

# transcript\_ISH2\_session1\_01122022

00:13

Good morning, everybody. It's now 10 o'clock.

00:17

And on the previous two days, everyone can hear me. So I'm gonna assume everyone can still hear me.

00:23

That's good. Can I also confirm that the live streaming is underway?

00:29

Please, thank you very much.

00:32

Welcome to this issue specific hearing to, in relation to the applicant made my national highways for the proposed A66 Trans- Pennine project. My name is Richard Allen. I'm a chartered town planner, and I'm an examining inspector. I've been appointed by the Secretary of State to be the lead member of the panel to examine this application, and if I could ask my colleagues to introduce themselves, please. Good morning. My name is Neil Humphrey. I'm a chartered civil engineer, and had been appointed by the Secretary of State to be a member of this panel.

01:07

Good morning. My name is Mary Louise Milliken. I'm a chartered planner and I have been appointed by the Secretary of State in a similar manner. Good morning. My name is Steven Roscoe. I'm a chartered civil engineer and I've been appointed in a similar manner.

01:20

And together we constitute the examining authority for this application. For those joining online, and in the arrangements conference this morning, and those present this room, you will have spoken to Barbara Kodiak, who is the case manager for this project. And he's supported by Max Webb here, and Steve Parker and other colleagues from the case team at the planning Inspectorate.

01:45

Before we consider, as usual, the items on the agenda, I do have to go through the usual spiel about the gpdr. And some housekeeping are being grateful if you could just bear with me for that. Mobile phones, please, if you could just check, they're all on silence, at least or switched off.

02:03

No fire drills today. So plan so if there is a

02:08

fire, we will need to evacuate the building through the emergency doors to my left and right and also out the back.

02:20

The gpdr

02:23

You'll know from our letter on the rule six, which from the 17th of October 2022. This event has been recorded, as well as being live streamed to interested parties who requested this, the digital recordings form a public record that can contain your personal information, and to which the GDPR applies. The planning inspectors practices retain and publish recordings for a period of five years from the Secretary of State's decision on this application. Consequently, if you participate in today's hearing, it is important that you understand that you will be recorded and therefore consent to the retention and publication of the digital recording. We 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 rarest of circumstances that we might ask you to provide personal information of that type that most of us would prefer to keep private or confidential.

03:20

Therefore to avoid the need to edit the digital recordings, what we would ask is that you try your best not to add information to the public record that you would wish to keep private or confidential.

03:32

Anybody have any comments on that?

03:36

Okay. This meeting will follow the agenda as set out in the rule six letter placed on Monday the 17th of October 2022. And this letter can be found on the planning Inspectorate website on the examination Library Reference PD 006.

03:52

If you turn to annex f, and this will have the agenda for this meeting. A supplementary agenda was published last week on Tuesday the 22nd of November, in which further details

04:02

of the areas we wish to discuss are set out the XA has decided to hold this second issue specifically hearing because we wish to discuss matters were concerning

04:14

set out on the agenda which I will come to shortly and to ensure that any interested party has the opportunity to make oral representation should they wish to do so.

04:24

Purpose of today is for the EXA to examine the information submitted by the applicant and also by interested parties and others. As a result, I would like to reassure 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 in writing. If you want to refer to information already submitted, I would be grateful if you could please give the appropriate pins examination Library Reference. Could I also please ask that if you use an abbreviation or an acronym for the first time

05:00

that you give it its full title in order to so that everyone participating will know what we are talking about.

05:08

The hearing today is a structured discussion with a structured discussion which I and other members of the XA will lead based on the agenda that has already been published. Throughout the day, certain issues will reoccur as we examine them from different angles or in relation to different elements of the scheme. I therefore ask you to bear with us or bear this in mind. When you give your evidence and focus please on the question that is being asked of you.

05:35

For the purposes of identification and ease of reference, could I please I ask that every time you speak, you give your name and who you represent.

05:45

So we're conducting this meeting in accordance with sections 91 and 94. The Planning Act and the infrastructure planning examination procedure rules 2010, specifically rule 14.

05:57

The Act allows the examining authority to refuse to allow representative representations to be made at hearing. If the examining authority considers them to be irrelevant, vexatious or frivolous. relate to the merits of policy set out in the National Policy Statement repeats other representations already made, or related to compensation for the compulsory acquisition of land, or an interest in or rights over land.

06:25

As I've previously stated, the hearing has been recorded, I must inform you all that this is the only official record of proceedings, which will be uploaded to the inspectorates website, as soon as practicable after this hearing, tweets, blogs, similar communications or other recordings arising out of this meeting will not be accepted as evidence in the examination.

06:50

So if I could now turn to the agenda,

06:54

and as I say that we did a high level agenda issued on the 17th of October 2022. And a supplementary agenda published on the 22nd of November,

07:06

which discuss first the Environmental Management Plan particularly in a two aspects. Firstly, I shall be asking the applicant for some guidance on legal matters and where and how this sits within the DCO. And then we'll be looking at the approvals process itself.

07:28

We will then be moving on to environmental matters in respect to design, landscape traffic, flooding, climate effects, trees, air quality and cultural heritage.

07:41

We will then be coming on to the draft DCO. But the draft DCO is one of those areas I mentioned earlier that's rather scattered amongst the topics today. For example, in the environmental management plan, I will want to deal with article 53. there and when we talk about design, I have some questions in relation to Article 54, which we will deal with at that point on Brookfield fair, it's I will want to look at the article in relation to that.

08:13

And also tomorrow for the compulsory acquisition hearing. We will talk about the DCO in relation to compulsory acquisition. So the matters for the DCO discussion there will be rather limited to those matters outside of all those areas that I've I've covered.

08:34

So we have a list of those parties have requested to speak under the above items and we will invite you to speak at the appropriate moment. However, should an interested party wish to raise a question on another scheme the EXA will hear that at that point. The agenda is for guidance only. We may add other issues for consideration as we progress.

08:56

We will seek to allow sufficient time for each of the issues to be considered.

09:03

We do have the room all day. So we will be looking to take a mid morning break around 1130 ish lunch at one and then perhaps an afternoon tea break around 330. But if for medical or other reasons, you require a break at a specific time. Please could you inform the case team and hopefully we can adjust the timetable to meet your needs.

09:28

Should consideration of the issues take less time than anticipated we may conclude the hearing as soon as all relevant contributions have been made and all questions asked and responded to equally if the discussions are to be longer than anticipated. It may be necessary for the time to be extended, alternatively, to prioritise matters and defer others to written questions. And if that arises, we will

09:54

update you of which items that we would defer, which we have given some time.

10:00

Also depending on, as I say how time works. Finally, it is important that we get the right answers to the questions we're going to ask. So therefore, if you cannot answer a question

10:11

at the time, please, in order to prevent giving a wrong answer, and for the smooth running of examination, please could you indicate that you need to respond in writing? And then we can defer that to another time.

10:24

Any questions about what I've just said about the procedural side of the agenda?

10:35

So it's not my intention to do full introductions, but I just want you to acknowledge who I have, as

10:43

here. I note that the applicant is here. Good morning, Mr. Cohen, I, you are now questions to be addressed to you this morning. Good morning. So Rubio in yesterday's Thank you.

10:55

Thank you, and no doubt you'll introduce your team as you need as you call them. Thank you.

11:02

And from the local authorities, good morning, this morning, sir. And yes, just for the record. I am representing North Yorkshire county council richmondshire District Council, Cumbria county council and Eden District Council. As we refer to them today, they will be the council's

11:24

thank you from Durham, Claire Teasdale, principal Planning Officer Durham County Council.

11:30

Thank you very much indeed.

11:34

And you have a number of colleagues who are online as well. You don't need to introduce them but just to acknowledge that I have

11:42

thank you

11:47

now also have presence. Dr. Wilshaw from friends of the Lake District online I can see she's there.  
Good morning.

11:56

Jane Belfield from sports England's

12:01

online as well.

12:05

Yes, online. I think

12:09

what the data is present that. Okay.

12:13

Dr. Martin, you're here. Yes. Good morning.

12:18

Now I've got the MR Parsons from h&h Land estates on. Good morning, your microphone is off. But good morning to you. Morning. Good morning, Kate.

12:29

I've got Dr. Boswell from the climate Emergency Planning and Policy. Good morning this morning. Good morning to you.

12:38

Mr. Wilson from Cumbria and lakes joint local access forum. Jeff Wilson. Yes, I'm here. Good morning. Good morning. Mr. Staples from the National Farmers Union. President online this morning. Is that correct? Yes. Good morning. Good morning to you. And Mr. Wells from the Gypsy and traveller. Community. Good. Good morning to you.

13:01

Okay,

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now, just wanted to check that the statutory bodies are here as well.

13:08

I can see Mr. Carter's here from the Environment Agency.

13:12

And you are online as well. Good morning, Mr. Carter.

13:18

Is anybody I haven't seen anyone from Natural England or? Or Historic England this morning is? Okay. Good morning. Good morning. I'm new Katie. I'm from actually I have colleagues Mark huskisson Currently it's with me as well.

13:32

Right okay, it's just on my screen not shown as present but But it's good that I checked that you are if somebody could update the attendance sheet accordingly please. Thank you. And

13:44

from Historic England, is anyone here from Historic England? Yes, Lee MacFarlane is here and my colleague David Monte

13:55

Thank you very much indeed.

14:05

Okay, um, I haven't

14:08

does anybody else wants to introduce themselves that I've I've missed out on

14:16

No, okay. Thank you.

14:37

So, just finally, this is just remind parties that this is a hearing not an inquiry. And therefore, unless the XA has specific specifically requested or agrees to it, there will be no formal presentation of cases unless we say we asked or cross questioning of other parties. As such questions that you have must be put through the examining of

15:00

RT and this approach is set out in Section 94 of the Planning Act. Does any party wish to cross question? And if so, why?

15:10

No good.

15:12

For those persons joining online, you may switch cameras and microphones microphones off if you're not participating, specifically in the discussion. Should you wish to raise a question, could you use the Microsoft team's hand function? And when invited, please turn on your camera and microphone.

15:31

For those people watching on the livestream, can I also advise you that when we go for a break, the recording will stop in order to give us clear recording files, and you will need to refresh your browser to rejoin this hearing.

15:48

So if there's nothing else, I'd like to move on to the item on that next item on the agenda, please.

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So that is the environmental management plan.

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And as I say here, I'm just keen to

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understand further the approach here Takens, particularly into how it sits within the

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the DCO.

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I mean, so many of the questions I have for you will be to see as I say that beginning to seek your guidance and assistance in that process.

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Now, you've very helpfully on Tuesday pointed out that the EMP is I'm not going to refer to it the environmental management plan. The EMP is not in itself a novel document and I do accept that it's not a new new approach. But certainly the way you are seeking to secure it is and I think we're agreed on that.

16:56

Can you just first of all start to explain to me has this is have you to seek the MP as an article as it's been done in any other project before or is this is this to your knowledge the first one

17:10

Good morning, sir again, are robbing from Pinsent Masons on behalf of the applicant national highways limited.

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This is the first time that

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an environmental management plan would be secured not by

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a requirement contained in a development consent order typically contained in scheduled, two to a consent order, I call them DCO and future

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but instead will be secured by an article in the main part of a DCO.

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I can if you would like me to now in writing set out in detail

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why we are proposing that different approach in in form, but in substance there is absolutely no difference in terms of the efficacy of the way in which the mitigation obligations, which are contained within the EMP

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are secured and can be enforced, there is absolutely no difference in substance. We quite appreciate that. This looks and feels a bit different to what has been done in the past. But this has been carefully considered, particularly given the project speed status of this project. And the conclusion was reached

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after considerable thought that this was a better approach. And one that was to be referred to the approach that has grown up since DCS came into being in 2010. So yes, it is a it is a new approach, which we are promoting. As I say, however, though, the mitigation that national highways is proposing the project should deliver will be delivered, there is no difference legally, whether the Environmental Management Plan, which is which is the vehicle for much of that mitigation, not all of it, there is no difference whether that is secured through one or more requirements contained in DCO, or whether it's secured in A Main article, the DCO.

19:30

Well, I'm certainly going to to seek further reassurance from you on that on that particular point about whether there's a difference so I'll we'll come back to that. But I'm just intrigued at the way you said that this has come about because you consider it a better approach.

19:47

I'm keen to understand from your point of view, having regard to what you've just said regarding project speed and everything. Why of going down the requirement routes was a problem what why is

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This, putting it as an article, a better approach.

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I think there are a number of reasons, sir for that.

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The applicants considered ways in which project delivery could be streamlined and made easier for all parties and participants in the process isn't this isn't just from the perspective of national highways as the applicant. And this includes in respect of your post consent determinations that are going to be required.

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As I say, it's acknowledged that requirements are the norm. But there is no legal obligation to follow that approach. Although it is, of course, well precedented.

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And, of course, it's very common for a DCO to secure mitigation, both through certified documents and by way of requirements on the face of it. The consequence of this is that it is inevitably difficult for

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participants in the process, both consults, and indeed contractors, which is an important factor here to navigate through the suite of documents that set the project controls. And we think that that can hamper timely delivery of vital projects. And we therefore,

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consider that there was merit in modifying the approach or framework for securing mitigation, whilst in no way as I said earlier, altering the substance. And that gave rise to the approach of essentially the environmental management plan, both the current

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plan, which is the first iteration, as we're calling it, but then in due course,

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if the DCO is made, there will be a replacement of that called the second iteration of the environmental management plan approved by the Secretary of State and that will be the single source of truth for all controls for the project in effective mitigation Bible.

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And, and, in doing so, it standardises for example, the approach taken to all the consultation that needs to be taken, these take place after the DCO has been granted.

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And

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we think that this will substantially

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Aid project delivery. Whereas at the moment, typically, the position is often unclear in that you have a whole bunch of requirements contained in typically scheduled, two to a DCO. Each of those requirements

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contains things that need to be approved, with or without consultation normally with consultation and sets out who should be consulted, there is no indication given us the quite how that consultation should take place. But then typically, you also have for a developed consent order,

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an environmental management plan, or sometimes it's called a code of construction practices or something along that variation, which also sets out a whole host of things that need to be delivered through mitigation, with or without consultation. And it's actually quite hard to navigate through. And our proposal we think would bring about a distinct improvement how these things are and should best be done for the benefit of all concerned for the applicant, in this case, national highways, for contractors, and importantly for consultees, whether statutory bodies or others. And that is essentially why we

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are doing this. It's perfectly true to say that the concept of separate requirements. Certainly we're not saying has acted as a complete barrier to the to the successful implementation of projects, but we can say from our experience that

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they have on many occasions impeded timely delivery.

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So in our view, so that is essentially why we have not not likely I should add,

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proposed this departure from the standard approach, as I say, and I do want to emphasise this. It is a departure in form not substance in terms of the way in which the mitigation is secured and guaranteeing delivery. But we think that having all of the mitigation requirements in one place and having a codified regime for how consultation should should take place before those requirements are discharged in the form of obligations under the EMP would be a distinct improvement.

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That's very helpful Mr. Owens.

25:00

Thank you. Can I just just I think you had a question, which I think you answered right at the very end there. But I did, just so that I'm clear, I think in what you're saying is that from from your point of view, having almost a one stop shop documents, is easier to,

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in your view, navigate for contractors to seek approval of various parts of that document is an easier process than having a series of requirements where the individual documents are sought. Is that is that essentially what you're saying? Robbie? So that's a very good summary. Thank you. That is indeed exactly what we're saying. And we think it will be easier for all concerned, we do understand that. This will take some getting used to we have been working hard, both before submission of the application, and subsequently to explain our approach to the local authorities to the salary of our mental bodies and to others. And we will hear from them shortly as to how successful we've been. But we think we are making good progress.

26:07

Scott was asked a question, I think it's throw in that you'd spoken about requirements not being a barrier in terms of projects. And then you went on to say that they may have impeded the timely delivery of projects. I think Mr. Allen's first question starting this little section was mentioned problems. And had Can you give any examples of situations where requirements have impeded the timely delivery of projects? Because because it's a new approach, it is important that there's a full justification behind that. Mr. Owen,

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Robin, for the African. Thank you, sir. We do with the national highways see some quite sharp contrasts across

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the portfolio of schemes that we have. For some of the projects, some of the schemes, consultees regularly provide comments speedily in a matter of weeks, and therefore, the discharge of the requirement can take place after that in a timely way. However, for other schemes, some, some consultants do not provide comments for a number of months.

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Indeed, this is even the case when there is a single scheme being promoted, as opposed to a number of schemes in a relatively small geographic area, as with this project, requiring multiple approvals and consultations. And so we we we

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fear that this complex context, does heighten the risk of delay, if there is no clear and consistent consultation framework. And we think that, given the project speed angle I referred to earlier, without

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the clarity and certainty in this context, but also the flexibility that a project of this size requires. We do fear the timely delivery of the project and its benefits, therefore, could be undermined. And therefore

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we've we formulated this project having regard to our experience of implementing DCO since 2010. Yes.

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So what you've said to me there is that, excuse me, it's part of its centres around consultation. And you've said previously, that that is a navigational aspect of consultation.

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How does Are there particular difficulties, then how would any particular difficulties with consultation be overcome in the EMP that is proposed? If you set the navigation aspect to one side? What is the consultation? How is the consultation structure different? Are there any differences in the consultation structure being proposed now and what was happening previously under requirements?

28:56

So if I can, if I can answer that, in this way that we think there are some big differences, because typically, a developed consent order provides some detail, as you will know, typically in the second part of sheduled, two to the discharge process itself. But in terms of the prior consultation,

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which is the front end of that discharge process. I'm not aware of any DCO actually saying quite how that prior consultation should take place. And we all understand nowadays that consultation is a process not an event and there is quite clear guidance from the courts in terms of what an effective and lawful consultation exercise must comprise, but there is no indication given in a DCO as to timescales for consultation and overall process.

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Under the environmental management plan, we are proposing

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the process perhaps I can just summarise it with just briefly

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Please, the African must give described consultations are set out in the environmental management plan, advanced notice of being sent materials, and they then have 20 working days from receipt of the materials in which to provide comments.

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The applicants, principal contractors must take into account any comments and revise the consultation materials, and compile a report, setting out how the comments have been taken into account.

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The consultants are then given a second chance to provide comments on the revised consultation materials and the summary reports of consultation undertaken within a 10 day working period. Sorry, 10 working day period. And finally, those concepts, those comments must then be again considered by the contractors in making any further updates to the materials prior to submission for approval. Now, it's important just to make the point that I hope is

31:04

fairly clear that this is the consultation process for approvals that will be required under the second iteration of the environmental management plan, once that has been approved by the Secretary of State. So

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I hope that in summary form, sir, explains that we think that there's a real benefit, not just in the environmental management plan, providing this comprising the single bible of mitigation obligations, but a further benefit in being very clear in the environmental management plan, how the consultation is to be undertaken, of course, it's a two way process. There are obligations on the applicant and its contractors. There are also obligations we are proposing on consultees to respond in a timely way. And we consider that the 20 and 10 working day periods I've outlined are appropriate and proportionate. So we think that through those that that means there are some big differences. Thank you. So basically, the purpose of this discussion, if you like is to get out the key the key points from you, rather than the entire scope of things. And so basically, you're saying to us that three of the key points are the 20 and 10, day time limits. And also, if I could call it the second bite at the cherry, if you're like, am I correct in that sort of summary of what you've given to me as the key? Yes. So that's, that's Thank you. Yeah.

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Thank you.

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So having so I understand now, I think, why you want to do a singular document, I just want to understand why. Article 53 is an article not a requirement even worded exactly the same. So

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well, what is the difference between an article and a requirement in in regards to the preparation of DCs was the purpose of an article on the purposes of requirements.

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So if I can start by

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the refusal of bluepoints, I perhaps can make to assist here.

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A requirement is is a term given to

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a provision of a developed consent order that is akin to a planning condition. That is essentially what the Planning Act says. And

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we use the term requirements to refer to typically paragraph numbers within a schedule to a DCO that are worded like a planning condition would be worded in a town and country planning permission except of course, the DCR is a statutory instrument. So the language is a bit different, but you get the point I'm making. So So DCO is a dividend consent orders are divided into the front end, our articles and then you have a whole load of detail contained in numbered schedules, and that everything is part of the DOD and consent order, whether something is in an article or in a schedule makes no difference. And it's also worth referring the stage to the planning Inspectorate advice note 15, which is, as you will know, publicly available, which makes the point of paragraph 16.1. And I'll just read what it says, quote, an application may have significant adverse environmental effects that require mitigation.

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Such effects will be identified in the accompanying ies environmental statement, and slash or relevant environmental information. Any mitigation measures relied upon in the ies must be robustly so

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cared, and this will generally be achieved through requirements in the draft, TCO mitigation that is identified in the yes as being required must also be clearly capable of being delivered. So, there was recognition there from the planning Inspectorate that requirements are not the only way of

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securing and therefore ensuring the delivery of mitigation.

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And there's I can certainly make submissions if you would wish me to in terms of the legal basis for

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British provisions in the DCR, whether they be requirements or articles for securing mitigation, but we are We there is no doubt in our mind, there is adequate legal authority for the approach that we are advocating.

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But perhaps in writing, if you want to make legal submissions, I don't necessarily need to hear them here. But I'm just, I just wanted to explore with you that there. I'm interested in the point you made there that whether an article with a requirement makes no difference.

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But But I sort of asked you again, is that is that right? Because otherwise, there

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wouldn't be differences. There wouldn't be articles, there wouldn't be requirements. And I'd particularly look to Section 120 of the Act, which I know you'll be familiar with Miss drone, which talks about

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requirements and what a requirement is, and as you say, it is essentially a planning conditions.

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Article 53 is essentially doing a job of a requirement, isn't it? And therefore, I ask, why is it not therefore, in the requirements there? There must be a difference than there must be a difference between article and requirements, but they have different functions. Do they not? Not really? No, I don't think they do. I am absolutely clear in, in my view, national highways is doing its view there is there is absolutely no difference here. And we think that given the proposed approach, that the Environmental Management Plan acts as a single source of truth in terms of mitigation measures, it will be more appropriate for this standard and obligation to sit as an article in the main body of the DCO rather than there being one or more requirements in the requirements schedule. And the same rationale actually applies to article 54, as well, in relation to the project design principles. And we also, in fact,

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looked further afield in terms of guidance on drafting legislation, and I refer you to,

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again, it's publicly available, a document produced in June of 2020, by the Office of the parliamentary counsel, who, as you may be aware, are responsible for drafting primary legislation which says that in relation to bills, but the principle also applies to dwelling consent orders as subordinate legislation, they say that schedules can assist clarity by providing a home for material that would otherwise interrupt and distract from the main story you're trying to tell. But relegating texts to the end of the bill may not always help the reader, it may break up the story or telling or make the structure of the bill more complicated than it needs to be. So don't dispatch material to schedules. Without good reason. We submit that here there is a very good reason and no legal difference to provide for the securing of the Environmental Management Plan both the first iteration and subsequent iterations upfront in an article to the DCA rather than hiding it away in a schedule, and that is the approach that we've taken in drafting the the the DCO. But as I've said, Where where an obligation is contained in a DCO has absolutely no legal implications. The entirety of a DCO is treated the same in terms of legal enforceability.

39:15

I'm going to ask you a final question on on that, where I'm where, which is where I'm leading, and I'd certainly see your

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guidance on this. But as a subsequent question, then is therefore are we seeing the death of requirements? Is there no need for them in the DCO in future GCOS from you're considered to be from perhaps future national highways schemes? And what do you think about that? Of course, I will refer you as I did in the supplementary agenda. The current scheme that's before the before the

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pins planning inspectorate, the A 12 channels for 2020 widening scheme. I don't expect you specifically

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To know that Mr.

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But there we have a similar approach of an EMP, but there are in there, then that scheme that that's in the draft is to secure all of the things by requirements. So I'm just

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everything that you've said

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has been done or in an opposite way on a similar scheme. So really, I suppose, what is your view on the future of requirements? Having regard to what you just said?

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Robbie, for the Africans? Well, I think that

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the approach that is being advocated here is clearly new. And I would say, an innovative approach. And I, it'll be clearly interesting to see eventually, what you recommend to the sector state in this respect, as well as in other respects, and also, therefore what the central state decides to do about this.

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And that will clearly given how

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dependent consent all the system works and that

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those promoting consent orders clearly look at recent ones, and they're constantly evolving as an area. And this approach, if endorsed by yourselves, and or the Secretary of State, may well lead to, certainly a reduction in the user requirements. And we would say that that will be for the better in a way, if the result would be as we say, would be would be here, a clearer and more certain approach to delivering mitigation that is easier for everyone to follow, because I reiterate the point that it's pretty difficult when you've got 20 or 30, sometimes more requirements in a DCO. And you've got a chunky environmental management plan, also containing a whole set of mitigation obligations, it's difficult to follow that for contractors for third parties for everyone. And this is

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aimed at being much more transparent than the approach that has grown up. I'm not saying that that approach is wrong. It's just when one takes a

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look at it. And of course, this is a much larger scheme, I should say, than the a 12 to a 120 widening, but that's why it has in this in other respects, resulted in this fresh approach being taken. Thank you.  
And

42:26

although you were implied, I think earlier when you talked about the parliamentary counsel who you implied that that and I think this is what you said that actually things like this should I think I got what you're saying if you correct me please Mr. Owen, if I've got that wrong, but I think he was suggesting that the document the parliamentary counsel

42:48

almost prefer the sorts of things as articles rather than as

42:54

requirements, because they're quite important to the scheme is that is that that's what you'd said, Yes, I think when you're when you're putting together a document, like the draft, TCO you you take a view as to, as the guidance that I read out, encourages you to do you take a view as to what is best placed where and where in this case, the

43:17

obligation to comply with an environmental management plan is such an important obligation.

43:26

And because it contains within it what would otherwise be a whole host of requirements and a DCO, because there's just one. So there's one thing you need to say, which is What article 53 says, which is, there must be an environmental management plan in broad terms, and it must be complied with, that is so important that it just feels to me and my colleagues as architects of the actual DCO to be the right thing to say in an article so that everyone can see it and understand it. It's very different. If you've got 20 or 30, under the convention approach requirements dealing with all sorts of things, then you wouldn't want to have 20 or 30 articles dealing with those or even very long articles anyway, then you'd want to have a one line article saying write shedule 12 has effect sort of thing, and then you deal with them in the shedule. So that's a drafting technique. But I think it's also important that these develop consent orders for these projects of national significance should be clear for all to read, not just those who are well practice versus reading the book for everyone to understand what the what the deal is what the regime is. Okay, and I just my final question, and then my colleagues have some questions for you. But just my this is where I'm leading to, in a way Mr. Owen. My concern and is is that if articles effectively convey a power on an undertaking to undertake the development they give you the powers to, for example, compulsory acquire land and to enter land and

45:00

To stop up roads and all the rest of it

45:04

is the situation here. And I know your what your answer is going to be, but I need to hear it from you is the situation that you and forgive me, I'm not clear on the exact legal term for this. But you could refer, in a sense refuse to carry out the power in article 53. And in so doing, not submit an environment management plan. And we're just before you think about that as an answer. I'm not questioning the integrity of national highways, who I'm sure would would would, would submit an environmental plan. But if this is accepted by the Secretary of State, then other

45:42

companies will follow this. And I'm trying to just like your view, and whether there is this just legal loophole, that if an article does have a separate function in conveying powers, upon the undertake to carry out the development as approved, that if you say, Well, I don't want to carry out the power given to me in article 53, then there is no need none of the what says in Article Three in 53 bytes, there's no need to submit an environmental management. Whereas if it was in a requirement, then you would have to adhere to it. Just I just see the point I'm trying to make. So thank you, I do see the point, I can immediately, I hope, sort of satisfy you on it because the the whole of the of the developing consent order contains a mixture of powers and duties. They're very different things. Of course, we turn them together as functions. So functions are powers and duties. But article 53 contains some very clear duties on national highways. It starts off by saying paragraph one of article 53, The Undertaker that will be national highways must, must not commence any part of the authorised development until a second iteration M for that part has been submitted to and approved in writing by the Central State. And then goes on to say, in paragraph six of article 53, each part of the authorised development must be constructed in accordance with the relevant second iteration environmental management plan approved. But what I'm just after, is that almost that early stage that if this is a power given to you, is this one. No, it's not what I'm trying to ascertain. It's a statutory duty, and if national highways

47:34

disregarded that duty, then it would be a criminal offence and could be enforced. So there is absolutely no doubt that

47:42

this is not a power, it's a duty and

47:46

therefore will be enforced accordingly. So that's very helpful that you've said that if the Secretary of State was minded to grant this order with that article in place, there is no getting around that that would, that environmental management plan would have to be submitted. Otherwise, it as you say it would be a criminal offence, sir. It's completely rock solid in that regard. Absolutely. I'm very grateful for that. Mr. Roscoe. Thank you. Australian. I just had one final point, you referred to the office of the parliamentary counsel document dated June 2020. I think you've actually said, obviously, that I expect that there will be maybe a follow reference to that in the oral submissions that come out. But just for the moment is will I be able to find it from the information that you've given orally? They're just not documented yet? Yes. If you if you Google, the Office of the policy council drafting guidance, it's readily available. It's it's good reading. Thank you very much.

48:47

Any of the parties want to interested parties that are here today want to

48:52

make any comment on that part of the agenda about the article and where it sits in the DCO? Does? Nothing from the local authorities, nobody in the room? Anybody online wants to say?

49:07

No. Okay.

49:14

Oh, Miss staples from National Farmers Union, you want to?

49:20

Thank you very much. Yes. Larry staples from the National Farmers Union. I just wanted to ask, please, if it was possible, the timelines that have been set the 20 and the 10 working days

49:35

as that as that has that actually been approved, or will that that timeline now be approved under this under this DCA?

49:44

Thank you.

49:47

Strange you want to respond to that place, Rovio and for the applicant, those timelines are contained in the draft of the proposed first iteration of the event.

50:00

As an environmental management plan, we are envisaging submitting into the examination, a further version of that first iteration of the EMP. And the intention would be to, if the DCO is approved for that final version of the first iteration to be a certified document. So, the point of my saying that is that this is our proposal for 20 and 10 working days, it is, as I say, within the current version of the first iteration of the EMP, and if there are further points on that or anything else, indeed, in the first iteration of the environmental management plan, then they can be obviously discussed and considered by us during the examination, because we will we will be submitting at some stage quite soon, following ongoing consultation, a further updated version of that first iteration of our mental management plan. So there is scope to consider these things. I'm not saying we would immediately change the timescales because they have been arrived out with careful consideration, but we are very much open for further engagement on on that in any other issue in the EMP.

51:14

Staples is you've raised the question is that because you have concerns about the 20 and 10 days in the EMP?

51:25

Thank you, I just I just thought that it seemed quite a tight timeframe. And I just just wants to make sure that that that timeframe could be considered further. So I probably will respond to that in writing after this. Thank you. Thank you. I don't need I don't think to come back to Australia. I think you've answered that. Any other points on this specific part of the agenda?

51:52

That's mostly

51:54

given the discussions about likely or possible proposed changes that have been made already is the shedule on the environment, the EMP likely to change in your second iteration of the first version.

52:13

I'm looking at one point 2.7.

52:18

Where it says that works likely to commence in 2024. And enabling works may commence earlier. That's actually quite soon.

52:31

I don't know whether I'm about to come on to the next bit of the agenda, which is about approval, the approval process of the second iteration. But

52:42

it missed me Australia is anything you want to respond to on that in advance of what we're coming on to talk about Robin? Well, so it may assist if I ask Carrie Wally from Arup, who you heard from yesterday, who's on my left hand side to just make a brief comment because she is responsible for the ongoing discussions on the amp with consultees and she may be able to give you an indication as to the kind of discussions that have been taking place and what therefore

53:14

is likely to change and what is not likely to change.

53:18

Yes, happy to Hi, Kari Wally. On behalf of the applicant, I lead the environmental work for the application for the DCA and two aspects to it. Firstly, as Mr. Owen has said that we are continuing to discuss the contents of the Aramco management plan with Sastry consultees. And obviously a number of points have been raised through relevant representations and we will be responding to those. So in terms of the change that Mr. Owen referred to around the second submission of the first iteration, those are the sorts of changes that we were talking about, which asked like wording tweaks and wording changes to make sure that the statute bodies are satisfied that the mitigation can be secured. I think, what can we if I'm wrong, you're talking about the changes the change process that we're talking about

in terms of the DCO. So we've said that the applicant may be bringing forward further changes. If those changes lead to any change in the environmental assessment that's been done, which is the source of the mitigation that we have included in the EMP, then of course information to support that any revised assessments, any revised changes to the MP would come as part of those changes. So at this stage, I can't comment any further as to what that might include, but that would certainly be a consideration and I don't believe that the timescales will be changed but that will be set out in those changes.

54:32

Okay,

54:34

so if I could, I'd like to move on to the

54:40

you just pause for one moment please.

54:57

Okay,

54:59

if

55:00

If I can move on to 2.2, then the agenda.

55:04

And I think it would be helpful here, given that,

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as you've acknowledged, and we all acknowledge that this is a new process, largely,

55:15

for us to go through for the benefit of everybody who's listening or who is here.

55:23

The approval of the Environmental Management Plan as I want to start off with the approval of the second iteration as a document, I then will separately want to talk about amendments to the second iteration. And then I would like to talk about the third iteration. So I'd like to deal with them all individually, please.

55:46

My first question is, perhaps one of a drafting error, I'm not sure. But the DCO. As I understand it only contains a definition of the first iteration emp, which is set out at the end of article 53. I didn't find any

definition of the second iteration or the third iteration. Does there need to be Mr. Owen? And if so, will that be updated? Or have I missed it? Because like I said, I've been through this video several times, I did not see

56:23

a definition of those iterations.

56:35

Robin for the applicant.

56:43

In relation to that question about article 53, there is no definition of a second or third iteration.

56:53

We didn't think one was necessary.

56:57

the drafting of article 53 was given a lot of thought it's something I'm happy to review.

57:06

We may come to the same conclusion, sir. But we didn't think it was needed because not least, because it's important to understand that within article 53, there is recognition that unlike with the first iteration, where it is one document, it is certainly envisaged, and I believe the intention that there will be a second iteration EMP and indeed a third iteration EMP for each scheme. And article 53 has been carefully drafted. So that it is capable of operating and is expected to operate on a scheme by scheme basis. So each scheme will have its own second, and EDUCAUSE third iteration, and therefore, it's not the same as referring to the first iteration because to be to be clear, the first iteration

58:05

will be the EMP which will clearly we have a draft the first iteration already, which is what we're talking about

58:13

a double P zero 19. And that will evolve during the examination process in response to comments as we've just been discussing, and then at the end of examination, we will submit to you the final version of our first iteration and if the DCO is made, that final version of the first iteration would in effect be BBB, the approved version and certified for that purpose, whereas with the second and third iteration of the MP, they will be on a scheme by scheme basis. That also

58:47

explains why we didn't define the second iteration EMP because there won't be just one second iteration EMP dezso Ferdous, Roshni MP.

58:58

I would suggest, if you could take that away, Mr. M, because the fact you've had to explain it perhaps suggests that they ought to be

59:06

I will add, will add just the in the 812 channels for to 820 widening

59:12

you do or that order or does contain, albeit that it may be a singular document as an as opposed to multiple documents that you've just said, there is nonetheless a definition of it. And given that we talk about it, I would like you to reconsider whether it ought to have a definition in the in under that article. Thank you. So we will give out for thought.

59:40

Australian Just on that point.

59:43

You You mentioned previously the EMP being I think you might have called it a single source of truth document if you like just one place. And obviously article 53 refers to parts of the development and you've just almost clarified that into schemes

1:00:00

Is it the intention then, that the split of the EMP, if I could call it that is basically down into those schemes? Or at the present time? Do you see the possibility of the EMP being split further into elements of those schemes, and I can see shaking of the head on your side in terms of specific subject areas, because that would be very useful for us, because I don't think we've had that kind of an explanation so far in what would be likely to happen in terms of those split. What does part in article 53 mean? you've clarified it, I think, at the moment, but I'd just like you to confirm whether I'm correct in that scheme section, whether I'm correcting it not being split further. Can I just sorry, I'd say because that was

1:00:49

the bit I was going to take you through next, which was the 53. One, The Undertaker must not commence any parts of the authorised development until a second integration MP for that part. And I was going to ask you to define what for that part actually meant. So I think the to tie it together. Thank you.

1:01:09

Thank you to both of you for that. That was very helpful questions. Certainly, it's my understanding, I've asked Carrie Wally to come in and the moment that that there certainly would not be

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more than one second or third iteration per scheme, I think the intention would be to have one per scheme, not to have



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more than that for different topics or any other way of dividing it up. And it may therefore be that in considering the drafting of article 53, of the way that we agreed a short while ago to do that, we could also consider whether, in fact, we could refer to schemes in article 53 not part of the development. That might be clear, I can see that. But could I just invite Gary Wally to comment on the point being questioned? Thank you. Yes, sir. I think it just concurs with what Mr. Owens said the intention, as we understand it is that it'd be likely they'll be brought forward by scheme. And certainly, I certainly wouldn't envisage that it will be broken down by topic area or by subject, it would be location specific. And the reason for the drafting is some of the mitigation may not apply certain locations. So it makes it allows the contractors to if they have a scheme, that that's in a certain location where mitigation might not apply, because of the geographical

1:02:28

setting that it's in, then they're able to bring forward a specific part of a specific second iteration EMP for that part of the, of the project being developed. So it's really just a further point, it may be that some some of the contractors are responsible for multiple schemes. So they may choose to do what a second iteration for all of the schemes they're responsible for.

1:02:49

But we don't envisage it being broken down any further than than by scheme. Right. And so But effectively, one of the things that I took from that particular section was that the first, the sorry, the second iteration, EMP, being broken down into a scheme, if you like being a part of the proposed development, that second iteration might not actually include all of the elements

1:03:18

of a one when that second, sorry, I'm getting confused here, when the second iteration is broken down, that might not include all of the elements that were previously in the EMP if they don't apply to that particular part or scheme. So I can claim that is correct. But they would have to demonstrate that they'd have to demonstrate why they don't apply, and therefore why that information hasn't been brought forward. Right. Thank you.

1:03:44

Can I just ask them why the first iteration isn't based on the second iteration, if it's your intention to produce Environmental Management management plans for each of the schemes, and I do agree, Mr. Owen, I think that would be helpful if the second, if for that part was replaced with for that scheme? I think that would that would have I do have a number of questions on that. So it would I think you've now answered that. And I will clarify that in just a moment.

1:04:11

The first iteration is one document for the whole, the whole route, taken by topic, as Mr. Roscoe was saying, but that departs, as I understand it for the second iteration, where you'll be putting an environmental management plan for scheme 10201 or two for scheme, three, and so on. Is that correct? That's how I understood it.

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I said, I'll take that question. And so

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if I can take a slight step back, if that's the case, it might help explain it. So the intention, as Mr. Roman has said, the intention of the environmental management plan is it is a single source of truth of the mitigation and the mitigation has been defined through our environmental assessment work through consultation, and therefore the mitigation is in there that we want consistency across the end.

1:05:00

tie a project. And we want to make sure that there is this single source of truth that everyone can go to to say this is how this is what mitigation will be implemented, the way the first iteration has been developed, it's very much about specifying the outcomes that must be achieved. So we've specified environmental outcomes,

1:05:17

where we had to specify specific mitigation we have done if that was required to to contract to the to address the impacts that we've identified. And what we envisaged for the second iteration is that the contractor is going to come forward and provide more detail about how they're going to achieve those outcomes. So there'll be a lot more detail about the specific measures that we'll be implementing. And that might vary by by geography. So this is why we want to allow for multiple second iterations, each one we envisage will look very similar to the first iteration, it will still follow by topic, it will still have all of the management plans that have specified in the in the EMP.

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But it will be geographically specific to the scheme that's been brought forward. And it will specify exactly how that contractor will be implemented in the mitigation on that scheme. Does that help to answer it? Yes, it does. And I suppose in a way that makes sense, because you'll be constructing each path, each scheme, presumably at different times. So you will need so for example, scheme three, you might want to start on perhaps before scheme eight, for example. And therefore you'll want to have the environmental management secure proved for scheme eight, as scheme three wide perhaps you're still working on scheme, eight, so I'm Yes, I understand that. Thank you. And the same for the just before I talked specifically about the third iteration. But is that the same for the third iteration as well, this, what I'm defining is your compliance statement. Your third iteration was it is is that the same fee for each scheme? So not quite actually, the third iteration is intended to be what you might

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previously have heard of as the Operational Environmental Management Plan. So the third iteration is intended to set out how the road will be operated in order to comply with the mitigation that's that's been identified. I would actually envisage that that would come forward as a single document for the entire road will be moved to because it will the wording in article 53. Seven says on completion and construction of each part, The Undertaker must prepare determined and I will come on to those word those words in a moment. I think that's certainly the crux of the statutory party's concerns about this,

but we'll come on to that. But the third iteration of the EMP, is to be produced on completion and construction.

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That is correct. Yes. And it relates to the operation and maintenance of the of the road. Okay.

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So might assist just to give a bit more background to you ask why the second iteration, in fact, couldn't be brought forward now, I think was, in essence, what you were saying,

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or what you said, why couldn't the first bit less than the second, it was questionable along those lines, I think the the the point is that we've produced as an application document, the departmental management plan to reflect the level of detail the project is currently at. And each year, it's based on the current status of design and construction planning. And some of the plans appended to the environmental management plan are heavily based on the environmental assessment undertaken or surveys that have been completed.

1:08:33

One example might be the detailed heritage mitigation strategy. And they've been developed in the submission to a relatively high level of detail based on the understanding of the baseline and the required mitigation, other plans, the best example probably is the site establishment plan referred to in the environmental management plan that they are clearly heavily dependent on the detailed design

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on construction planning or specific construction methodologies that will be implemented by the contractors. And these will need to be developed in detail, therefore by the contractor to specify how the outcomes required by the

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Environmental Management Plan and the outline

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plans within it will be delivered. So we produced the detail that is we're able to use at the moment and that's why we have this

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process of iterations from the first iteration through to the second iteration once the detail design has been undertaken.

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Thank you. And just on my my final question on if you'd like 53 one, because I'd like to move on to 53. Two after that. And the actual sort of processes involved.

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Is

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the onus is on the Secretary of State to approve

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the

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MP for each scheme.

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Now you've deliberately I presume it's deliberately left out in consultation with local authorities and statutory bodies

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within that text, is that related to your earlier comments about sort of bearing performance times and response times. But is there not a role for local authorities and statutory bodies to be consulted on those bits for each scheme?

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Rovio and for the applicant that is provided for in paragraph two of article 53. Paragraph two says that the second iteration must be prepared. This is for paragraph two B must be prepared in accordance with what are termed the consultation and determination provisions. And those are defined

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in paragraph 10, of article 53.

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Towards the end there, as being the provisions contained in paragraphs one point 4.9 to one point 4.51 of the EMP that set out the matters on which consultation is required, and the procedures that apply to the conduct of that consultation. And therefore,

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in essence through that drafting approach, there is no doubt that there are obligations on national highways to consult before submitting a second iteration EMP to the central state for approval. And the Secretary of State is also of course able to consult

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whoever such state wishes to consult before making a determination. Thank you. And the EMP there that is the first iteration EMP paragraph one point 4.9 to 1.4. bomb would be off the first iteration. Yes, that's right. So

1:12:06

thank you before I asked the local authorities if they wish to respond to that. Mr. Roscoe, you have a question. Mr. Owen, it's just coming back to the point that you made previously in terms of what I might call the EMP split as it progresses down into schemes. And

1:12:26

it concerns the fact that certain aspects of the EMP might not be taken forward into the split the geographically split emps. And it was said that that would require justification. In terms of those EMP those areas of the first EMP not being taken pre splits not being taken into the split versions, how would that justification be regulated if you like, what would actually who would that need to be justified to and how would that justification take place? That justification sir, would need to be provided to the Secretary of State and would take place as part of the approval process and that is provided for in paragraph two a of article 53, which says that a second iteration EMP must be substantially based on the first iteration emp, insofar as it relates to the relevant part of the development unless the central state is satisfied that any part of the second iteration emp, that isn't substantially based on the first edition EMP would not give rise to any material new or materially worse adverse environmental effects. So, we are in essence sort of anchoring things to the first iteration EMP and thereby providing a guarantee that

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the second iteration EMP has to follow the first iteration EMP in delivering the same mitigation so far as appropriate to the scheme and

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yet only if a departure would lead to, in effect better environmental outcomes. Could could there be

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a departure from the first iteration emp, although the words do actually say materially new or materially worse but adverse environmental effects applies to both those new and that yes, worse? Yes. Okay.

1:14:24

And I am

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Yes, I'm going to come on to talk about that, that that wording, yes shortly, but this may be a point to bring up the local authorities any local authorities want to

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want to say anything about this approval process of the second iteration of the EMP

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not inviting you but it was specifically if you want to speak there's only anything smart that you want to want to say you

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And Michelle sparked for the council's Not at the moment. Thank you.

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from Durham, let me think

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that it present thanks.

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Any other party wants to say anything on the

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on that bit of the discussion on the on 53? One namely?

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Nope, no hands up. So

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okay

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we could just move on to a discussion please on

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53 to please dosterone. And

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no doubt you are aware of what I'm about to to discuss his some of the wording used. And what this second iteration EMP must do. If I could start off with substantially based on the opening words of to A, and I'm not aware of those words being used before in a DCO. And certainly, whether they've been accepted by the Secretary of State. And I wondered if you had an example,

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by association that the DC shows that I've previously done the

1:16:32

previous one being a high national highway scheme

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was that enps had to be in accordance with first iterations or, or documents thereof.

1:16:44

There's a difference, isn't there between, in accordance with and substantially based, it's actually basically is much looser, isn't it? So I do accept that. And I can you point to where the Secretary of State has accepted substantially based in previous CCOs.

1:17:02

Robin for the applicant. So I do accept there's a difference between in accordance with and substantially based on

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I wouldn't myself say that our formulation is much looser, which is the term you used,

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it does provide and we would say rightly so, unnecessarily. So, some flexibility,

1:17:27

but that is we feel necessary given where we are with the project development and pre construction, detailed design and and construction methodology work, I would need to check an icon Can we can we can do so, in the post hearing note, where in the CCOs, the term substantially based may have been accepted. I mean, there are a number of certainly relation to the requirement you often see which you will be familiar with requiring a project to be built with reference to general arrangement drawings, there are a number of different formulations we've seen over the years

1:18:10

in terms of quite what words are used to tie back to the approved and certified general arrangement drawings, and there are other provisions to have a similar in similar vein, so we can certainly

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let you know

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where in previous GCOS this word of the terms is actually based has been approved.

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And in fact, I've just been notified that a DCO that was made

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on the 16th of November,

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says in relation to the second iteration emp, this is paragraph four one of

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they were me. So sheduled to

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paragraph four, one or schedule two to the DCR to which it isn't a minute says no part of the authorised development is to commence until the second iteration EMP substantially in accordance with the first iteration EMP for that part has been submitted to and approved. So there we have a DCO that is

1:19:28

fresh out of the traps.

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It is the 57 link roads, dwelling consent all the 2022 made on the 16th of November 2022.

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And I can't give you an SI number. Now that's obviously fine. But that's not quite the same as it substantially in accordance against substantially based that the wording you say they're substantially in accordance. I mean, that is substantially different. I would argue

1:20:00

I would suggest a substantially based and that the issue I have Mr. Owens, I'm not entirely sure what substantially based actually means.

1:20:09

And that's, that's where I'm from in this. And I'm not entirely sure there's much you can add other than than what you have, although I will give you an opportunity to do so. But it may be that the later on in the examination, the XA, will seek to recommend that be changed to at least substantially in accordance. Is that something that you would consider

1:20:37

at the next, the next iteration of the of the DCO?

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Robbie? Sir. Yes, we will certainly consider that we will take it away. And in our posterior note, we certainly try and give you any further assistance on there are various terms or phrases aren't there that one seasoned GCOS? And I dare say there are others we haven't mentioned as well. So we will try and provide some assistance to you there. And we will also consider whether in accordance with might be something we could move to I can't say yes or no right now. But that's fine. And whatever your answer is, it's unlikely that I would pursue the matter further, if it ends up being a disagreement between ourselves and your position, it might be something that we recommend is changed, and then something that goes to the Secretary of State for his final decision.

1:21:38

But it just seems to me that substantially base has never been used, I don't know of a DCO, where that's been used, certainly substantially. Unicorns, certainly unicorns, and I have my own views on whether something should be in accordance or substantially in accordance, but for the purposes of this,



I'm not convinced, I have to say substantially based is is strong enough, and I would certainly urge you to take that away. Thank you very much. Thank you. So we will do that.

1:22:06

In a similar vein, then can we move on to the words

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materially new or materially worse, adverse.

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And then we move on from that. So we now looking at still it to a

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we'll move on from substantially based on the first iteration would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.

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I'm particularly interested in the words worse, adverse, and in comparison with now again, Mr. Owen, I've never seen wording like that in a DCO I have to say.

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And so I was,

1:22:54

again, we can we can shorten this or we can we can debate it. I'm quite happy either way. But I would need to understand what materially worse adverse environmental effects actually means.

1:23:06

Whether that pushes the Rochdale envelope, beyond what has been assessed in the US.

1:23:14

And really, whether that should be rephrased as materially new or materially different environment and thanks as assessed in the environmental statement, which is what is the normal wording Secretary states has accepted in previous GCOS?

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Robbia and for the applicant? Thank you. So we have given this some thought it was

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set out I think in in item item for the agenda on under the DCO. But

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you're right, you're absolutely right. But as it's yes, used here. Absolutely. Yes, I did. I did. To clarify, I did put it in that agenda item, but then it sort of cropped up here as well. So if we deal with it here, there'll be no need to deal with it in item four. So that's that's absolutely fine by us, of course, and it might assist us for the benefit of all listening that the phrase, quote, materially new or materially worse adverse environmental effects, is used in a number of locations in the draft DCO Article to Article Two, one and the definition of maintain

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Article Seven, six,

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in relation to the centre of State Certifying departures from vertical limits of deviation, article 53 in two places, as we're seeing 53 two A and 53 Five B, article 54, two on detailed design, and finally as a qualifier to the list of ancillary works included at the end of schedule one, and if I can just explain that the purpose of this in each case is to provide a limited degree of flexibility within the sort of heart

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constraints have the flexibility

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to make sure that the flexibility, the flexibility, the DCO gives could not be exercised in a way that would make likely significant environmental effects worse and would not introduce new adverse environmental effects compared with those that have been assessed in the environmental statement.

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And, and as you as you, as you'll know, I'm sure you know, the general principle of the existence of this amount of flexibility in the locations in which is provided for in the draft DCO is very well precedented.

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And most of national highways develop consent orders have been made to date that include a similar mechanism. But we are aware that our what we focused on, given the agenda item was the reference to the word worse. So materially new and materially worse, as opposed to the

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precedent and formulation of materially new and or materially different. Well, it's not just materially worse, it's materially worse adverse

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environmental effects that mean that that's, I mean, I hear what you're saying about having a limited degree of flexibility. And I would assume the Secretary of State has accepted that in previous DCO, where it's materially new or different. The material bit being the flexibility that developers are Undertaker's need, and I accept that some flexibility is needed. But yeah, sorry, I was just going to finish. But it seems to me that that flexibility is rather stretched by the words materially worse adverse?

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Well, what we're trying to achieve here is that we we, we do

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consider that the formulation, materially new or materially worse, adverse environmental effects is appropriate because our concern with the department for Transport's formulation of materially new or materially different environmental effects is that it would prohibit

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the discretion under the DCO being exercised when to do so would lead to materially different beneficial environmental effects. And it would seem

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perverse to disincentivize the delivery of significant beneficial effects as part of detailed design and construction, that were not reported in the environmental statement,

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just because of the wording of the DCO. So we have never understood why

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that formulation materially different is is to be preferred from materially worse and surely if there can be a better effect delivered as part of diesel design and or construction that should not be prohibited by the wording of the order.

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But then, what you're what that would do then is we then into a definition of what is materially worse, as opposed to worse. And my concern is that such wording would then

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allow the second iteration to be approved, where it goes beyond the Rochdale envelope, because you're what you're saying is that the the,

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the material, the material, the effects can be worse than already assessed and still be acceptable? Well, I think so that there are many well qualified environmental advisors who know exactly how to assess whether something is material or not. And therefore, I think it would be absolutely incumbent to interpret this phrase based on established methodology for determining materiality in terms of environmental effects. And therefore, I we feel this is the this is appropriate to provide the right degree of flexibility and to allow improvements to be delivered as part of detailed design and construction. That's that's what we've we're trying to achieve. Okay. Understood. But does that then still need to be the case with the word adverse? Could that word be removed? I mean, you would say if I were even if I were to agree with you, or the secretary of state were to agree with you, you would still achieve that, wouldn't you with any, it would give rise to any materially new or materially worse environmental effects?

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So I think I think that is possibly right. Can I take that one away? And we will

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comment on that

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in our written submissions after the hearing.

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Thank you. And again, just moving on to in comparison with and again, that's not that's an unfamiliar wording to me. It is usually the wording i i will see the Secretary State has accepted previously

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This is

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where they say that no materially different as set out in the environmental statements words to that effect. Therefore it's tying directly to the environmental statement. Comparison with

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is an unfamiliar term for me. And again, I questioned the looseness of the wording here. Perhaps you're you have a comment on that. Mr. Yes, I actually don't think the wording is,

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is materially different. I don't think it's I don't think it's certainly certainly I don't think it's looser. But we will consider that as well, whether we

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can move on that. I think the effect of either formulation is the same in terms of tying back to the original statement.

1:31:02

Thank you. And I have to ask a question about, again, this term materially worse, and how that affects the need and conclusions of the habitats regulations assessment, because, again, I bring you back to this issue that the this

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if the second iteration, EMP, identifies materially worse environmental effects, and nonetheless could undermine the HRA couldn't it?

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Which would then affect the secretary state's appropriate assessment?

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Well, so I think I think the same answer follows really that.

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If as we believe are drafting is appropriate and sufficient to protect the conclusions of the

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environmental impact assessment as reported in the vital statement, then equally, it would do so for the appropriate assessment carried out under the habitat regulations assessment, under habitat regulations.

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So we don't see there being any difference between the two.

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And I think I was I was going to ask you about individual and cumulative

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parts that would in commutativity, would be materially worse, but I think your answer would just be the same as what you've already given me. So I will tie that in there.

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Okay,

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that's all the questions I had. Do you have any? Any? Like? No questions?

1:32:49

Okay, I will just, okay, I'll come to parties. And then I'll just finish off with my final comments on that specific part. And then I think we'll take a short break. Does any of local authorities, or anybody online, wants to make anybody here, for that matter? Want to make any comments on what we've just heard? knows nothing? No.

1:33:15

Nothing online, either.

1:33:18

Okay, I will just perhaps draw Mr. Onto the same conversation we had at the end of the first item on the agenda, which would be that,

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again, I'd welcome your written submissions on a post him note, it may well be that if the XA is not convinced by this wording, we may well, we've heard your views, there's no point in debating it further.

But we may in our acts as draft DCO, later on in the process, seek those changes, and then we would leave it to the Secretary State to make the final decision and assume you'd be content with that process. Absolutely. So I mean, we would like to think we could persuade you that what we end up putting forward by the end of examination is something you feel able to support. But somebody's saying, Yes, I and I'll be clear, I'm not at the moment, persuaded that this wording is is been carried out before, and goes way beyond what you what you've just done, what you what you're seeking it to do. And I understand there is you use the words limited degree of flexibility. The essay will will no doubt consider. Consider this further in light of your responses. And yes, thank you. I think what I'll just say in conclusion is we certainly aren't intending it to go way, way, way beyond in the way you put it. But we will, of course, give further consideration to the wording.

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Well, like I said, I understand your intentions is whether the wording permits you to go further than that. And that's what I'm concerned about. And I think X is concerned about so say, I'll leave that there and you've heard loud and clear, I think where we're coming

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From and we'll, we'll certainly

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take from there. Thank you. I now I will the next part of the agenda. Oh, no, sorry. You just pause one.

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Okay, we did have a couple of questions relating to the second integration from from my colleagues, if I can ask Mr. Humphrey first and then Mrs. MILLIKEN and then we will go for the break. Thank you. Thank you, Mr. Allen. Mr. Owen, I understand from what you said earlier that EMP replaces and incorporates what would normally be considered a code of construction practice that right.

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I understand there are elements of what would normally be in a code in EMP, but equally there's little by way of simple accessible approach usually seen in a code in EMP. It's quite a very technical, very about the approval driven process.

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I know in your description of emp, is a bible of commitments, but also know refers to separate documents such as construction traffic management plan within the Bible, where separate sources of truth will be provided.

1:36:16

I saw in your consultation documents, the draft construction method and management strategy, which is a p p 265. That contains diagrams and explanation of how you will construct the works.

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Could I ask consideration is given to taking elements of this strategy and a summary of your commitments in EMP on issues like working hours, etc, and create an accessible version of construction practice document that will assist us and IPS as the examination progresses?

1:36:49

Thank you, sir. I'm going to ask Carrie Wally to address that, given it's more than her area of expertise. Thank you. Yes, thank you, sir. So the document I refer to that was presented, it's actually consultation was an illustrative document to provide examples of how certain aspects of the construction might be, might be constructed. And the reasoning why we haven't incorporated that into the environmental management plan, or the subsidiary annexes at this stage is because that's by no means the the way that every element of the scheme will be constructed. That's obviously in the in the remit of the contractors that are coming forward. So the point I made earlier is that we've we've we've, our intention is to word the environment and plan very carefully to define the specific outcomes that must be achieved, exactly how those outcomes will be achieved. It may vary between schemes, and it will be dependent on the contract and bringing that information forward. So I understand what you're asking for information to illustrate how some of these things might come forward. I'm not sure we're in a position to say that with certainty at this point, but I understand that but given that the schemes will have separate MPs, could they not equally have construction practice documents that demonstrated because by that time, you'll know how they're going to be built? So it will be clear to everybody how that was going to be achieved? And what was it what was the construction regime on that particular scheme? And that's something we can take away in consideration of Absolutely. Thank you.

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Mrs. MILLIKEN.

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Thank you. Yes. My question relates to the EMP and specifically paragraph one. Point 4.9.

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I just would like the applicant to set out please hide the detailed heritage mitigation strategy being applied in advance of the Start definition would work in practice. If you could just set that up briefly. Thank you.

1:39:06

Sorry, I can't ask you to repeat your question. I'll reread that paragraph. Sorry. Yes. Can you just set out briefly high the detailed admitted heritage mitigation strategy being allied in advance at the start definition would work in practice, please? I think what I'm specifically getting to is could the approach present any conflict with the overarching EMP approval process? If it's something that needs to go away and consider I'm happy to receive a response per deadline one, but if it's something you can set on, and that would be helpful, thank you. And I think I think if I can explain the intent of why would include it in that paragraph first remaining to take, take it away and come back with some further information if that's okay, so, the intent here is clearly to allow some of the works that that are relating to for the survey or further investigation to happen in advance at the start of works. And so a number of the mitigations included in the detail heritage mitigation strategy are around archaeology

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works. So the intent of that is to allow that work to happen in advance of the main start of works, to allow the contractors to go in and have time to undertake those investigations properly. In terms of how it works in practice, in terms of the approvals, is that something we could take away and come back to you with a written response? Please? Absolutely, if you could, please. And then also, if you could briefly explain the process for managing any changes to the heritage mitigation strategy, please. Absolutely.

1:40:28

So I'm going to come on to now talk about the amendments to the second iteration. So this is going to be 53. Three onwards, but so I appreciate people may want to question on that. But I'll just on the submission and approval of the second iteration. Can anybody have any final comments before I go for the break?

1:40:51

Nope. Okay, so let's have a break. At this point. I

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propose that we resume at around 1155 15 minutes to have a quick break and then we'll move on as I said to the amendments to the second iteration in the DCO. So 1155, please