



Hearing Transcript

Project:	H2 Teesside
Hearing:	Recording of Issue Specific Hearing 2 (ISH2) - Part 1
Date:	14 November 2024

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TRANSCRIPT_H2TEESIDE_ISH2_SESSION1 _141124

Thu, Nov 14, 2024 2:34PM • 1:20:39

Good

morning. The time is now 930 and I'd like to welcome everybody to this issue specific hearing in relation to the application made by h 2t side limited for the proposed h 2t side project. At today's issue specific hearing, the examining authority will be looking at the applicant's draft development consent. Development consent order before I formally open the issue specific hearing and the examination authority introduces itself. I just,

I'd just like to confirm with the case team whether or not they can hear me, and the meeting recording and live streaming of this event has started.

Okay, thank you.

Can everybody in the room hear what I'm saying?

Nobody indicate Thank you.

Could I ask that all notifications for electronic devices, including mobile phones, be switched off, please, or at least turn to silent.

I'd also ask that you keep your camera swift switched off and microphones switch to mute unless you're actually speaking. This will help reduce background noise and assist with broad bandwidth. Additionally, I'd advise that we've had no request for any special measures or arrangements to enable participation in this hearing, but I'd just like to confirm that's correct, please. So in the room, has anybody got any special requirements?

And online, does anybody have any special requirements to participate?

Again, no indication. So I'm going to move on.

In terms of fire alarm testing. I'm not aware that there's a fire alarm drill today, so if you hear a fire alarm, it's to be assumed it's the real event. And we will need to leave.

In the event of a fire alarm going off, you leave by fire exits, which are all around the room, but the main one I'm advised to follow is the one through to our left. You go down into the hall, down the stairs, and you meet in the car park at the or, sorry, the green space on the other side of the hotel,

toilets and toilets facilities, just for comfort, toilets are through these doors. Here's ladies and gents, and there's also a ladies and gents through the doors at the back, as far as I'm aware so

so having the confirmation that the live streamings and digital recordings commenced, I'd like to confirm that this issue specific hearing into the development consent order for the H 2t side national infrastructure project is Now open. Moving on to introductions. My name is Christopher Butler. I was appointed on the 22nd of May 2024, under Section 65 of the Planning Act 2008 under delegation from the Secretary of State as lead panel member to examine this application. I am a chartered member of the royal Town Planning Institute, and have academic qualifications in Town and Country Planning. I have made a declaration of interest responding to the planning spectra it's conflict of interest policy, and confirm that I have no declarable interests in relation to this appointment. I'm now going to ask my fellow panel members to introduce themselves, starting with Mr. Sims, please Good morning. My name is Matthew Sims. I was also appointed on the 22nd of May 2024, as a panel member to examine this application under Section 65 of the Planning Act, 2008 as amended under delegation from the Secretary of State. I'm a chartered civil engineer and a member of the Institution of Civil Engineers. I've also made a declaration of interest responding to the planning inspectorates conflict of interest policy, and confirm that I also have no declarable interests in relation to this appointment.

Good morning. My name is Sharon Bennett, Matthews. I was I was also appointed on the 22nd of May 2024,

as a panel member to examine this application under Section 65 of the Planning Act 2008 as amended under delegation from the Secretary of State. I'm a qualified planning solicitor. I have made a declaration of interest responding to the planning inspectorates conflicts of interest policy, and I can confirm that I have no declarable interests in relation to this appointment.

So thank you. Together, we constitute the examining authority for this application, and we will be reporting to the Secretary of State for energy security and net zero with a recommendation as to whether the development consent order should be made. Just before I proceed, I just want to apologize to everybody that's heard this yesterday. We have new people with us today online, so we have to go through the whole thing again. So please bear with us.

So also present with the also present today are members of the planning spectrums case team working with Mr. Sims, Miss Bennet, Matthews and I on this national infrastructure project present here today at the event, and existing us, we have Lily Robbins, who is the planning specters case manager for this nationally.

Infrastructure project. She is leading this plan that she is leading the case team effectively today, and any issues that you may have in the room, you should go to her first as your first point of contact. In terms of people online, we have Ramune Birney and Ilyas Pereira who are supporting the planet also from the planning spectrum. Its case, team working on this national infrastructure application and providing online support for virtual aspects of the blended River. Get event again. Anybody attending virtually has a problem should contact them in the first instance.

Technical technicians from production 78 are also in attendance solely for the production or the purpose of managing the audio and visual service, including the recording of the live streaming of this meeting. I'd also, I'd like to add that colleagues from the planning spectrum may join the issue specific hearing as observers, as part of the planning spectrum commitment to continuing professional development. They they will take no part in the hearing. It would just be for training purposes. Effectively, if they join us,

they have no involvement in the case.

If you have any questions or concerns about today's event, please speak to a member of the case team here today. Or if you're attending virtually with the virtual case team members, that's the end of the team at our end. So moving on into attendee introductions.

Firstly, we wanted to acknowledge and welcome all those that are attending this event today, including those watching the live stream. Welcome and thank you for joining us. We'd like to start with the introductions for attendees. When I read out the names of the team, please, could the members of that team present introduce themselves, starting with the people in the room and then those that may be attending virtually.

If you're a representative of a company or an organization, could you state who you're representing? Could you also please advise how you wish to be addressed and on which items you may wish to speak so can we start with the applicant? Please

Good morning, sir. My name is Harry wood. Phil Park kings Council. I appear together with Miss Isabella TAFE to my right, we're both instructed by Pinson Masons on behalf of the applicant, h 2t, side limited. I anticipate that I'll be doing most of the speaking today, but I'm also going to be calling on Mr. Ross Nixon, the environmental and social manager for BP, who sat immediately to my left. He'll be dealing with items six one and six two. If there are any other speakers I need to call on during the day, I'll introduce those, if I may as and when that becomes necessary, you Thank you, Mr. Philpott, moving on to local authorities, red car and Cleveland Borough Council, please,

morning, sir. My name is Adrian Miller. I'm a chartered town planner and head of Planning and Development at red car and Cleveland Council. We're not making any specific representations on any of the agenda items, but happy to take any questions, particularly in relation to the requirements.

Thank you for that Stockton on tees, Borough Council, I understand one of your party isn't going to be joining us until after 10 o'clock. That's Mr. Stephen Docherty, but can we do the introduction? Introductions for for others, please? So I have Elaine Atkinson,

sorry, camera was on. Mike was on mute. Elaine Atkinson, principal Planning Officer representing struck and council don't intend to speak, but we'll be here to answer any questions. Okay, thank you very much.

Mr. Aske

morning. David aske Sombrero, Council, green space section,

again, likely not to speak in light of Len's comments. Okay, thank you. Stephanie land landels, landlords,

good morning. It's Stephanie landels.

I'm from stocktonborough Council Environmental Health Unit.

I'm here for any questions. Thank you very much,

and I've got Martin Parker, finally,

Hello, I'm Martin Parker. I'm also from Stocktonborough Council, representing highways, similar to all of the representatives, so don't intend to speak. Answer any questions. Thank you. Okay. Thank you very much. And then moving on to

South Tees group now. Mr. Henderson is not able to join us until after quarter past 10.

If he needs to speak, I'll ask him to introduce himself when he first speaks. But

Mrs. Parent, do you want to introduce yourself? Yes. Hi. I'm Megan. Parent.

A solicitor with BDB Pittman, representing the South Tees group. And we, as you mentioned, Tom, will be joining in a bit, and we expect to speak on agenda items three and four. Thank you very much for that. I'd like to move on to Anglo American and Tabitha Knowles, please.

Thank you. Hello, Mr. Tabitha Knowles of Litchfields, on behalf of Anglo American Woodsmith, Teesside Limited. Anglo American Woodsmith Limited, and Anglo American Crop Nutrients Limited, collectively and here on referred to as Anglo American. Anglo American is also joined today, but via the live link, and we'd like to speak to agenda items three and four. Thank you. Do you know if your colleagues want to introduce themselves, I've got David Rawson and Fiorella Remark Romero, no, no, they'll just likely be listening in on today. Thank you. Okay. Thank you very much. In that case, I'll move on to Mr. Nesbit of Evershed Sutherland's please.

Good morning, sir. My name's Mr. Peter Nesbit from Evershed Sutherland

today, I'll be representing Pdts, Port Limited, CF, Fertilizers, UK Limited. Navigator Terminals, Limited. Semcourt Utilities, UK Limited and INEOS, Nitriles UK Limited.

I only expect to be making representations today in relation to

the the interests of semcorp utilities, UK, limited

and PD, T support limited

and particularly interested in items three

and four and six of the agenda. Thank you.

Thank you very much for that. Mr. Nisbet,

then moving on to Mr. Barton, on behalf of red car bulk terminals.

Good morning, Sir Tom Barton from Mishcon de REIA, acting for red car bulk terminal. No specific representations intended at this point, although I may raise my hand at some point. That's that's fine.

Yes, if at any point you wish to come in, just switch your camera on and raise your hand so your virtual hand on the scene.

I've got Shepherd, Shepherd and Wedderburn down, and a Mr. Mr. Innis, who was here yesterday. Mr. Innis indicated yesterday that he was unlikely to attend today because he felt that he'd covered sufficiently what he needed to discuss in regard to the items that we were discussing today. So I don't believe he's in attendance, but, but just in case, is Mr. Innis available? I Okay, moving on. I've got Mr. Dag on behalf of

SABIC petrochemicals limited.

Thank you. So yes, Stephen dag from womb Dickinson on behalf of SABIC petrochemicals, UK and the other SABIC companies. I won't go into their into their names. I'm joined by Simon Mann from SABIC. We're also joined online by Daniel Daniela Franken from SABIC.

They are not expected to speak, but they are on hand, if they can insist, you and your colleagues today, sir, we're expecting to speak on agenda items three and four. Thank you. Thank you very much.

And then I think finally I have

climate Emergency Planning and Policy. Dr Boswell,

yes, good, good morning. Dr Andrew Boswell, climate Emergency Planning and Policy. I

have interest in speaking in items three and four, and an interest in item six, three possibly two. I

thank you very much for that. Dr Boswell, thank you.

Right. Have I missed anybody that is here in the room or virtually that is registered to speak, but I've not asked you to introduce yourselves,

getting no indication. So not in the room, not online. So I'm going to move on.

And item two, we're moving on to then. So Miss Bennet Matthews, if you'd like to take this item forward, please. Okay, thank you. Now if you were.

Us to acknowledge the format of the event today, this is a blended event. It allows attendance both in person and virtually through Microsoft Teams, both blended and fully virtual events form part of the planning Inspectorate future operating model. We the examiner examining authority, are attending this meeting from Middlesbrough, as are several of the attendees. For those attending virtually, please be rest assured that you you have our full attention

at all times, even if we are at times not looking at the camera. To avoid visual and noise distractions, please keep your cameras and microphones off unless we invite you to speak for all taking part today, especially those watching the live stream or listening to the digital recording, you might find it of assistance to have a copy of the agenda open digitally or printed in front of You. It is available on the documents library assessed via the planning, assessed by the project page of this proposal on the national infrastructure website. The agenda can be found in Annex D of rule the rule 13 letter the examination reference for that library reference for that is PD zero, 11, if for medical or other reasons,

anyone requires a break at a specific time, could you please let the case team know, and we will hopefully adjust the program to meet your needs. Now, turning to timings

proposed for today, we will take a 15 minute break at approximately 11 o'clock, a lunch break around 12:45pm,

and aim to finish around 3pm but we will keep this under review once the business is as listed on the agenda is concluded, This hearing with close. So it may conclude earlier than 3pm

although there is a lot to get through on on the agenda, these timings are approximate. If you are joining for a particular agenda item, we recommend you keep in touch with the case team, who can tell if the sessions are running ahead or behind schedule for virtual attendees. If you decide to leave the meeting during the breaks, then you can rejoin using the same link provided in your invitation

email. If you are watching the live stream, then please refresh your browser to resume each subsequent session. We would remind you that, as already stated, the chat function in teams is not working

and is not being used today. So please do not send any messages via chat, as it is not monitored

if at any point in the meeting you can't hear me or my fellow panel members or should wish to speak. Can I ask you to put your hand up or ask the examining authority for permission to speak at the appropriate time,

if you are virtual attendees taking part in the hearing? Can we ask you to turn your camera on, if it is turned off and use the raise hand function in teams. If you do not have the raise hand function, then please ask the examining authority for permission to speak at the appropriate time, whether you are here in person or joining virtually. There may be sometimes there may there, may sometimes be a delay before we can acknowledge you wish to speak,

the case, team will have explained what to do if you lose your connection, and if I am able to adjourn for a short period, or we are able to adjourn for a short period if an interested party experiences more significant connection problems.

If you do lose connection, use the same link that you use to log in this morning, and the case team will endeavor to reconnect you as soon as possible. Should you experience any problems with the live streaming, a digital recording of the event will be published on the national infrastructure web page as soon as practically possible after the event has ended,

turning now to general data protection regulations, GDPR and live streaming.

With regards to GDPR and live streaming, I would like to make you aware that this event is both live streamed and recorded and will be published on the project web page. They form a public record that can contain your personal information and to which the general data protection regulations GDPR applies, all personal data is managed in accordance with the planning inspectorates custom.

Trauma privacy notice.

Consequently, if you participate in today's issue specific hearing, it is important that you understand that you will be recorded and that you are there, and that you therefore consent to the retention and publication of the digital recording. It is very unlikely that the examining authority will ask you to put sensitive personal information into the public domain. Indeed, we would encourage you not to do that. However, if, for some reason, you feel it necessary for you to refer to sensitive personal information, we would encourage you to speak to the case team in the first instance,

we would then explore with you whether the information could be provided in a written format, which might be redacted before being published. Please bear in mind that the only official record of the proceedings is a digital recording that will be placed on the project page of the national infrastructure, website, tweets, blogs and similar communications arising out of this meeting will not be accepted as evidence in the examination of this application.

Turning to the purpose of the meeting,

my next point is about the substantive matter of today's issue specific hearing itself, which concerns the draft DCO.

To be clear, it is it is not intended to discuss all aspects relating to the draft DCO today. Some matters are being pursued through rounds of written questions. However, the examining authority who wishes to explore a number of of matters orally. In respect of the draft DCO,

we would also like to remind you that the examination is predominantly a written process. The examining authority will be issuing a round of second written questions towards the end of this month,

the purpose of this meeting is for the examiner, examining authority to examine the information submitted by both by the applicant and also by the interested parties, other persons, and where relevant, affected persons. As a result, we would assure you that we are familiar with the documents that you have sent in. So when answering a question, you do not need to repeat at length something that has already been submitted. If you want to refer to information already submitted, we would be very grateful if you would please use the appropriate pins, examination, Library Reference.

Further, could we please ask that the first time you use an abbreviation or an acronym that you give the full title, as there may be people here today or listening to the digital recording that may not be as familiar with the application or documents as you are

whilst we accept that the majority of discussions will be undertaken by those parties that have requested to speak, this is a public examination, and therefore, if there is a point that you want to make, please feel free to use the raise hand function in teams or switch on your camera at the relevant time that you wish to contribute.

The hearing today will be a structured discussion which will be led by the examining authority based on the agenda that has already been published. The purpose of the discussion is for the examining authority to ask questions and to seek clarification on matters relating to the draft DCO with a view of ensuring that we have all the information that is needed to make our report to the Secretary of State, the questions we will be asking today will be focused on those areas where we consider further information is required, or where we think The issues would benefit from examination orally,

we would therefore like to take this opportunity to reassure you that whilst we may not be asking a specific question or covering a particular topic that you were expecting, it is not necessarily that we view that this matter is as satisfaction. It is merely it merely indicates that we consider that we have all the information that we need on this topic.

We would like to remind everyone that this is not an inquiry, and therefore, unless the exam examining authority has specifically requested or agreed to it, there will be no formal presentation of cases or cross examination as such questions that you may have for other parties need to be asked through the examining authority. In addition to the above, I would remind all interested parties present that it is not the purpose of this issue specific hearing to discuss compulsory acquisition.

Duncan and or temporary possession matters at this hearing today, a separate hearing specifically dedicated to those matters have or has already been held,

and we currently have programmed into the draft timetable for further hearings in January 2025

which is highly likely to include a further compulsory acquisition hearing,

and is set out in the timetable issued with our rule six, letter which is PD 11, dated the 30th of August 2024,

as varied by our rule eight, three, letter which is PD zero, 14, dated the 24th of October,

notification of such hearings will be confirmed closer to the dates of those hearings. Should they? Should they be required? Which we are relatively certain that they will.

Our certainty in this regard is partly down to the applicant's formal submission of potential changes to the proposed development known as a change request, which was submitted by them on the 17th of October 2024

and accepted by the examining authority on the 21st of October 2024 however, as the applicant's formal consultation on exchange request is currently live, we will not at this hearing pursue any questioning related to the change request at this time, but will potentially include such questioning and discussion in subsequent hearings scheduled for January 2025,

Turning now to the conduct and management of the hearing. We are conducting this here, this meeting, in accordance with section 91 and 94 of the Planning Act 2008

planning, planning act 2008

and infrastructure planning examination procedure rules 2010

specifically rule 14, relating to the procedure at hearings. We would remind you all that at section 94 subsection eight of the 2008 Planning Act allows that the examining authority may refuse to allow representations to be made at the hearing, including representations made in exercise of an entitlement under Section 91 three, if the examination the examining authority considers that the representations are a, irrelevant, vexatious or frivolous. B, relate to the merits of policy set out in national policy statement C, repeat any other representations already made in any form and by any person or D, relate to compensation for compulsory acquisition of land or an interest or a right over land,

Turning now to the agenda rule 14, subsection two of the examining examination procedure rule requires that at the start of the hearing the examination, the examining authority shall identify matters to be considered at the hearing. The draft agenda for these hearings were set out in Annex D of our rule 13, letter dated the 15th

of october 2024,

Annex D to the rule 13 letter is set out on our website,

both the draft and more deep, both the draft agenda uh details are available via the Project Web page on the planning inspectorates, national infrastructure website, we consider that the main items for discussion are articles and schedules of the draft DCO. Schedule two of the draft DCO article 44, of the of the draft DCO certification of plans and consents, licenses and other agreements. We would ask you to note that we are aware that many of the matters relevant to this DCO application often need to be considered in multiple different ways, and that there are cross cutting issues. Please note that today's agenda is for guidance only. We may add other issues for consideration. As we progress, we will seek to allocate sufficient time to each to each issue to allow proper consideration of them. Should the consideration of the issues take longer than anticipated, it may be necessary to prioritize matters and defer others to written questions

for the virtual aspect of this blended event

when we adjourned for short breaks at convenience points, you can stay logged on into teams throughout.

The break, but please ensure that you switch your cameras off

and mute your microphones. If you're watching the live stream, you will need to refresh the live streaming web page to continue watching the live streaming after any break. If you do lose connection, use the same link that you've used to log on this morning, and the casing will endeavor to reconnect you as soon as possible. Should you experience any problems with the live streaming a digital recording of the event will be published on the national infrastructure web page as soon as practically possible after the event has ended. It is important that we get the right answers to questions that we are going to ask. We reiterate that this is predominantly a written process. Therefore, if you cannot answer any questions that are being asked or required or require time to get the information requested, then rather than giving a restricted or potentially incorrect answer, can you please indicate that you need to respond in writing? We can then defer the response either to an action point or to the next round of questions or to a point to another point in time,

if possible, within the timescales

of the remaining examination period.

In the anticipated timescale for this hearing, it is clear to us that the agenda is a reasonable agenda, and we would highlight that the examination authority may ask questions and make other comments as we go through the various parts of today's event. We will also be noting any actions arising from the hearing as they emerge at the close of the meeting. We will summarize action points depending on the amount listed. However, if there are too many to list, we will endeavor to publish any action points arising from today's meeting, today's hearing, as soon as reasonably possible.

The assumption is that post hearing actions will be expected at the next deadline. In this case, deadline, which is Wednesday, deadline for sorry, which is Wednesday, the 20th of November. However, acknowledging any resourcing constraints on your end, if you feel meeting that deadline would be difficult for you, please raise that at the hearing itself, so we can, if possible, accommodate that in the deadline set out in the post hearing action list. Finally, for the purpose of identification and for the benefit of those who may be listening to the digital recording. Later, could we ask that at every point in which you speak, could you please give your name and if you are representing an organization or an individual who is, who, who that who that individual is, or organization that you represent. Also, please ensure that you speak loudly and clearly we're making your submissions

before we move on to deal with items, detailed in the agenda. Are there any questions at this stage about the procedural side of today's hearings or the agenda that you would like to ask?

Okay, I see that no hands are raised, so I'll we'll move on to agenda item three. Thank you very much.

So I'm taking Agenda Item three forward, which is articles and schedules for the draft dual and consent order.

Prior to moving on to the main subject of this gender item, I need to acknowledge the change request submission which has been accepted by the examining authority and is currently being consulted upon in

accordance with the infrastructure planning compulsory acquisition regulations, 2010

that consultation is currently ongoing,

and the cons, the examining authority, considers it would be inappropriate to pursue any discussions related to the change request at this time, irrespective, irrespective of that, we would stress that there is currently an opportunity for parties, interested parties, to Make relevant representations in relation to those change requests, and there will be a further period of written representations to be submitted in relation to those change requests. Furthermore, there is the potential that we may decide to hold further preliminary meetings related to the change requests, should one be considered necessary.

And there will be opportunities to make oral representations in regard to the change requests at subsequent hearings, which, as Miss Bennet Matthews has already indicated, will be held in January, 2025

if they are required,

the dates which will be confirmed mid December, I think it's the 13th, we have to notify by

all their whereabouts. So moving on to Item three, we have a number of interested parties who have asked to speak in relation to this agenda. Item I'm proposing to bring you all in relevant at each relevant question, rather than asking you to speak at the beginning. I believe that will allow more focus to pro.

Approach in relation to the questions, and I'd hope you find that acceptable. If anybody objects to that approach, could they indicate now, please, I'm

getting no indication. So we have a number of questions to cover. Some may appear to overlap, and in which case they we have in that case, we may have adequately already answered questions in a later part of the agenda in the earlier part, and we will probably move past those, but we will look at those at the time we get to them.

As we've already said, we'll endeavor to cover the topics by three o'clock. However, we do have ability to continue rather than adjourn. So if we feel that the hearing will be served in that way better than that's what we will do.

We anticipate items three and four relating to the schedules of the draft development consent order and the articles

and schedules, and

we expect those to take the substantial part of the time that we have allowed for today,

so

we think that the remainder of the agenda will not take as long as those first two articles.

Oh, sorry, items.

I don't intend to repeat the statements and questions shown in detail in the agenda. Rather, I will be referring to any bullet point numbers, so it would be helpful if you have a copy of that agenda at hand.

So

as part of today's agenda, can I ask the applicant to provide us with a brief walk through of each part of the development consent order to provide us with an understanding of the power sort and the context of the for the context of the discussion today, it can be very light touch and high level that the applicant should they like to submit for a fuller script. Is welcome to do so once they've delivered their their

response. So Mr. Philpott, thank you, sir. Herwood Philpott, on behalf of the applicant, the latest version of the draft development consent order is revision two, which went in at deadline two, the clean version is rep 2004

and the tracked version rep 2005

and there is, of course, the revised version that has gone in with the change request application. That's CR one zero 15, the clean version of that CR one zero 16, the tracked version, and that includes only amendments to give effect to the relevant changes. So I won't be touching on that

this morning. The schedule of changes to the draft DCO, which is rep 2006,

summarizes the amendments that have been made to the draft development consent order since it was submitted.

The draft order has been prepared having regard to pins, guidance in advice, note 15 to practice and precedents established in other made DCOs, and we have identified those where relevant, both in our

explanatory memorandum, and then also in various places in response to questions and other other suitable opportunities. The draft development consent order would confer both development consent and necessary powers to enable construction, operation and maintenance of the authorized development which comprises the works that are described in schedule one to the draft development consent order,

the version submitted at deadline two includes 48 articles, which are grouped into six parts, and then 22 schedules, which are given effect by and tie into the articles the draft order must be read alongside the various submitted plans and documents that are secured through the draft DCO and that are listed in schedule 14. And that's something I know we're going to come to in agenda item five in due course,

then touching briefly on the articles. So part one deals with preliminary matters. Articles one to three cover the citation of the order, definition of terms that are used in the order and the position and respective use of electronic communications purposes relating to the order. Part Two contains the principal powers. So articles four to nine set out the main powers that are required to construct and operate and maintain the authorized development they determine which.

Entity has the benefit of these powers and how that can be transferred if required. It also disapplies certain other statutory provisions to enable the construction, operation and maintenance of the authorized development part three deals with streets. So articles 10 to 16 provide powers to enable the carrying out works to and within streets, creating or improving accesses, temporarily closing streets and rights of way and regulating traffic to enable the authorized development to occur. And then Part Four deals with supplemental powers. So articles 17 to 21 provide powers to assist with the construction, operation and maintenance of the authorized development and they include matters such as discharge of water, felling or lopping of trees and removal of hedgerows, the carrying out of protective works, to buildings, authority to survey and investigate the land, and also removal of human remains if those are found. Part Five provides the powers of acquisition. So articles 22 to 37

provide powers for the compulsory acquisition and temporary possession of land for the purposes of the authorized development. And they also deal with land related matters, such as providing the procedure for the provision of replacement special category land for the cap and Bewley special category land,

the manner in which these powers can be exercised and in relation to which land is controlled by the drafting of these articles. And I'll deal with this very briefly, because we touched on this yesterday, but I know not everyone was here. So the starting point is that the compulsory acquisition powers can be used on all land unless they

fall within the ambit of articles 25 and 32

so article 25 which deals with the compulsory acquisition of rights, sets out how for order land that is specified in schedule nine to the order and shown shaded blue on the land plans the powers are limited to the acquisition of New rights or restrictive covenants that the undertaker may require for the authorized development, as set out in schedule nine. And then, similarly, Article 32 provides for the temporary possession powers in relation to the land that is specified in schedule 11, to the order and the detail of which order land is subject to which power is set out in the land plans, that's as 003

and the book of reference that's rep 1004,

which are both listed as certified documents in schedule 14 to the order. And as noted yesterday, the DCO is drafted so that lesser powers can be used prior to the exercise of greater powers. And so, as I explained yesterday, temporary possession may be used, first to access land and carry out the works, followed by the exercise of compulsory acquisition, or compulsory acquisition of rights, which then reflect the development as built. And that's common practice in DCO projects then Part Six, miscellaneous and general articles. 38 to 48 set out various general provisions which don't fit into the

categories of the other parts that I've identified above, but are required for the authorized development to proceed. So this includes, in this case, provision for where there are overlapping planning permissions. Article 39

the protection of interests to give effect to the protective provisions. Article 41 protection of Crown rights. Article 42 setting out the procedure in relation to approvals. Article 43 and certification of plans, Article 44 so those are matters that come within the miscellaneous in general,

the most recent addition to Part six, which was added at deadline two, is Article 48

which covers the interface with the Anglo American environmental permit, and as you'll have seen, that was inserted to seek to address Anglo Americans concern as articulated in its relevant representation. That's RR

zero 10 paragraph 4.3

that its environmental permit covers land that could be compulsory acquired by the applicant, and that Anglo American would still be responsible for the operation of the permit. So the new article 48 ensures that authorized activity undertaken by the undertaker does not constitute a breach of their permit.

Earn it. Then turning to the schedules, to the order. Schedule One provides the description of the authorized development that's what the author the order provides development consent for. Schedule two contains the requirements. These are controls that are akin to planning conditions, which apply to the authorized development. Schedule three is currently a placeholder for modifications to in amendments of the York potash harbor facilities. Order 2016

which will be in a form similar to those in the net zero Teesside order schedules four to seven provide details of works to streets access temporary closures of streets and public rights of way and traffic regulation measures that are required for the project. Schedule eight sets out details of the important hedgerows to be removed. Schedules nine to 11 provide details of land affected by the powers of compulsory acquisition and temporary possession under the order while schedule 10 sets out modifications for compensation and compulsory purchase enactments that are appropriate for the DCA regime.

Schedule 12 sets out the process for the undertaker to appeal to the Secretary of State in respect of certain local authority approvals after the grant of consent. Schedule 13 sets out the procedure to obtain approvals from relevant planning authorities for the discharge of requirements

which enable, depending on the context construction works to commence or elements of the development to be brought into operation. Schedule 14 lists the documents and plans to be certified. Schedule 15 sets out the relevant design parameters for work number one, which tie into the maximum form of development that's been assessed in the environmental statement. And then schedule 16 to 22

are to contain the protective provisions for various statutory undertakers and other relevant parties. These were all to be contained in schedule 12, and that was the approach taken in the application version of the draft development consent order. But having regard to the number of protected provisions that are to be entered into. The applicant has moved these to the end of the DCO and split them into individual schedules, and so that brings me to the end of the draft order.

Thank you very much for that explanation.

Do just so moving forward, as you would have seen, we asked as the examining authority asked a significant number of questions in relation to the first ring questions that we issued

in regard to the draft development consent order.

And I'd like to thank you all for your responses in relation to those, those draft questions.

As a result, you might be relieved to know that my question is significantly reduced for this hearing,

and

I don't need to ask as many questions as I as I originally had.

What I intend to do is I intend to go through each of the articles to start with, and then the schedules, and I'm going to ask questions where I still have some questions or I want to point something out,

but there aren't that many. But what I would like to know from as I go through each one individually, whether or not the applicant, the local authorities or other interested parties who have registered to speak have anything to add on those those individual ones as and when we get to them, so that we can have a discussion about any of your concerns that are left over that weren't addressed at yesterday's compulsory acquisition hearing.

So at those points in time, I will ask each party to indicate whether or not they wish to speak

before getting to those articles, though, I just wanted to touch on the response that we received from climate Emergency Planning and Policy at deadline three, where they were asking about

they asked a couple of questions or indicated that they wanted to speak on a couple of items, but weren't certain where they fell within the agenda. So the first question they asked was a development consent order provision. Could they ask whether a development consent order provision can be drafted into the H 2d side DCO, so that the minimum carbon capture rate is secured in the DCO itself, ensuring that the capture rate is 95% reflecting the assumption in the applicant's environmental statement. And the second question was whether a similar provision.

Carbon concerning the natural gas supply from the H 2t side plant being required to be compliant with the low carbon energy standard, sorry, the low the low carbon hydrogen standard.

Could I ask Dr Boswell? Do you mean to raise this point as part of the articles and schedules section.

Or is it a requirement that you're thinking of such as a requirement is equivalent of a condition in a planning permission effectively? So was it a condition attached to the development consent order? Or is it a specific article we were thinking that would cover these two things.

Thank you. Yes. Dr Andrew Boswell of climate Emergency Planning and Policy,

what I

am proposing is that

a definition is put in for each of those, those two

items you mentioned, a definition is put into

the

Article Two, I think it would be interpretations and also a corresponding requirement

under the schedule two.

Okay, this is partly why I said I needed to speak at both items three and four, in fact, because it's sort of split across the two. But it might actually be easier fine to sort of Yeah, what? What I'd like to do then, Dr Boswell is I'd like to see if we could deal with it now, I

I've read your question out already. Is there anything you wanted to add to that question before I put it to the applicant? Um,

I the the applicant came back on this in the document,

which was submitted on November the first

so I can speak to that. But it may be if that the applicant came back on just the first item, actually, they didn't come back on the low carbon hydrogen standard aspect, I don't think,

but they came back on the first one on the 95% carbon capture. I can either reply now, or I think it might better see what they say now, in case that's sort of augmented anyway, and then I'll come back. Then, okay, what I'll do in that case is I will ask the applicant to respond to the two aspects of that questions, or the questions that you've asked, So question one and question two, then I'll come back and ask you to respond, and then I'll go back to the applicant for a final right of reply. Are you satisfied? Thank you very much. All right, Mr. Philpott, would you like to respond to both aspects of that question. I'm assuming you don't need to be reminded I can deal with that Harry would feel put on behalf of the applicant. So starting with the first request, which is that a minimum carbon capture rate be secured in the development consent order, and just to provide some context for the answer I'm about to give you. Will recall, sir, that in Dr Boswell's submissions, references made to similar provisions having been put

into the net zero T side and key b3 development consent orders. And I made that point because I need to respond to that suggestion, and

starting with the short answer, the applicant does not consider that any additional or different drafting or controls are required or would be appropriate in the development consent order in relation to carbon capture,

a 95% design carbon capture rate will be required under an environmental permit and is technically achievable for this development. And then turning to the precedents that Dr Boswell has sought to pray in aid. We consider that the way this is put in, the written representation put in by Dr Boswell mischaracterizes how those two orders deal with the carbon capture rate. And we would add to that, that this issue was also considered in the examination and decision making in respect of the Drax bio energy carbon capture and storage scheme following some.

Similar submissions made in respect of that proposed development by Dr Boswell, and that scheme had also based its assessments on a 95% capture rate. So I'll deal with all three of those cases in my response, and I can deal with that briefly. First of all, so far as key b3 and Net Zero Teesside are concerned, the only reference to a carbon capture rate within those development consent orders is contained within the definition of carbon capture and compression plant

in neither of those orders is there a provision requiring a capture rate to be achieved. In other words, it's a definition of the development being designed to achieve that rather than requiring a particular capture rate

in the Drax, bio energy, carbon capture and storage DCO. There is no reference at all to a percentage capture rate in the DCO, so nothing was considered to be appropriate there. And the Secretary of State has therefore decided to grant consent to those projects without the need to include a requirement for a 95% or indeed any other percentage capture rate to be achieved. The drafting in the draft order here is consistent with those precedents, and there's no reason why this development should be treated any differently on this point. Now, for all of those projects, including this one, the mechanism for ensuring a capture rate is achieved is the environmental permit. And in considering the environmental permit for this project, the Environment Agency will have regard to its February 2023 guidance on hydrogen production with carbon capture emerging techniques, and the applicant's environmental permit application has been based on meeting this guidance in section 3.3 of the guidance, it states, and I quote, you should design plant to maximize the carbon capture efficiency. As a minimum, you should achieve an overall CO two capture rate of at least 95%

although this may vary depending on the operation of the plant and quotes so the Environment Agency will have to consider whether this has been achieved in determining the applicant's permit application. There is similar guidance

in relation to post combustion carbon capture plants. And we have provided, in rep two, zero, 23

an example of its application in the environmental permit for net zero T side, which sets out the mechanisms for the carbon capture rate to be achieved. And so I just ask you to note there. You'll see, when you look at our you will have seen, when you see our response to what Dr Boswell has put in by way of written representations, our explanation of the need to be alive to the differences between different technologies in this contest. And I won't labor those in the context of a DCO application, but it goes to the question of achievability. And the clear legal and policy direction is that it should be assumed that the permitting regime will operate effectively, and the development consent order should not duplicate controls that can be imposed through that alternative regime, and that's reflected in the energy MPs in one paragraphs, four point 12, Point 10 and four point 12, point

16 and finally, in relation to this matter, first matter, the 95% capture rate is used as an assumption for the purposes of the environmental impact assessment and not As a parameter for the project. In other words, it's not part of the Rochdale envelope. It's simply an assumption that is used in in the EIA, and it is neither necessary as a matter of law nor proportionate to secure every single assumption that.

Goes into assessment, and that is an important legal distinction to keep in mind when looking at the question of securing things that are in the EIA that is appropriate in relation to parameters which define the project for which consent is to be granted, and in relation to mitigation measures which are specified and have to be secured through the DCO, as opposed to duplicating controls through other regimes or fixing every parameter that goes into the assessment. And it is neither usual nor necessary for assumptions of that sort to be reflected in a control, in the development consent order itself. So that's what I say in relation to the first matter. So far as the second matter is concerned, so much shorter answer, but essentially along similar lines of principle, this is the request that there should be a requirement that the natural gas supply for this plant must be compliant with the lchs standard. That is not required because it is, of course, already a requirement of the low carbon hydrogen agreement that requires producers only receive support payments for volumes of hydrogen that meet the low carbon hydrogen standard, and that is to ensure that only genuinely low carbon hydrogen is supported by the government. There's no need to duplicate that regime through a parallel requirement in the development consent order. So that is, again, just entirely unnecessary. It's already covered by another regime, and it's not the purposes of the DCO to cover that matter as well. So that that's, that's the short answer to the second point, sir.

Thank you very much for that.

I did have a supplemental question about duplication of controls, but you already asked answered that, so I don't need to pursue that. Dr Boswell, I would like to bring you back in please.

Yes. Thank you, sir,

yes. I'd like to respond to those points,

and

just to sort of say, as I said before, that the what I'm proposing is two very small changes to the DCO. One would be in the interpretation the definition. One will be in schedule two.

And

I'd like to start, I mean, I think the key issue is the duplication the rig of the regulatory control, duplication of controls, and that's what I'm going to address. I'd like to start

by saying that the environmental statement describes the effect of the development on the environment, and that the environmental statement chapter 19,

that is a P, P, 072,

in the pins number, describes and identifies that the developments proposed to operate in two specific ways, first at an operation carbon capture rate of 95%

and second, that the development will produce low carbon hydrogen product that is in compliance with the low carbon Hydrogen standard.

These aspects of the proposed develop the fundamental to its planning merits, and are the basis upon which the applications currently being assessed.

The seat the proposed changes from seep seek to secure that the plant operates according to these environmental impacts as they are described in the environmental statement.

So I'll start with the 95% carbon capture rate matter

and address the issue of regulatory duplication

with respect to the environmental permit SEEP is not aware of any indication, much less assurance, that the proposed developments environmental permit will require that the development or the hydrogen production facility is operated only a when the project's carbon Capture infrastructure is in operation

B at a particular capture rate,

and see that the carbon capture infrastructure will be connected to the relevant infrastructure to export captured carbon dioxide to the offshore storage network.

And the applicant has not cited any evidence.

To support that the environmental permit does provide that assurance,

document nine, two, the statement of common ground, and that the pins code for that IS rep one Oh, 13, the same COVID ground between h 2t, side limited and the Environment Agency does not list the carbon capture rate, nor the other matters above of connecting

to the offshore network, or whether the carbon capture infrastructure needs to be operating when the plant is operating, it does not

address those under the matters under discussion, and I've already noted that in My submission

at deadline, free, rep, free. Oh, 17, I

and that was my comments on the applicants, response to questions, question 156,

of your first round questions.

And the the the documents

which Mr. Philpott referred to, he referred to one of them. But there's two Environment Agency documents quoted by the applicant. And it's important to note that these are not at best available technology, status, but status, the

post combustion carbon dioxide capture, emerging techniques. Document, as it's now called, was published in 2021 and it's actually been downgraded to emerging technique document which indicates that there's not actually considered that it is a best available technology yet. And the Environment Agency document which Mr. Philbot did just mention the hydrogen production with carbon capture emerging techniques was only ever published as an emerging technique document. In other words, it was never published ever as a best available technology.

In both documents, the 95%

capture rate is discussed as an aspiration, no evidence is given that it can be achieved or how it will be achieved. And worldwide, there's no evidence that it can or has ever been achieved. And I gave the evidence of that in my written submission, written representation at deadline two. I

so the EI permitting is only based on guidance at an emerging technology level. So the standards for the techniques are much more speculative. They are still speculative. And the environmental permit is not a mechanism. It's not a mechanism for achieving the capture rate at best. What the environmental permit regime does is monitor and report the capture rate. So I don't accept that the environmental permit is acting as a pollution control regime here. It's more like it's operating as a pollution monitoring regime.

Therefore, seep consider that there is a need for the draft DCO to include provisions that secure the capture rate, the capture and storage of carbon dioxide produced by the hydrogen production plant, in line with the assumptions in the environmental statement, such provisions would make no regulatory duplication between the DCO and the Environment Agency permitting regime.

And it's clear that the just summarize that the Environment Agency emerging technique documents which the permit would be based upon do not require that the project's carbon capture infrastructure also operates when the hydrogen production is in operation, operates at a particular capture rate, or will always be connected to the relevant infrastructure to export the carbon capture,

the carbon that the captured. So export the captured carbon dioxide to the offshore storage network.

So given that there's no regulatory duplication, section 112, of the energy NPS and the quoted sections 412, 10 and 412, 16, as just quoted by the applicant do not apply, in seeps view,

and this is also evidenced by the DCOs for keybre and net zero T side already containing DCO requirements and definitions similar to the ones I'm proposing now, in fact, the ones I wish.

Propose more as a clone of the net zero T side ones.

And if, though those DCO changes were duplicating another regulatory resume regime, the Secretary of State in those cases would not have allowed them in the decision. That's everything I want to say on the carbon capture rate side, I've just got a little bit say on the low carbon hydrogen side.

Shall I go on with that and then conclude? Yes, please do both of your points now and then we'll go back to the applicant for a final right of reply. Great. That's That's fine. Thanks. So on the low carbon hydrogen

standard is literally just that it is a standard, and as the applicant said, It is designed for supporting a regime of payments for the operation of the scheme.

It's not actually designed as something which enforces particular levels of

of production

in terms of complying what or in terms of being consistent with what is actually being proposed in the environmental statement.

And the Low Carbon, Hydrogen standard emission factor is calculated in environmental statement, chapter 19, and it's used to describe the hydrogen facility as low carbon, that it's going to be low carbon when it operates. Therefore seep considers that there is a need for the draft DCO to include provisions that secure the compliance with the low carbon hydrogen standard in line with the assumptions in the environmental statement. And currently, there is nothing that requires the hydrogen production facility is operated only in compliance with the low carbon hydrogen standard. It would be, for example, perfectly possible at the moment to operate the development below not meeting the low carbon hydrogen standard, and you're not getting the payments for it.

And what I'm proposing is that

that should be secured in the DCO as that is part of the assumptions in the environmental statement and part of the planning merits being put forward to this examination. So the low carbon hydrogen standard allows some monitoring and reporting on a retrospective, monthly and annual basis, but it has no powers of enforcement, and that's the point. It's not a duplicate regulatory scheme. So requiring security for the low carbon hydrogen compliance, along with how the development is being proposed in the application in the environmental statement requires

some changes to the DCO so that it complements, but does not duplicate the low carbon hydrogen standard itself. I think that's all I want to say. So thank you very much

at this point, thank you, Dr Boswell, I could see from your glasses that you've clearly got that written down from your reflection, so

off the screen here, yes, no, that's fine. But what I was going to say is, could you submit your comments? You can tidy it up, whatever you want to do. You submit them at deadline four, so the applicant can fully understand the points that you're making and will be given an opportunity to respond by the next deadline. That would be very helpful, if you could do that. Absolutely intending to do that. Thank you. I was fairly sure you were but I thought I'd better make the request just in case. Thank you, Dr Boswell, thank you for your time on that. The other thing I was just going to ask, I noticed that, Dr Wesley, if you can come back on screen for a second.

Sorry, that's all right. You You've abbreviated your climate Emergency Planning and Policy to seep. Are you happy for us to refer to your organization as seep from this point onwards? Yeah, I didn't want to just take that assumption without asking, because you might have been offended. So no, no, no, well, thank No. Thank you very much for asking that. That's absolutely fine. Okay, all right, thanks. In that case, we'll do that from this point forward. Thank you very much. With the applicant like Final right of

reply, clearly, bearing in mind that Dr Boswell now is also submitting those comments at the headline four, so you'll be have an opportunity to think about them further, if you wanted to, and respond in writing. So we, if I may, I intend to take both opportunities. So I'll take a make some brief points. Now, I won't seek to be comprehensive, because we'll have the opportunity to do that in writing. But just to make a couple of points. The first is.

That I listened carefully to what Dr Boswell said, but he didn't seem to either acknowledge or grapple with the fact that none of the DCOs that we are talking about here, where exactly the same issue arises, have thought it appropriate, and Secretary hasn't thought it appropriate to include a provision of the sort that he's asking for here, explain that at the start, that there are two which contain a description of the development as something that is designed to achieve 95%

but nothing that requires a particular capture rate to be achieved in Practice, similar points to those which have been made now made then, in the Drax case, nothing at all. And Dr Boswell has not been able to identify anything that distinguishes this case from those.

The second point I want to make briefly is that in schedule two to the draft development consent order in this case,

requirement 27

which is headed to carbon dioxide transport and storage, provides that no part of the authorized development other than the permitted preliminary works may commence until evidence of the following has been submitted to and approved by the relevant planning authority. The first is that the carbon dioxide storage license has been granted, and secondly, that an environmental permit has been granted for work. Number one, a one, so there is no opportunity to operate the authorized development until the carbon dioxide storage license has been granted and that there is an environmental permit. Now, of course, at this stage, we don't have an environmental permit to put before you, but as the next best thing we've put before you, the environmental permit that is in place for Net Zero Teesside, and we provided that as appendix one to rep two, zero, 27 which is our response to the first round of written questions on the draft development consent order. And you will have seen on page 20 of that document, requirement IC 10. Carbon capture efficiency deals with the issue of the 95% capture and explains what has to happen in the event that for any reason under normal operating conditions is the capture rate drops below it there are actions that have to be taken under that proposed remedial actions and then a fail safe in the event that those actions don't improve, it to 95%

all of that is in front of the examination. It is

undoubtedly true that to seek to provide an equivalent provision within the DCO would duplicate that regime, it would be two different bodies responsible for exactly the same thing, and if there, of course, there is any deviation between those two, you create the very problem, or one of the problems that the approach to not duplicating controls is intended to avoid. So there's no doubt that Dr Boswell is simply wrong that this wouldn't involve duplication. It clearly would. And the final point I want to make is, of course, in the relation to development of this sort,

in the event that the hydrogen produced does not meet the low carbon hydrogen standard, then my clients simply won't get paid for it under the agreement,

so that the commercial incentive which is provided by that regime, which is intended to ensure that

The hydrogen produced is low carbon that is, in itself, also sufficient to mean that there has to be an appropriate capture rate and that it has to be connected to the carbon capture and storage in order for the scheme to make commercial sense under that regime. But we'll deal with those matters in more detail, but I wanted to give you those headlines this stage, sir,

that's fine. Thank you very much for that.

I wanted to deal with those two questions first because I wasn't sure where they sat, really within agenda items for.

Three or four, but I think it's wise to just deal with them right at the outset.

I'm conscious that we've been going for an hour and 20 minutes. I think it's before we get into the main body of the other articles. I think it's appropriate to have a 20 minute break. So if people don't mind, I'm going to adjourn now for 20 minutes, slightly ahead of time, and allow people to have a comfort break. And we'll come back at 10 past 11, if that's possible. So I'm going to adjourn the meeting now. Thank you. Applause.