoting a DCO to re engage, we restart Manston airport. So you will be aware that on the 15th of February, that DCO, has now been quashed. And it's the de Secretary of State,

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in effect excepted. One of the grounds that was put forward by one of the objectors to the scheme, Miss doors, who had submitted that the examining authority had been correct in its assessment of the case and had said that the need had not been established. And the Secretary state had eventually come to the conclusion that had, and now the secretary accepts that the reasons were not there to reach that conclusion. So that's just a handful. So sir, but

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very shortly after the examination of Manston DCO, the principal land holder of the airport company called stone Hill Park,

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reached an agreement with river oak who were the promoters of the DC Oh, to actually sell the land. So the issue of compulsory acquisition

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was ended up being pretty minor, sir. And there were a few other elements to it. So even with Manston, there was a different set of circumstances to the ones that are here.

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So I'm not going to repeat Portsmouth's position, we do remain very, very concerned about the funding position. And we do say that, that the applicant has failed to meet the test. So I won't go into further excuse me into that. So at this stage, I was going to turn to Mr. Cunliffe to see if he wants to pick up a

few more points. And then what I do is come back and deal with there a couple of points unless Mr. Connor picks them up himself. But there are a couple of points to ask about the way that the plot 14, A, B and C flat 14, A and B rather, are described, but that's a procedural point. We can deal with that very quickly. Okay, I'm happy for that.

1:08:59

Good afternoon, sir. Can you hear me? Okay? I can. Yes, thank you. Marvelous. Thank you very much. I've got a I've got about four points. One of those has been heavily covered already. So I won't go into too much detail. I'm just for my information. Is it possible to share documents or are we not able to? No, it's not possible. Okay. In which case, my first point is in respects of concerns over order limits, which we have touched on previously. And in particular, it is in respect to the framework management plan, which you'll be aware has recently been issued by the applicant to Portsmouth City Council, with updates, and we are in the process of reviewing that documents. And

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within that, within that document, there are phasing plans and there's also an indication of what the likely land take is going to be for all of the

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relevant land holdings out

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Within my clients ownership and which are affected,

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and what is demonstrated with within that document is a clear discrepancy between the land that they're identifying as being required either permanently or during construction. And the order limits and, and I referenced plates two in particular, which sets out the playing fields at Farlington. And also the phasing plans in Annex A for Farlington. In particular, the phasing on phase three, phase A's. Phase three and phase eight do show a lot of land take during construction, but nowhere near to the extent of the audit limits. Right. Mr. Khan, if I can just hold you hold you there, because effectively, you're positioning here is in respect of the change request. And you're now talking about Farlington playing fields. And the extent of the order limits, as you've previously said, is something which has been discussed before.

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I'm just looking at the purpose of the compulsory acquisition hearing that we're having this afternoon.

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You're going to return back to back to the change request. Very, I thought that agenda item that had fallen away upon oneness, there were broader topics that we wanted to touch on this other this afternoon, rather than the change request. Right. The purpose of the hearing is to is to hear matters relating to the change requests. And also to hear from those who have been entered in the book of reference, since during the period of the examination.

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Just start just hold a moment. Miss Colquhoun is

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asking to speak, Miss Colquhoun. So if I can assist that, obviously, this comes out of receiving the FMR. FMPRI,

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which has been which has provided new information. So if you don't want to hear from Mr. Cunliffe, today on that, we're going to have to make submissions on it because we have still to consider that document. So that's why there is an overlap here. If you don't want to hear directly from Mr. Cunliffe than that, today on that one, I can see why it might wasn't it wasn't entirely clear to us whether we would go wider or broader than the changes, then then so be it. But we have Mr. Cunliffe here. Would you rather hear the point? I don't think it's a repetition of anything that we've done said before.

1:12:42

But the question of how to compare with the information you have now about what's happening. So we're talking about Farlington. And we're basically building on the issues that were talked about at the

1:12:56

issue specific hearing. That's my understanding, sir. Right. Right.

1:13:02

But these matters weren't gone far enough effectively for you at the at the issue specific hearing. Is that correct?

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What's the CPA? Sorry, in terms of the acquisition? Right. Okay. Mr. Kennedy, if I could just put you on hold for a moment because I'm conscious that Mr. Jarvis wishes to speak. Mr. Jarvis. Thank you. Miss Roscoe. I would just acknowledge your appointment today is to discuss the change request in the specific matters that were held over from Wednesday to today. And also, as you have identified, the Portsmouth city council did have the opportunity to discuss the findings from playing fields yesterday, but chose not to do so. Having said that, if you would like to hit submissions on finding the playing fields, then as the applicant and taking into account the time that remains in the examination. We would be happy to hear those submissions.

1:13:55

Right. Okay, well, that that being the case, then, I'm happy to continue with

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Mr. Cunliffe. Continue with you, Mr. Mr. Cunliffe. And then that will allow the panel and to have a response on this if necessary, before deadline eight, and said, Thank you. So

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just to continue on then thank you very much.

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for accommodating me. The point that I was making is that does seem to still be a clear discrepancy between the land that has been identified as being required for the works and the audit limits. And I think the framework management plan, part of the objective of the plan is to try and provide comforts that were possible impacts are going to be kept to a minimum, but where we've got the order limits which we are not in keeping with the proposed works area, that comfort falls away. So we have raised it hasn't been addressed in the latest in the latest iteration of the

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framework management plan. And we're just addressing it formally here now.

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Right, kind of so are you you're saying effectively that this has been raised before? And that your position is that the framework plan that's recently been issued? The amended framework plan that has recently been issued hasn't reduced? that

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correct? Okay. Okay. Mr. Jarvis, is there anything? Mr. Cunliffe? Was there anything else you wish to say at this stage? Well, so I had an agenda item of for I was going to touch on the car park and funding in some position, but I know not whether I am going to be permitted to expand on those points or not. Let me do let me deal with that. That one first and go to Mr. Jarvis, if he wishes to respond at this stage,

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Mr. Jarvis? No, thank you, sir. helpful. Thank you. Okay. It's definitely on to your next point then.

1:15:59

So in respect to Fort Campbell and car park at the same principle applies, it's in the framework management plan. We've got the same discrepancy in respect of the order limits and the area of damping demonstrated to being required for construction and also for the permanent works, and just expanding on the fort Cumberland car park. And you would have seen in our representations that deadlines seven rep 7088. In response to questions arising around the carpark there have been plans issued to Portsmouth City Council in respect of demonstrating the reinstatement of the carpark which is helpful. But we just wanted to clarify that the two plans that have been provided to us, they show a capacity of 106 car parking spaces at present.

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Mr. Cunliffe. I'm starting to hear things that we've already heard in the hearings previously. And it's accepted that I mean, the parties will have different positions. And it appears to me at the moment unless one party says otherwise that those positions have been evidenced previously. And we as the only authority are aware of them.

1:17:15

I don't think that it doesn't appear to us as if the party is going to get closer on these particular issues.

1:17:21

Am I correct in that? So I take I take that we were closer on these points. And I was just going to say for the record that there is that discrepancy between understanding how many of car parking spaces could be accommodated there. And it certainly my understanding with engagement with the applicants agent that the position was understood. And I was only making the point really for the record. So there isn't any ground to be made up in that respect. Okay.

1:17:51

I'll wait until the end. Before I asked Mr. Jarvis. If he wishes to say anything, you want to proceed to the next point? Yes, sir.

1:17:58

The next point is just pure purely on funding. And just to confirm the point that we have we align very much with Mr. Zwart and Mr. Stott and the Carpenters' position, I think we have made submissions previously in respects of our concerns over statutory blight, which is which it was the point we've made, and the lack of provision to be able to resource a blind notice if it was served, and the responses of I've heard today from the applicant have done nothing to allay those concerns. And we have confirmed at some point in the future, the project will be funded, and the acquisition of land compulsorily will also be funded, which is what you'd anticipate, but we still have had no confirmation if a blight notice was served tomorrow. It's admitted tomorrow, that in two months' time, they'd had the funds to be able to acquire the land subject to that blight notice, to some respect the horse has already bolted. But we just wanted to make it known that we have that concern, which is alive concern now. Thank you. And the final, the final point that I wanted to expand on sir was some sort of acquisition, which, again, so we've made representations previously on this point, we did want to expand on it, we do feel duty bound, as the local and host authority to make this point on behalf of residents who are affected. And we've reviewed advice sought by the applicant under Section 51, as a meeting with the Inspectorates on the ninth of August 2019.

1:19:33

And it was in that meeting, that the applicant set out its position in respect of the approach it was going to take in respect of subsoil acquisition, and it said that it was opposed to seeking to negotiate private agreements with presumed owners of highway sub Sol. And as justification for was that, for that was the precedent it believed high speed to gave, where it did not consider was necessary to negotiate the private act.

1:20:00

position for the rights or to pay compensation. And the Inspectorate did direct the applicant to the compulsory acquisition requirements of the Act, and also to the accompanying guidance in that meeting. So we have a couple of concerns clearly on this in terms of the HST precedent, it is incorrect to say they did not pay compensation, they did pay compensation. So unless again, at this stage, it's it

appears to me that we're going over ground that has previously been gone over and that may well still be Portsmouth City Council's position.

1:20:36

Is there anything new that you have on this? Well, so I'm going to pick up on their responses, their latest responses, which I don't think we have had the opportunity to provide a response to sir.

1:20:48

And clearly, we're, we're raising as a point because it's one that we don't think has been properly responded to buy the African. Right. Okay. It's not necessarily a point for this hearing is my is my position on this. But bearing in mind that bearing in mind the timetable at the moment, I'm content to hear you briefly, in order that the applicant then can respond to what you have to say. So I imagine I have less than a minute to summarise points. Thank you. So.

1:21:18

So HS two, as I said, did pay 50 pounds per parcel of land

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for all sorts of interest, and that's in there, using sub so for HS to paper, which you can find on their website, and also 250 pounds contribution towards professional fees, whether or not an advisor was used.

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And then recently, they were impressed on this at the compulsory acquisition hearing to written response by the applicant and rep 606 to was that it did not feel practicable to negotiate with all the landowners, or highway sub Sol. And in the rare instances where it was necessary to go beneath the plane of the highway compensation was available. So we have the starting position pursuant to the section 51 meeting where they said they weren't going to pay compensation they've not they've now moved to a point where they will pay compensation, sir. But for those landowners who are going to have the road dug up in front of their house, at what point in time do they know compensation is owed to them? Because unfortunately, with the understanding of what isn't what is and isn't highway sub salt is still very opaque.

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And we have to challenge the notion that writing to those parties are in the book of reference and often offering them 300 pounds compensation is not the beyond the resources of the applicant.

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And is certainly achievable given the other promoters have done the same thing.

1:22:51

Those complete those complete my points and I thank you for accommodating and and being raised today. Thank you, Mr. Jarvis. Was there anything in response?



1:23:03

Two subsoil acquisition, if that's okay, so we have been by way to go over them again, thank you, we just highlight that the example of HS2, it was not relevant. It was not some sort of a highway, it was just some sort of properties generally. And the applicant is seeking to composer acquire rights in all sorts of oil, which is not beneath the highway, because it's not owned as medium file. And in that case, it doesn't have a nominal value. And so that's how we are analogous in that respect. Also, I would just like to highlight that Mr. Kindness refers to Section 51 advice and says that we stated we were opposed to seeking to negotiate five degrees if Mr. Kindness had read the word before it would have read as opposed to seeking as an alternative to and so just to ensure that that isn't misconstrued for you, sir. Thank you. Thank you, Mr. Collins. Thank you.

1:23:52

Was there anything else from the city council?

1:23:57

Yes,

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very short point which flows from

1:24:04

agenda point 3.2.

1:24:08

So this comes back to plots 1010 writing Yeah, yep. Okay, I'm dealing with it last because it is a practical point. So,

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plots 1010 1410 through two

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A and B

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are if you look at the book of reference are clearly seeking temporary use and or other rights, but in particular, seek new connection works rights in relation to classes aid ad but it but also H and I. And it is it is ancient I in the context of it being only in relation to sub soil.

1:24:54

And when you read Ah, so I'll read it out. Sorry, forgive me. It's easiest.

1:25:00

To do

1:25:02

class H is restrictions on construction, Rec and erecting buildings etc.

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altering ground levels soil levels planting growing trees or shrubs carrying out operations or actions, which may obstruct interrupt or interfere with exercise of the rights are damaged the proposed development

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I

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deals with the same, but refers specifically to works into three as far as works extend into the structure of land over which the restriction applies.

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So, to my mind, AI is the only relevant class here, ah seems to apply to surface rights. Whereas AI, which deals with the restriction should be the relevant one because it only applies to sub soil. Whereas h wood apart about trying to erect a building in the subsoil doesn't make sense, although, obviously,

1:26:03

but I just wondered why. Yeah. Okay. Thank you for that, unless it's foundations of structures. But Mr. Jarvis, is there anything that you'd like to come back on at this stage in respect to that?

1:26:15

No, I'd need to look at that in more detail. So I'll come back in that respect. Thank you.

1:26:21

Right. Okay. Thank you.

1:26:24

Let's go home. Was there anything else from Portsmouth city council?

1:26:29

Right. Okay. Just before we leave agenda item four.

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We talked about the

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exemption and related matters, route and options. And the post hearing note that was coming out following this Goldberg's

1:26:47

section this afternoon.

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That was just come out as soon as possible in order that it was available to comment by deadline eight.

1:26:57

Is it possible Mr. Jarvis to give an indication of when that may be available, just to get some little bit of clarity on how the comments would be received from parties before deadline? Eight? So Mr. Jarvis, when would when would that post hearing be likely to be available? Do you think?

1:27:18

I expect that post hearing note could be available early next week. So Monday or Tuesday?

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Right. Okay. So Miss Colquhoun, then that would give Portsmouth city council

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the opportunity as you wish to respond to that before deadline eight, which is actually the following Monday.

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I hit

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Miss Colquhoun please. I hear that sir and we will obey.

1:27:52

Right. So that would give Portsmouth city council then

1:27:57

a the opportunity then to actually effectively submit that as opposed to hearing note early next week by say, the end of Tuesday. And that would give Portsmouth then almost a week then to consider that until midnight the following Monday. I'm grateful, sir. Yeah. Right. And so that would mean that it would come into us then, Mr. Jarvis, it would come into us, say by the end of Tuesday. And so if that could be emailed to us, obviously, as opposed to hearing note submission, and then that allows us to actually deal with that at that time.

1:28:36

Yes.

1:28:37

I'll ensure that's issued directly to Portsmouth city council as well, sir. Thank you. Thank you. Right. So it looks as though the particular point on that has been we've managed to resolve that. Right. Was there anything else in terms of agenda item? 4.1.

1:28:59

don't see any hands raised? Okay. Nothing heard. This is what?

1:29:04

Yes, sir. Could I just remind you that if notes are being produced that we could be copied in on them directly as well, because that will truncate time. Thank you. Thank you. Thank you for pointing that out. Yes, I think that would be useful there in the stage we are at at the examination when notes are forwarded to us. If they could be copied to the relevant parties, then that would be very helpful.

1:29:29

So anything else on agenda item one and agenda item 4.1. Okay, nothing heard. Agenda Item 4.2. We've already dealt with in terms of the presentation by Mrs. Langley. Anything else looking around? Okay, nothing heard. Thank you. On to agenda, agenda item 5.1.

1:29:52

Other matters.

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I didn't have anything else that I wish to raise in terms of this hearing. But

1:30:00

I would just draw attention because it hasn't actually come out in any discussions subsequently, without the two points relating to

1:30:10

the termination details at the telecoms buildings, the parking purpose and extent that I'd mentioned previously. And also the Carpenters' comparison, we Thorpe Marsh and Swansea Bay, the points that I made earlier on in Mr. Zwart section, and those were actions for the applicant.

1:30:32

Mr. Jarvis, I presume that you had already taken a note of those. I have

1:30:38

a question. Thank you. I know, we haven't dealt with them orally at this hearing. But I'm sure that a written submission will suffice on that. Miss Colquhoun.

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So yes, just it's I've been instructed that, that Aquind are not able or weren't proposing to submit your revised

1:31:03

FTMS or FCTMP until deadline eight. And we were wondering whether we could have early sight, just in order to enable there to be suitable, timely response. I understand that's what was proposed. But I wanted to make sure perhaps that we could, you know, apply a sensible

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timaeus approach to it so that those who are engaged in looking at these things could

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could ensure that, you know, that we are able to give you comments in time. Right. Thank you.

1:31:42

Thank you, Mr. Jarvis. I understood that that was agreed yesterday.

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But if you could just confirm your understanding of the agreement.

1:31:54

I will just rather I will just double check with Mr. Williams, sir, just to confirm who they have been sent to. And if they're not already with individuals at Portsmouth City Council, I will ensure they are within as soon as possible. Right. Okay. Yes. I mean, from what we are taking from this is it is it is almost becoming a general rule as to when documents are submitted, submitted, not to wait for their publication, but to circulate them to the relevant parties. And I trust that everybody who's in the hearing at the present time is aware of that in terms of the organization's

1:32:28

right. Was there anything else in terms of agenda item five, which is other matters? I didn't have anything, anything from anybody else?

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Nope, looking around that. Okay, nothing heard.

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That's all that I will now in a moment hand over to Mr. Man to actually complete the hearing. But in finishing, I just like to thank you all for your contributions this afternoon that have been very helpful. And I'll now hand over to this demand is demand.

1:33:02

And Rosco.

1:33:04

Agenda item six, just to close this off. Is there any other business in relation to compulsory acquisition that anybody wishes to raise before we close this hearing?

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Nothing hurts. So we'll move on to the action points. I've made a list of I believe, just for today, but I'll go to my colleagues afterwards. The first one goes back to Professor Goldberg's

1:33:28

submission, which was in relation to the regulatory exemptions, positions, and so on. So it was a note on the management of regulatory impediments at the current time by the end of the examination and the resource implications associated with that. And also how what route of actions would be available to the applicant From now onwards, assuming they get consent, going and getting to the market. That would include the French consents that Mr. Charles has subsequently offered to pull out the French consents part of that and issue that more earlier in the process. So that was one on one a.

1:34:10

The second one, sorry, if I made that if we're going to be issuing our information earlier anyway. We will just deal with all of that. At the same point. We're aiming to the end of day Tuesday to issue that note, I believe it's what we just agreed. Okay, if you're able to pull it all forward, that's even better. Thank you, Mr. Jarvis.

1:34:30

The second note I have was the one that Mr. Roscoe just alluded to, and that was the applicant was going to respond to the Carpenters' examples which were given in terms of thought Marsh and Swansea Bay.

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Third one was also for the applicant, and that was Mr. Roscoe his question about the separation on the ground of the fibre optic cable into its monitoring and its commercial uses. And also added into that the parking provision of the fibre optic cable buildings that was asked for

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By the Carpenters.

1:35:03

My final number four was a post hearing note from the Carpenters' representatives on the acceptance procedure for change request to and there were two parts to that. That's all I have. Is there anything else that you have done, Mr. Roscoe?

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You're on mute. Mr. Roscoe.

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Thank you. I just had a post hearing note on light when Mr. Stott was giving evidence.

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And there was also

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a post hearing note post hearing notes from Mr. Jarvis concerning Mr. Zwart's

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points on change request to

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I then had

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there was there was information on Farlington.

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And there was also that was from the city council and Mr. Jarvis also agreed to look at

1:36:23

h and I, in terms of plot 1014. Mr. Jarvis, I might just need confirmation on that as to whether it was itself or I mean, the point was made by Miss Calhoun, and you agreed to look at it. I'm not sure whether that actually resulted in a post hearing note or not. I don't think it was post hearing notes. I can claim to go away and confirm position with the team as to what the rights are that are to be included. And if there are any corrections to be made, they will be made alongside adding the additional names to the book of reference that you refer to today, sir, thank you. Yeah, the point I was talking about, there was Miss Calhoun's point recently towards the end of the hearing about 1014 subcategories H and di, and then necessity for them. If you remember. Yes, I do remember. So. So what I was explaining is that we will review that in the event that both are necessary, I will explain why that's the case. And in the event, one is not necessary, it will no longer be sought. And I will again explain why that's the case. So the position is resolved. For deadline eight, if not before. Right. Okay. Thank you. And I wasn't quite sure in terms of the Farlington situation, whether there was anything to come back from Portsmouth, Miss Colquhoun.

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So I don't think there was, I find it. But I raised my hand for a separate reason. And I should have raised it earlier, sir. It is simply because we listened with care from the allotment holders, and your questions about the hub. And I wondered whether it would assist because some of them at least expected Portsmouth to speak to that, whether you wanted

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a description or any insight into the hub from Portsmouth.

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I believe that I have sufficient for that purpose. So I'm not requesting anything further on that. Thank you. Okay. Thank you.

1:38:22

Mr. Mahon, that's it for me. Thank you. Miss Roscoe. Mr. Wallis. Was there anything that you picked up that we've missed that?

1:38:28

No, I think we're all present and correct on that front. Thank you very much anything anybody else has picked up that we've missed off that list that we need to add to it? Nothing heard there. So let's move on.

1:38:41

Can I finally confirm that, therefore, that the time that we've reserved for an exceptional issue hearing on Monday, the 22nd next Monday is no longer required? We've managed to complete all of this week's hearing so there'll be no continuation in the next week either. As such, there's nothing in the examination timetable for next Monday.

1:39:02

The banner on the project webpage will be updated with this information as soon as possible.

1:39:09

And agenda item seven is the closer to hearing. final reminder that the next formal deadline is deadline eight on the first of March. But we have all those other arrangements in hand now, which will help us achieve everyone seeing everything they need to see.

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Nevertheless, anybody who has spoken today should ensure that any written summaries of your oral submissions reach us by that date as well.

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We have tried to be flexible but fair in dealing with late submissions throughout this examination. But as we know, so close to the end of the examination, we're unlikely to be able to exercise any further discretion in terms of acceptance of late submissions.

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Finally, and on behalf of the examining authority can I thank everybody who has contributed today and throughout all of the hearings held for this examination, your attendance has been very helpful and very much appreciated, especially in the

1:40:00

It's very difficult times. Your commitment has helped us to make the virtual hearings approach to success and would have been most unusual and often challenging circumstances. So we're most grateful for your patience and adaptability. And with that, I bring the compulsory acquisition to a close. Thank you