

TEXT_dDCO1_Session1_A47Thickthorn_1811 2021

00:05

Good morning and welcome Can I firstly check with the inspectorates case team that the live streaming and recording of the event have started? And that parties can see and hear me please. Hi, Matthew, the recording has now started. I'm just going to go check the live stream now. Okay, that's great. Thank you very much. I'll just wait a few moments while you just confirm the live stream is started. Okay, looks like the live stream is up and running fine. That's great. Thank you. It's now 10 o'clock and I would like to welcome you all to this issue specific hearing on the draft development consent order relating to the submitted application for the A 47, a 11 fix or injunction improvement scheme. My name is Matthew Shrigley. I'm a charter town planner and I am employed by planning Inspectorate. I am the appointed examining authority for the application. You will have already spoken and heard from the case manager for this project. Louisa Evans, Louise is being supported today by Harpriya Kaur, which you may have also met. If you do have any queries or questions during the course of the examination itself, they should be your first point of contact. Their contact details can be found at the top of any letter you have received from us on the project page of the national infrastructure website. For those people who are watching the live stream, can I also advise you that should I adjourn proceedings this morning, we will have to stop the live stream in order to give us a clearer recording file. As a result, you will need to refresh your your browser page to view the restarted stream if that happens. Before I consider the points on the agenda for this meeting, there are some additional housekeeping matters to deal with in tandem with those raised in the arrangements conference. As far as I'm aware, there are no requests for any special measures or arrangements to enable participation in the hearing itself. Can I just again check with the inspectorates case team that that is correct? Yes, that's

03:18

correct.

03:20

Thank you. That's great. As I've already mentioned, this event is being both live streamed and recorded. The digital recordings we make are retained and published, they form the public record. They can contain personal information to which the data general data protection regulations apply the planning Inspectorate practices to retain and publish recordings for a period of five years from the Secretary of State's decision on a development consent order. Consequently, if you participate in today's hearing, it is important that you understand that you will be recorded and therefore you consent to the retention and publication of the digital recording. The Inspectorate will only ever ask for information to be placed on the public record that is important and relevant to the planning decision. It will only be in the very circumstances that we might ask you to provide personal information. Therefore, to avoid the need to add it the digital recordings. What I would ask at this point is you try your best not to add information to the public record that you would wish to be kept private or that is confidential. And finally, can I repeat the request made in the arrangements conference that in order to minimise background noise? Can mobile phones be switched off? And that you stay muted with your camera

switched off unless you're actually speaking With that point in mind, I may also use the mute function, I do have some background traffic noise. So if you see me using the the mute function, when I invite all the people in that that would be the reason why. If you do need to raise something during the hearing, you can either use the hand raise function on Microsoft Teams, or given the low number of participants in the meeting, if you could otherwise signal to me and I like to invite you in. I would also like to remind parties that the chat function and teams won't be enabled or in use. Therefore, please don't try to use that avenue for questions or comments as it will be working for the avoidance of any doubt. Given that we are using a virtual hearing format, I do have a screen to my right. And notes in front of me therefore, if I am looking away from the camera during the course of the hearing, is bits because I'm looking at more than one screen, but I can assure you that I am listening to all elements of the proceedings.

06:31

Okay, I've just got a few more announcements to make. So I'll get through those and then hopefully, we can then come on to the agenda. The purpose of today's su specific hearing on the draft development consent order is to allow me to examine some of the aspects of the written submission supporting the examination orally with any questions I deem appropriate. This is to enable me to have a clearer understanding of some of the issues involved in the formulation of the development consent order, and its overall effectiveness. prior to making any recommendation to the Secretary of State. I wish to point out to you all the number or nature of relevant questions being posed within the hearing does not indicate I've made my mind up on a particular issue. Nor does it lessen the importance of any topic or issue that is not subject to particular questioning being covered today. Because there are only a limited number of parties attending I've not support sought to allocate any specific timings. But I do intend to follow the running order of the agenda which has been published on the project page of the national infrastructure planning website prior to the hearing. It would be beneficial for parties to have a copy of that to hand if that is possible. In terms of a germinates, I may seek an adjournment at a suitable time in the run in order to allow a refreshment as a guide, I'd probably look at around an hour or an hour and a half. Before I look to other an adjournment if one's needed to have a tea or coffee or to stretch your legs etc. If that is warranted, I will raise that and seek parties whether or not they want to have that. If it turns out that we can make good progress and not having a gym and that will also be possible but we'll see how we go on the running order. But that's a broad guide of if I do seek an adjournment. As we move forward through the agenda itself, I will invite parties to come in at appropriate times to make your contributions, if you feel are moving too quickly or you wish to raise a specific point. That's not being picked up. If you do, let me know in the manner of previously described using the hundreds function on teams. I will then look to invite you in at appropriate times. So you'll see from the agenda published on the website. Hopefully, we're following a topic based format it is about the development consent order itself. And the hearing today is a structured discussion which I'm leading based on those topics. The examination of the application is largely a written exercise and the information received to date forms the examination can be taken as being read. With that in mind, I would ask that all parties are as focused as possible in providing or avoiding rather unnecessary repetition and reading directly from the examination documents themselves. As is the case with all hearings, if discussion does become overly repetitive, or any elements are not appropriate, I do reserve the right to ask you to bring your contributions to a close.

10:46

Having said that, if you do wish to draw my attention to specific documents in making points, it would aid all parties within the examination if you could clearly specify the examination library reference number, and also for the recording as well. If you feel you need more time, to give a particular answer to a question rather than giving incomplete or potentially wrong information, please let me know that the appropriate time as a response could be potentially deferred to written clarification, as an action point should you require that there is also likely to be a further round of written questions as well. If a particular question or a matter needs to be deferred, I also have that to use as well as supplementing any question responses given today, the digital recording, the hearing will be placed on the project page of the national infrastructure website as soon as practicable after the hearing formally closes, it will be beneficial for the record if each time you speak you state your name. And if you're representing someone the name of the organisation you represent, as I've already confirmed, in other hearings, the only official record of today's proceedings are the transcription and the digital recording tweets, blogs and other similar communications arising out of this hearing will not be accepted as evidence in the examination.

12:45

Okay, turning to the documents I would like to focus on in the hearing. And this will aid parties in the background any interested party or those watching the live stream? There are it is mainly the applicants draft development consent order sheduled changes document which is the tracked version that is Library Reference Number, our EP 2003. I would also like to refer to the applicants explanatory memorandum to the draft development consent order. That's Reference Number A pp 018. And also possibly the applicants responses to the examine examining authorities first written questions that is our EP 2006. Those document reference numbers aren't exhaustive, but if it would help if parties have sight of those if they need to have them. Okay, that more or less completes most of the opening announcements. Before I move on to the relevant parties who will be speaking are there any questions or comments on the management or conduct of the hearing at this point? I'm just going to throw that open out there if anybody was wants to raise anything, could you please signal to me now? I'll take that as a no thank you. Okay, turning to the attendance list. I have those I have an updated list from the case team. I would like to focus on those who intend to speak. I know there are other parties observing as well but When I read your name out, if you could just please turn on your camera, your microphone and introduce yourself confirming your name, who you represent. And if you still want to speak. So with that in mind, turning to the applicants team, first of all, could I ask you to introduce yourself? Firstly, I think it's Mr. Fry. And could I confirm with you, who would be dealing with my questions?

15:29

So good morning, Michael Fry of counsel for the applicant. You're going to be assisted today in respect to the DCA questions by Miss Kate Ashworth, my colleague. She's the only other person who I expect to be this morning, I'll ask her to introduce herself to examination now serve that assists. Word. Yes, thank you.

15:47

Good morning, sir. Kate Ashworth for the applicant. I'll deal with agenda items one and two for you.

15:55

That's great. Thank you very much. I do have record of the council's attending. But I'm also aware that they don't intend to speak but there may be questions posed just for the smooth running of the hearing. Could I just ask, first of all the county council if there are questions to be directed, who those would be directed to?

16:31

Running? So it's David Cumming? Strategic transport team manager at Norfolk County Council. So I'll be representing the County Council today. So yes, come to me for any questions.

16:42

I'll do that. Thank you very much. And in terms of the other two local authorities being represented, again, not speaking but possible. Possibly I could ask a question or there could be questions posed, starting with South Norfolk council if the lead person could introduce themselves.

17:08

Good morning, sir. I am Claire Curtis, area team manager for South Norfolk. We've also got with us today, Robin Taylor, who is our landscape architect representing South Norfolk whilst we don't necessarily wish to speak, so there may be opportunity if you would allow it to ask a question on some of the requirements.

17:32

Yes, I don't see a problem with that. Thank you. I will come back to to yourself first. And then if you want to pass over to colleague, we'll do so at that particular time.

17:45

Thank you very much,

17:46

sir. Thank you. And we've also got broadland District Council, who may be represented jointly with Seoul, South Norfolk Council, if the lead person could introduce themselves,

18:09

Claire Curtis, broadland and South Norfolk, I can confirm this broad and will not be making any representations today, sir, in respect of this hearing.

18:21

Thank you. Thank you for clarifying that. Okay, in terms of other interested parties, I have also, the name of Mr. Richard Hawker listed again, could you introduce yourself if confirm if you would still like to speak?

18:43

Morning, sir. My name is Richard Hawker. I'm representing the Wensum Valley Alliance. But I do not anticipate speaking this meeting. Thank you.

18:55

Okay, thank you very much. Okay, before I move on, can I just confirm whether or not I've missed anybody else who wants to speak?

19:16

There is anybody else please let me know. I'm not seeing any hands raised. So therefore, I'll move on. Thank you. Okay, I'd like to now move forward to the actual topics on the agenda itself.

19:42

A set out by Mr. Fry. I'm going to invite Miss Ashworth in. What I would like to do is just to have an initial discussion on the articles and the schedules of the DCO now I realise interested parties may not be used to dealing with certain elements of this. So what I would find helpful is if an overview of the articles and schedules could be given on behalf of the applicant, just to set the scene how it works, the particular mechanisms involved. And in doing so, secondly, if you could confirm any minor editing chain, well, notwithstanding any minor edits or changes, if necessary, briefly clarify or highlight any substantive changes to the DCO since its original submission, just again, to provide clarity for those interested parties who may not be aware of that. So if I could just ask you, Miss Ashworth on behalf of the applicant to do that first, and then I would then ask questions as we go along.

21:00

Yes, of course. So the text of the A 47, a 11th exon junction draft DCO is based on VCOs, which have been previously made in respect of highway schemes by the applicant. Part one is the preliminary section, and it sets out the main definitions used throughout the order. Part two sets out the principal powers. So these are the key operational parts of the order, particularly Article Five, which actually grants development consent for the scheme, by reference to the 49 work set out in shedule. One, and they're also shown on the works plans, and article eight, which defines the limits of deviation. Development, consent is also subject to the requirements set out in schedule two, which I will come on to later in the agenda. Part three deals with streets and associated powers. So article 11, provides for the works to be made or how it works under the new roads and street Works Act 1991. And then disapplied a number of requirements under that Act to allow the works to proceed. Article 12 provides for the construction and maintenance of highways and streets which are not going to be troubled roads. Article 13 makes provision for the classification of roads by reference to parts one to two a of schedule three and also the classification of roads bands. It also then goes on to provide for speed limits, and these are set out in part three of sheduled three as shown on the traffic regulation plans, and also the creation of footpaths, footways cycle tracks and bridleways. These are listed in part four of sheduled three and shown on the rights of way and access plans. Article 17 provides for the stuffing of streets and private means of access, as shown on the rights of way and access plans and these are all listed out in sheduled. Four. Where a substitute is to be provided there are controls designed to ensure that the substitute is provided or a temporary alternative remains in place until the substitute is provided. Article 19 provides a new clearway restriction or the new mainlined of the a 47. So Part Four supplemental powers These are standard powers included in a DCO and include provisions governing the discharge of water into watercourses, sewers and drains, protective works to buildings, the authority to survey and investigate land. Part five deals with powers of acquisition. So this is another key part of the draft order. It allows the undertaker to acquire the land and rights required for the scheme. The land

is described in the book of reference and shown on the land plans. It's divided into three categories on those plans. Pink land is land which may be acquired permanently. Blue land is land in which new rights may be acquired permanently, and which also may be used temporarily. And green land is land which may just be used temporarily. London which only new rights may be acquired or restrictive covenants imposed are listed in schedule five. This sets out the purpose for which they may be acquired or imposed. And also the works to which those rights or restrictive covenants relate. And then the land over which only temporary possession can be taken is listed out in schedule seven along with the purpose for which temporary possession may be taken, and the works to which that possession relates as well. Article 26 imposes the usual five year time limit applied for these powers to be exercised. Part six deals with operational provisions, it provides a power to fell or lock trees and shrubs, and to remove hedgerows set out in schedule eight and also shown on the hedgerow plans or with the consent of the local authority any other hedgerow within the order limits. It also includes the power to fell or not any trees with a TPO made after the 17th of July 2020. And that is the date the arboreal cultural survey was carried out. If the TPO wouldn't show up if it was made post that day.

25:56

Part Seven deals with miscellaneous and general provisions. It's generally boilerplate articles in relation to matters such as the non application of landlord and tenant law, operational land, defence for proceedings for statutory nuisance provisions relating to the compulsory purchase compensation code, including preventing double recovery, and appeals for proceeding under the control of Pollution Act 1974. This specifically relates to noise on construction sites. It also gives effect to the protective provisions, which are all set out in schedule. Nine. And finally, it deals with the certification of documents. These are all listed in schedule 10, of the draft DCA. Would you like me to go straight on to the changes, sir?

26:52

Yes, if you could.

26:55

So, there have been various minor updates made as a result of comments made by interested parties. And in response to the first set of written questions. These primarily involve adding additional console trees into the requirements and correcting typographical errors. We have also added in a set of protective provisions for the benefit of cadence. And that has been included in schedule, nine full details of all those changes. And the reasons for them are set out in the schedule of changes that she referred to, that was submitted at deadline to and IS rep two dash 009. That there haven't been any substantive drafting changes as yet.

27:45

Thank you very much for providing that clarification. And that overview. There are around nine or 10 articles, and all I wish to query and ask questions on I'd like to just basically refer to those by number. And hopefully, we can deal with any questions that arise for the actual article itself. But before I go any further, I'm just conscious there are other parties turned into does any other party wish to raise anything at this point, before I dive into the actual article numbers? I'll take that as an app. So in terms of the first article, and I do have the draft DCM in front of me on another screen, so we'll just after that. So Article

Five, I just have a query in relation to the second clause, that it's a query I just I just want confirmation really the incorporation of the justification for adjacent to

29:01

Yes, yes, sir. Okay, so no search of local enactments can be completely conclusive. So although we have sought to discipline anything that might be relevant, this provision is necessary to ensure there are no other acts particularly of a local nature. With that will hinder the delivery of a nationally significant infrastructure project. It is a cautious approach, but it ensures the delivery is not jeopardised by incompetent compatible statutes. So in terms of adjacent to and this is referring to any legislation applying to land in in close proximity to but not actually incorporated within the Borderlands. So an example I could give you was railway legislation. I'm not saying that Israel, legislation that is applicable here, but that this might be a good example. So that affects railway lands specifically, we don't include any railway land operations. Well, we land within our order limits, but the order limits do sit near to where we land. And sometimes, this legislation can restrict activities in on land adjacent to the railway or near to the railway. So what this article would do was it would be to ensure that that legislation would still have effect, but it would be subject to the provisions in the draft DCO. So, so it's very much when when adjacent to its used it, it would usually be land sort of sharing a boundary with the order limits or or something that actually has effects outside of the legislation provision, but that encroaches into the order limits.

30:44

Okay, I think I understand. Could I just clarify, is this a provision included in all the developed consent orders? Is it based on similar wording as a as a model of like?

31:03

Yes, it is based in it has been used in other orders. I don't have any names in front of me, but I can definitely follow up and give you some examples of other authors that have used this wording. Okay,

31:15

thank you. Yes, I don't have any further questions on Article Five. I'd like to move forward now to Article eight, if you have that in front of you, but it says a minor point, but it does concern limits of deviation. It does seem as though the wording isn't explicit in terms of how limits of deviation, whether or not they're confirmed in writing. And as a reference point, I do query whether or not that that needs to be confirmed. As such,

32:02

so in terms of so So your question is how are they are we talking about the lateral limits of deviation here and how they are defined?

32:14

Yes, it talks about, just get it in front of me It talks about seeking confirmation in writing.

32:29

Oh, is this the in part two about about the Secretary of State Certifying accordingly that a deviation in excess of the limits would be acceptable?

32:40

Yes. Yes, it's part two.

32:46

Okay. So are you asking how that process might work?

32:52

Yeah, so I'm asking for clarification, how that works? And does the article need to be more explicit and refer to that as being in writing?

33:04

Yes, my understanding is that that certification is a written process. Anything that would need to be dealt with under Article eight, two would be submitted to the Secretary of State in writing, it would need to be accompanied by evidence as appropriate, as the applicant will be expected to evidence there is no materially new or material materially different environmental effect. So that would be evidence in writing. And then the Secretary State would certify back accordingly that that was appropriate. We we could consider including the word written, but I has been used previously, this wording and I think certify, to me certainly implies it must be done in writing.

33:52

Okay, thank you for confirming that. It was just a minor query in relation to that my side. Article 10. I'd like to now move to as the consent to transfer benefits of belief. So again, I'm just referring to that on my second screen. So firstly, again, for my understanding, and the other party's presence as well. Could you just set out please, when that would be appropriate to be triggered?

34:33

Article 10 in its entirety or would you like me to give an example of first

34:41

an example Yeah, working example part one. Okay. Would be welcomed.

34:52

So, part part so, article 10. One requires written consent. From the Secretary of State to transfer any or all of the benefits of the provisions of this order. So, in a sort of an extreme scenario, you might imagine, for example, there's been a recent name change for the applicant. But if the applicant, if for some reason needed to transfer the benefit of the order to a different legal entity that is not currently defined in the order, that would require the entirety of this order, the benefit to be transferred across because it is personal to the undertaker as defined at the front of the order at the moment. So that's the extreme scenario where, for some reason, the bet the entire benefit needs transferring across so that a different legal body can implement this scheme. It's quite unlikely for a scheme of this nature. But as you can imagine, for other schemes, this could be more relevant, privately funded energy schemes, for

example, you may require a transfer of part, the example that I would give here again, it's not how it's related. But with an offshore wind farm, the offshore wind element, and the cable, onshore element may need to actually be run by different Undertaker's. So the benefits of the order, even sort of post construction may actually need to be severed. Part of that benefit may need to be passed to another legal body. So it can operate the cable, for example. So that's generally why this power is included.

36:41

So in terms of that, it's generally just in case and managing or just in case scenario. Yes, as a very basic way for you. Yes. Thank you. And I just need to clarify in relation to the actual compulsory acquisition, powers and transfer of those. I'm just wondering what the relationship is with those and will it actually convey those powers as well? If it is triggered?

37:20

Yes. So at the moment, yes, it does allow the transfer of those powers as well. Again, it's, it's very unlikely that the the whole of this particular order given the nature of the scheme would be transferred. We are actually, the moment considering some additional wording that's been used on another high risk scheme, that would clarify the position around compensation, which is, I wonder, sort of maybe forming part of your question, who would pay the compensation and the applicant has confirmed it would be them? Even if the powers were confirmed? Confirmed, sorry, to the party. So that might be something we could consider including just to give a bit more clarity around how that would work?

38:08

Yeah. So welcome that as a change and that clarity, even if it's just, as you say, just in case clause? Yes. I think that inclusion would be beneficial.

38:18

Okay, pretty well. We'll look at including that wording, and we'll let you know where it's been used previously. In the next draft use Yeah.

38:34

I'm just getting the next article on the screen. It's article 12. Wasn't left better discussion on this yesterday? It relates to construction and maintenance of new altered or diverted streets and other structures? Don't know if you have that in front of you? Yes. Yeah. So the county council have mentioned certain concerns about the current leave Lane link road classification as a B road. And I'm just wondering how this sits with any of the County Council's concerns. Firstly, if the applicant could give their views and might like to put that to the county council?

39:34

Yes. I'm sorry, Kate, Ashraf, the applicant. In terms of classification of roads. I know that there there are still some discussions being had around the classification. And the Applicant is willing to discuss that with Norfolk to ensure it has the correct classification as far as they're concerned. So with that, that's sort of I guess, still pending a final decision. And that might work. By the change to the classification of road plans and the the shedule sheduled. Three as well, if if that was chosen to change the classification in relation to Article 12. And the way in which the the highways would pass to the local

highway authority, those roads which are not trunk roads, is your question whether they would still, the responsibility would still pass to the local highway authority if the classification was not deemed appropriate.

40:35

Yeah, so do have a question on that aspect. Also, it's just in the event of disagreement on that, how the DCO precise wording would have an impact on the county council if it wasn't changed, and how it sits with its current views, it's expressed now that those are my main points to that.

40:57

Okay. So at the moment, so 12 One, and to deal with the sort of highways, three deals with footpaths, cycle tracks and right ways and then four deals with structures like Sorry, six deals with structures apology. So one and two, specifically state that it must be completed to the reasonable satisfaction of the local highway authority. So again, they would need to be content that the highway had been constructed appropriately. And then it states unless otherwise agreed in writing with the local highway authority, then it must be maintained by and at the expense of the local highway authority from the point of completion. So it's, it's quite an otter in the way the drafting works, it would be an automatic transfer, but due to that reasonable satisfaction, wording, there is there is an ability there, I guess, for if the local highway was not happy with the quality, quality or the construction of the road, that may need to then refer to arbitration under the order. So it would need to be completed to this standards, provided they were reasonable. Other than that, there's nothing else that would need to happen. It would be automatic, under the order as drafted.

42:34

In as you say, there's an arbitration process, if there were to be a disagreement based on whatever discussions go on in the background.

42:44

Yes. And there is flexibility in the wording unless otherwise agreed in writing with the local higher authority. And I know those discussions are still ongoing. So that that wording, again, does allow different agreements to be reached between the parties if it was deemed suitable, although I'm sure everyone would agree the applicant is is responsible for the strategic highway network. And the local highways Authority is responsible for those local roads. And I'm sure both parties would want that to remain the case.

43:17

Okay. Understood. Just like to open this up to the county council to comment on if if they wish to comment if they don't that that that's fine. Yes, Mr. Cumming

43:30

Yes, David Cumming forward. Norfolk County Council. I don't have any particular comment to make other than to reiterate what Mrs. Ashworth has said about negotiations and discussions are ongoing in terms of what would come across to the local authority. I think, you know, that we do accept that the parts which will not be Trunk Road will come across to the local authority. But we are sort of concerned

that we do have sufficient resources in place to enable us to be able to maintain those. So anything which is new, or is, you know, a former part of the trunk road network, which will come across to us or any other assets, we would expect to be in that that reasonable condition, which has been talked about. We are also seeking a commuted thumb for future maintenance of those assets that come across to us. And as I say those discussions are ongoing, and it is hoped that we will reach agreement. Otherwise, yes, if arbitration is necessary, I guess that's the last resort.

44:41

That's great. Thank you. I haven't noted what you're saying and I have no further questions on Article 12. Again, I would like to just basically move forward to well the next one on my list is Article 30 Again, there are some perhaps interrelated issues it relates to the classification of roads. But I think we discuss those in relation to Article 12.

45:15

Sir, sir, Kate Ashworth, the applicant, I do have a clarification point on the classification. My instructions are that the applicant would would happily be led by the county council on the appropriate classification for for the roads.

45:32

Okay. So, on that basis discussions are ongoing, and perhaps will be a written confirmation of that, post those discussions? Yes.

45:51

Okay, I'd like to now move forward, please, to article 18. And that's, I believe it's access to works. It's just a basic question from, from my perspective in terms of would that in any way need to specify whether or not the access would be temporary?

46:25

Yes, sir. So the purpose of article 18 is to allow the applicant flexibility to undertake such works for the purposes of carrying out the scheme. And every effort has been made to identify all the accesses, and all works required to those accesses. And those known points are shown on the rights of way and access plans. However, it is possible that some unknown or informal accesses exist or there's there might be a need to improve and access or layout something new. And that will only come to light as the scheme is working through detailed design. And then and or being constructed, it may even come to light at that stage. So it's not intended to be limited to temporary accesses only. The intention is to provide equivalent powers to those available to schemes authorised under the Highways Act 1980, which would benefit from the power in Section 129 of that act. So that's where it comes from. And that's what it's trying to provide for the applicant that flexibility to ensure that that there's no there's no reason a situation or ransom situation could arise whereby they can't get access to a part of the scheme that they need to but didn't foresee needing to access. It has been included in other orders as well sir. So the a one Berkeley two Coalhouse development consent order 2021 and also be a 303 spark for two Ilchester duelling development consent order 2021.

48:16

Okay, thank you that clarifies. I'd like to move forward to article 21. The discharge of water article. Again, it's a clarification issue my side really just so I have a complete understanding. It refers to any water course. I do know that while I note that sub clause six, it refers to a permit mechanism being incorporated triggered if needed. And I'm just querying whether or not that is adequate for everything related to currently stream.

49:13

So the purpose of article 21. Six, is to ensure that the applicant isn't circumventing that need for an environmental permit. So if a permit was triggered, that wording just clarifies that regardless of what is contained in article 21, there would still need to be obtained from the Environment Agency before those works were carried out. So on that basis if a permit was required for the words, I'm currently streaming Applicant with still be expected to obtain that this article wouldn't allow them to circumvent that requirement in terms of the discharge of water To provisions, I would need to take instructions on on whether there was any proposed discharge in that area. I'm not aware that there would be. But this is a module provision. And it is included, again, to ensure that there can't be a scenario whereby an NSF is prevented from coming forwards purely because of a drainage issue, which is almost like a private private land issue, someone almost holding it ransom, and saying you can't drain across my land. So that's that the purpose of the article? It's certainly not to circumvent a permit need.

50:44

Yeah, I, I understand that. I appreciate what you're saying. But it's whether or not the works to currently stream themselves would require a licence in the first place. And I'm just wondering and querying, whether or not if they don't require a licence, whether or not that model provision needs to be cognizant of any sensitivity issue to currently stream. So it's not necessarily circumventing or the licencing regimes etc. It's more along the lines of if it's not required, if it's simply not required, as a licence. But the Vianney need to adjust this model provision just on the basis that there are certain sensitivity issues relating to currently stream. I mean, it's, it's something that you would take away with you or I could deal with it with a written question. That's absolutely fine. But that was more what I wanted to convey.

51:49

Yes, absolutely. I think I would want to take that one away. I'd want to talk to a colleague dealing with environmental matters, if that's okay with you, so we can come back to you on in writing on that.

52:01

Yes, that's great. Thank you. Okay, again, I'm just throwing it out there. Do any of the interested parties want to raise anything? On the articles? There are quite. They are quite technical terms of what what's being discussed. But I'm happy to open it up to any questions, if there are any. I'll take those No. So on that basis, I'd like to now move forward to article 22, which is the I believe it's the protective works. Article, just having a few questions about that. In terms of its wording, and what it actually does, I'd like to basically establish from the applicant, or clarify, who determines if the work is necessary. In terms of the protective works. I just like to start with that point. First of all, please Miss Ashworth and Koplou they're asked aspects of life to raise.

53:21

Yes, sir. It would be the applicant who would determine whether works are necessary. This is a power conveyed on the applicant. That isn't to say that if a landowner had noticed some issues with the building, they could absolutely report that to the applicant, there is a public liaison arrangement in place for those sorts of things to be communicated. And then that may, in turn prompt the applicant to use article 22.

53:56

I see. So it's reported on like a complaint similar to a complaint, and then it's dealt with through that mechanism if need be.

54:07

Yeah, so the article just deals with the power. The complaints process and how that is managed is actually set out in the environmental management plan, which I believe is a PP one to eight.

54:24

And I note that there is a counter notice provision is that right? Just

54:38

it is at just trying to find it, I think it's article 26. So that when it would enable a landowner to dispute the use of this power, server counter notice Raised raised questions around the works and whether they're expedient. And then it could be referred to arbitration if the issues couldn't be resolved.

55:20

Okay, thank you. I'm turning now to article 35. If you could just give an overview of that article, I do have a question on that.

55:44

Sorry. So, you want me to give an overview of the purpose of the article,

55:48

please Yes. So.

55:51

So, this particular article relates to temporary use of land for maintenance. So, this is post construction, when the scheme is operational. It is based on a model provision. And it applies to a maintenance period of five years from the completion date of the relevant works and may be exercised if access is reasonably required. So it is there's not unfettered.

56:34

In terms of any specific the purposes for which it may be taken are set out in 35. One, so, A, B and C limit the reasons for taking possession.

56:51

And presumably, there would be a consultation requirement of some sort. Is that right?

57:01

There is a notice requirement. So notice must be given to the landowner, and 28 days notice under Article 35, three unless there is a potential risk to safety, in which case under 35, for notice wouldn't be provided. And as you can imagine, if there is a safety issue in relation to the strategic highway network, that is very crucial that the applicant can resolve that very quickly. In terms of consultation, this the possession for maintenance, it is listed in the section 56 Lotus, which is od 001. In the examination library. The notice refers to the DCO, authorising the compulsory acquisition of land interest in land and rights over land, and the powers to use land permanently and temporarily for construction operation and maintenance. And my understanding is that the applicant does endeavour to make specific reference to this article. And the five year period during land negotiations, and the ongoing access for maintenance is usually addressed in those property documents. As the standard is to agree a licence with a landowner as opposed to exercising the powers.

58:50

Okay, thank you. I'd like to now move forward to article 39. Unless anybody wants to raise anything again, I'm just conscious of the party's presence. So if you do want to raise anything, please let me know. But article 39 deals with failing lopping of trees. And I just got a few. Well, a couple of questions about that. Again, it relates to the actual word in itself. How does the actual reference to the unnecessary bit get controlled? Just seeking clarification on the unnecessary bit in Word.

59:46

Is that in article 39? One, so where it says if it reasonably believes it to be necessary to do so?

59:57

Yes, if it's necessary rather than unnecessarily how does the necessary bit get controlled? So yeah, part one, article 39? How would that the mechanics of that actually work?

1:00:13

So, article 39, one goes on to say to refer to a and b, which are the circumstances in which this power can be relied on. So, if it is necessary to prevent obstruction, or interference with the construction, maintenance or operation of the authorised development or any apparatus being used, for example, machinery or from constituting a danger to persons. So, again, that would be a decision for the applicant to make, but it would need to be reasonably necessary. on those grounds.

1:00:58

Would there be some sort of consultation or discussion with the local authority involved in not?

1:01:10

Just looking on the second page under this specific article, no, there wouldn't be any consultation. It's the power provided to the applicant as part of the order in terms of enforcement, clearly the relevant planning authority or the enforcing authority. So, if they so that they decided the article was not being used correctly that that would be for them to determine so, so clearly there is a enforcing authority set

behind all of this. But it would be most appropriate for the applicant to decide whether something was interfering with construction, their best place to do that, and particularly, constituting a danger to persons using your authorised development. Again, that's that's a decision really, that should be should sit with the strategic highway network operator and not another party.

1:02:21

I can see we've got 100 raised I think we've it's Mr. Taylor, if you'd like to come in and raise a comment or a question. Yes. I'm

1:02:30

just going to try to learn my hand now. So don't forget to Yeah, perhaps I might be able to help here. I think it's it's fair to say that we wouldn't certainly wouldn't want to get in the way of works that are necessary for safety. And certainly anything that's an often imminent nature to cause cause concern. And that's probably quite useful in the sort of exceptions to tree preservation orders, conservation restrictions, felling restrictions, there's always sort of allowance for that. I think where and statutory undertakers obviously have exemptions and things. But what we're really clear we were keen to see is that any works have done it to the best practices. And I think we had made a suggestion that we could improve the wording by adding a similar clause that was used elsewhere, I think, in some of the horticultural operations to say that any works undertaken should be in line with current best practice. So things there's a British standard for tree works, for example, 3998. And if a clause were in there, then it would mean that, yes, one the the operating sort of party would be making that decision, if those works are actually strictly necessary and to if we are going to do work, then we will do the best it to the best standard possible in the circumstances. And then I think if those, if that was in there, we'd be much happier. I don't think we want as a local planning authority, we've got more than enough, we've got more than enough on our plate to then to be going out and trying to sort of deal with all these little situations that arise along what is quite a large scheme. But if there is, if there's safeguards within the wording, then I think we would be very content. Does that help?

1:04:33

It does it. It helps. I mean, I am conscious to just give Miss Ashworth just the right response to what's been raised in those elements. I did see a lot of nods in terms of agreement. So

1:04:45

that's always nice to see.

1:04:47

Yes. Kate Ashworth for the applicant, I would need to take instructions on including some additional wording, but we will definitely take that away and and consider it definitely.

1:04:59

So what While we're on on 39, and while I've got my microphone on, it's a very minor point, but I feel I need to make it in in article 39. Number seven, it's actually hedgerows regulations, plural. So there's a minor typo there, but an important one.

1:05:18

Thank you very much, we'll definitely make that change.

1:05:32

Okay. There is one last article I'd like to just touch on. And I think that's article 49. Again, I'm just looking at my other screen just to get in front of me. Just give me a moment, please. And I'm just getting that. Yes, it was touched on earlier. But I just want clarification of the significance of what is being referred to as certified and what is and and just clarification from the applicant just to underline or explain the importance of that particular term.

1:06:32

Yes, sir. Kate Ashworth for the applicant. Certification generally relates to documents which are specifically referred to in the order and usually contain information, which is, is referred to impertinent to the powers and restrictions in the order. So a way to think about it is potentially they are the control documents. So for example, all the plans that I referred to in my in my overview, they directly linked to the schedules and depict what the schedules are describing. So in a way, they almost form part of the order, they're incorporated into it because they're importantly, and form those schedules. The same with the environmental management plan. You heard yesterday, a lot of people find to the React the record of environmental actions and commitments. And again, those are, those are linking to the requirements. They are commitments that are made in the order three requirement form. So it's important that document again, is certified as part of the audit. There are, however, other documents within the application suite that was submitted, for example, the consultation report, which is not necessarily a control document, it doesn't need to form part of the order or be certified by it. But it was a very important informative document to to inform the planning Inspectorate on the console tailoring process and ensure it is adequate. Hopefully, that gives a bit of context.

1:08:14

Yes, it does give context. I just have a lead a question, though. So in terms of iteration documents, that are important documents, they are significant in the examination, but how does that certification side of things work with? What is effectively an iteration? So for example, it could be a design document, just as an example, would that necessarily fall within the certified definition? Or does it fall outside of it?

1:08:53

In terms of an iteration submitted during the examination, or an iteration submitted, post examination, sir.

1:09:01

Either way, okay.

1:09:03

So in terms of the iteration submitted to you, during the examination, we will be updating the I guess, a table in sheduled 10 At the back to ensure that the latest version of the document is referred to in the final draft DCO. So it would be that that final version that is certified as that is the version the applicant wishes to rely on in relation to other documents, like the environmental management plan, where

further iterations will be provided after the DCO is granted. I note that was on the agenda and I have sort of got a bit of an explanation. Would it be helpful if I run through that now, sir,

1:09:48

but is going to be very helpful to run through but if possible, could we run through that when we deal with requirements? Yes, link with some of that. So yes, I mean, I will pour on, on my question if it sort of does sort of lend itself to be dealt with later on, but it was just in general terms. And in terms of the mechanics. Yes, just the line where something perhaps isn't actually certified, done become certified. He was just trying to understand that a bit. Yes,

1:10:25

so the documents in federal turn are the ones that will be certified. As at the point the order is granted, anything that's prepared in accordance with the requirements, it will not be in itself certified as it's it sort of gets produced after the event after the order, crystallises, or, I guess takes effect as it were. But it doesn't mean that that document should must not still be complied with it just won't be certified in the same way as the the original documents forming part of the application are.

1:11:01

Understood. That's very helpful. I don't have any further questions on articles. You pleased to know and the I'm just conscious of the time it's been 10 past 11. I am able to move on and to the requirements but might be a good time to have a break. That's welcome by the applicants or the other parties.

1:11:30

Yes, sir. Yeah, that would be welcomed.

1:11:34

Okay, on that basis, I'll just have a quick adjournment. And if we could come back, please. It's 1130 and we'll deal with the other items on the agenda. So I'm adjourning the hearing until 1130