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01:11

Thank you, everybody, it's now just gone. Five to 12. Apologies just have to sort something out on the computer. So like to now move on to the process of amendments to the second iteration. Just before I do. I just wanted to confirm with the local authorities and statutory parties, I mean, if you can put your hand up if you disagree, but before the break, we heard from the applicant that there was a process for which the local authorities and statutory parties would be consulted on the approval of the second iteration. And you heard Mr. Owens talk refers to the consultation and determinative provisions, which are set out in paragraph a subparagraph. Two, B, and which a definition is provided for or you content that for the approval of the second iteration of the MP, that there would be adequate consultation or the contract consultation is taken care of, for the local authorities and statutory parties to be involved. If you've nothing to say you can.

02:29

Michelle spark on behalf of the council's there isn't full contentment, shall we say at the moment? I'm trying to be fair here. And I think we will make some written representations and take that away. The timescales are particularly worrying considering that they're going to come through on a scheme by scheme basis. And and, yeah, that's our concerns at the moment. But we'll take those away and come back and provide a full response.

02:57

I think Mr. Ian said that the timescales were potentially being reviewed, not necessarily changed, but being reviewed. But aside from that, I'm just, I'm just want to go on the I suppose what I'm coming to is this is the so called self approval process, I just wanted to wish on coming on to but you're satisfied that in respect of the submission of the second iteration, that that isn't a self approval process. It requires the Secretary of State's approval and require and would be consulted upon by the local authorities and the statutory parties. you're content with that, irrespective of whether you've have long enough or not.

03:34

And for the record, Michelle spark on behalf of the council's Yes, we are content with that approval process. And we were coming on to the self approval process. But you're coming on to that. So

03:44

yes, and I think this is where the amendments, the second iteration, and particularly the third iteration come into, and we're going to come on to talk about that now. Again, if I assume Darren, no, no comments to make while you're listening?

04:02

Yes, I mean, I just know sort of reiterate the points that can spark to said,

04:08

Okay, I haven't got any hands up from the statutory parties online. So I'm going to assume for that part, they are contained. And the it's the rest of it that I'm sure comments will, or hands up will be made. So I just wanted to clarify that point. Thank you very much. So let's move on to the now. So we're at a stage for a particular scheme, where the EMP has been approved by the Secretary of State for a, as I say, a particular scheme. And now we'll come on to the points where the undertaker seeks to amend that second, the second iteration. And I think, Mr. O'Neill you'll clarify, I think this is where we are governed by article 53 part Golf three, four and five. Now as I read that it's not a given that the the, in this case national highways but the undertaker needs the Secretary of State's approval for any amendments. That's right, isn't it?

05:26

Thank you. So Robin for the applicant the the approach taken here is that for more material that I can put it that way changes to a second iteration emp, those would require approval by the Secretary of State under Article 53. Three for more minor changes that may be needed. And of course, it's difficult to predict precisely what might be required. But for more minor changes, the proposal is that national highways should be able to with safeguards that are set out in the article, approve those changes. So it's a deliberate sort of jewel regime, if you like. On the basis that it seems that in relation to minor changes, that it's appropriate for the applicant to approve those changes with, as I say, with the safeguards, and we think it would be disproportionate and burdensome on all parties to require in every case, even for a very minor change the applicant to seek sector state approval, provided, as I say, the changes are within a SETT Framework, which they would be given how article 53 is drafted. So that arrangement together with the fact that any approval of changes to a secondary duration emp, given by national highways would be given on the sort of function, the functionally separate bases that we've explained, and that therefore, the different part of the map of national highways would take an independent and independent approach to considering changes to the MP says it's a deliberate regime that we've set out that form for less than completely minor changes, that Central States approval would be required. But for minor changes, the proposal is that the applicant with the safeguards set out in article 53, five should be able to approve those.

07:54

Thank you and understood, but you talked about sort of major and minor or minor and not minor, whatever. You said there was criteria. What what criteria are you referring to? Or is it specifically the criterion to A?

08:18

I suppose where I'm coming from here, while you're just looking at that is, I'm seeking to understand that the paragraph as drafted doesn't necessarily differentiate between something that's minor or something that's major, it simply says the undertaker may seek the Secretary of State's approval. And it suggests to me that something could be minor, A minor change, but have quite a significant other signature could be quite significant depends what you mean by minor, or my main or by not minor or major, minor being a small area or minor is in the change itself is very small. So where is that? He said there was criteria?

09:05

Well, the criteria are set out in 5353. Two, because 53 Three refers back to 53. Two, and says that 53 Two applies to the Central States approval of any amendments. And then under 53, two, there is that reference back to the first iteration and environmental effects and constitution Termination provisions. So obviously, we won't go over what we discussed before the break about the precise formulation of those provisions that we will we will consider further but that is the essential way it would work and equally, the mechanism for national highways, approval of more minor amendments would be under 33 Five I think what you're asking for, sir, is whether there can be further clarity provided in article 33, in terms of indicating when you're in the secretary of state approval regime, and when you're in the national highways approval regime,

10:22

essentially. Exactly. Exactly my point because before you start to read article 50, certainly, you if we, we talk in practical terms. So you've had an EMP that's been approved, you want to make a change to that approval, you've you're the first exercise as I see it on you is to make a decision as to whether to even bother the Secretary of State or not. And only if you decide that you need to seek the Secretary of State's approval, does then the paragraph three bytes, and then you have to then comply with paragraph two as I read it. But it's that process of making a decision as to whether you need the Secretary of State's approval or not, then I'm not clear on. And that's what I was hoping you could provide me the guidance is that if there is a regulatory control here, where that is set out

11:19

with the intention, so we'll set it out in article 53, and it is set out there. But I think it's part of undertaking the actions we agreed before the break, we will include in that further consideration, this particular point to see if we can make it clearer, which approval of amendments regime applies in each case, because clearly, it's important that everyone is clear about that. And we will just see if we can make that any any clearer. Can I just say in relation to the consultation provisions that you mentioned earlier? That they're not currently under review, but we will review them again, as and when interested parties make comments on them. And I think we're due to receive some comments from the National Farmers Union, as we heard before the break, so as and when those are received, we will obviously consider them. So we're not currently reconsidering the timescales for consultation, as set out in the end. But as as is incumbent on us to do so we will consider them again if representations are made.

12:32

Yes, thank you. I mean, I was I was now going to come on to talk specifically about the wording. But the wordings on the third line, which allows you to make amendments to all or any part of the second iteration. So the power is there for you to make a change to all of it all of an EMP without necessarily needing to go to the Secretary of State. But I think your answer will be that you will review that, because that's how I read it that you could you could seek to amend all of an EMP without going to the Secretary of State. And I know you said it's your intention that that wouldn't happen. But I don't see where that control is. So if that's something you could review, yes. And stipulate perhaps the times where a change to an EMP either whole or in part needs the secretary state's approval, all those matters that you feel can be done in house, so to speak. I think that level of control is missing?

13:44

Well, I think certainly the intention was that the control is set out in paragraph five in particular, for amendments approved by national highways. But as I say, we will it's clearly not coming out clearly enough to you at least. So we're very happy to give that some further consideration.

14:08

Thank you. It's about do you want to come in at this point? Yes,

14:13

please. Michelle spoke on behalf of the council's there was one question that we had in terms of their decision whether or not something needs to go and amendments in all or in part needs to go to the Secretary of State. What if what's the mechanism if there's a disagreement with national highways approaches to what has a resonance, a substantial, substantial amendment for example?

14:38

So your questions before I put it to Mr. O'Neill is if as currently worded if the National Highway was the applicant was to accept that a change needed the Secretary of State's approval?

14:51

Sorry, no and the alternative if they think that they don't need the Secretary of State's approval, but the council's disagree with that, for example, What mechanism is there for it? Does it automatically therefore go back to the Secretary of State for approval? Where's the regulatory element?

15:11

Come on, so that

15:13

there is no provision for termination of disputes. We don't think that would be appropriate, just as you don't have provisions elsewhere in the DCO, for determination of disputes for some exceptions. So one has to just apply and enforce the DCO in the normal way. So we don't think it's at all appropriate to have a special arbitration provision in relation to this article. If I can just emphasise, though, that the difference between the two approval regimes for changes to the second iteration are that national highways would only be able to approve changes to a second iteration amp that are substantially in accordance with the already approved secondary iteration. And I appreciate we've debated whether that's actually in accordance is right forwards, be honest, someone I'm saying whereas the Secretary of State under 53. Three, would be able to approve changes to a second iteration them that were not substantially in accordance with the approved secondary duration, then, as long as the central site was satisfied that the environmental effect was was no, it was no, it was no worse. So that is the essential difference. But we can look at the wording to see if that can be made clearer.

16:52

Well, that is I think the also difference is that there is at least that checking process, that the Secretary of State does at least see a change and can make his own decision as to whether that's acceptable or not. It's just as it's a I think, as his as worded it that you can make changes to all or any part of the

second iteration, and it is up to you to decide whether the Secretary of State needs to be consulted or not. That's I think the the point, the step back points, if you like, in that, you know, you have, you can look at making a whole change to the EMP. And there's no trigger say we must put that now into the Secretary of State. So to consider. You have to decide whether to bother him or not. That's the point. I'm trying to make that that that there isn't that trigger to say, well, we've changed all of it. We have to put it in. And then obviously, what the Secretary of State does with that would be up to him. But

17:57

I mean, we

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the words being of course, the undertaker may seek the Secretary of State's approval in writing of amendments to all or any part of the second iteration may say,

18:09

well, that's just a standard way of wording, a statute provision like this, that, in effect, gives us the ability to see changes. We don't want to be obviously obliged to see changes if they're not necessary. But if we concluded that an approved second iteration amp does need changing for whatever reason, then we are able to get it changed. And depending on the significance of the change the materiality of the change, we can then approve it through the sub approval process or by going to the central state. But Did I understand you correctly to ask whether, for example, there might be some additional mechanism we could include here to put a put put a put us have put a check on national highways is intention itself to approve a change by first of all, perhaps notifying the central state that a change is contemplated national highways doesn't think it's a change requiring central state approval and giving the Central State 21 days or something to respond? Is that the sort of thing you're looking for? Or?

19:21

Well, yes, put it put me on the spot a little bit there. But But, but But yeah, I mean, obviously leave it to you to put that into us for us to consider. But they would at least be that that, in my mind, that process where the Secretary of State could could consider whether the change is minor and then doesn't want to be consulted on it or actually thinks no, I need to approve these changes, that regulatory check is there. And I think so yes, I would, I would. Broadly, I think welcome that addition or something like that into the DCO. But obviously also I'll wait for your thoughts and final and any changes to the next iteration. I think that's something the council would welcome to.

20:09

Yes, thank you, Michelle spark for the council's Absolutely. That's exactly what we were looking for. Mr. Roscoe?

20:19

Mr. Chairman, I just wanted to come back to the points. Obviously, there isn't a dispute. There aren't any dispute provisions in terms of the articles within the DCO itself, if you like, and you'd said earlier on that, that was a point that you made it a few moments ago. You said earlier on you were talking about the differences between articles and requirements. And effectively there was little difference bringing

the the controls of the EMP from a requirement into an article is that, in fact, a difference between the two, the fact that within requirements, there are normally dispute resolutions. Dispute Resolution provision. Sorry,

21:01

Rob. Yeah. And well, certainly within within requirements, the normal dispute resolution provision is the ability for the Undertaker, the developer to appeal for non determination of an application to discharge a requirement or to appeal for refusal of PIP appeal against the refusal of a discharge of a requirement. So that is, that is the normal position where the requirement is to be discharged by a local planning authority, there is never an ability to appeal against the decision of the Secretary of State that is final, other than obviously, judicial review, in the normal way. Yeah, I should just clarify that there is, of course, the provision of article 51 on arbitration, which is the standard provision for disputes, which, for example, is typically applied in the case of disputes arising under protect protective provisions and approvals that they require. But that wouldn't apply in this case. So I don't think that affects at all what I said earlier about there being no, no no difference in effect between something in an article or something in a schedule, including requirements. Thank you.

22:24

Thank you. I have no further questions on the amendments, the second iteration. But I know that the statutory bodies have had concerns about this, is there anything that they wish to say? So this item I'm not seeing any hands up. Mr. Carter?

23:17

Thank you, sir. It's just to confirm so we have submitted some comments in relation to the MP process. We note that the applicant has submitted some comments back in response to a relevant representation. So we will feed back our comments on those in writing the deadline one, you know, rather than writing I've written representations. One of the one of our concerns does relate to timescales as has been discussed, regarding the approval of material submitted on the amp. The applicant has suggested that pre application discussions may address that concern is something we'll look at, we do have a pre application process, if that is a solution, and that would need to be made very clear somewhere, I think, as a as a, an addition, and expectation, if you like that where there is a known, some work is known, it's going to take some time to approve. So hydraulic modelling is a good example. That That wouldn't be reviewed by the Environment Agency within a 20 day period. Very unlikely, especially in our 10 day period. So if the workload is going to be significant than that up front, and prior engagement would be critical. Thank you.

24:42

Thank you, Mr. Carter. Can I just pull you on the discussion that we've had, I think yourselves and the other statutory parties have had or have expressed concern, certainly in representation, but also in your pads about the self approval process. As the we've talked about this this, given the are you encouraged or do you have any comments specifically on what the outcome is throwing, as talked about, particularly in the this perhaps an additional paragraph about the Secretary of State at least being consulted on whether the changes to a second iteration of the EMP that there is that checking process? Is that something that, that you would welcome?

25:36

I would say so, yes, I think that, yeah, that would be something that would definitely support. Becky,

25:45

any other party wants to make any comments over and above? Yes, Miss Kelly.

25:54

Hi, thank you new career matching. And I just want to echo what Philip said about our concerns, and that we will provide comments in written representations as well. And just what you said, Mr. Lyon, about the regulatory Chatbot is something that we would deem a positive and a benefit to ourselves as well.

26:14

Thank you. Rebecca. Lush, I'm putting your hand up as well.

26:20

Hello, yes. Rebecca lush from transport Action Network. And I wasn't clear right at the beginning of this whole section of the agenda, whether or not the examining authority had requested national highway submit their legal advice on the legal basis for this approach. And could you just clarify whether you whether national highways will be submitting their legal advice?

26:45

So do you want to answer that, I think the

26:48

Rabina for the applicant? No, we won't be submitting our legal advice. What we will be doing is making written written submissions about the legal basis for the approach being proposed that it wouldn't be normal or expected to disclose legal advice. But we will certainly make representations as I think the chair invited us to do or agree that we could do on as the legal basis for the approach we're taking.

27:16

Yes, post hearing note that we'll we'll explain the approach I think with with a legal legal explanation to Okay. Mr. Monti.

27:31

Thank you, David. Monty from Historic England, just to confirm that we have had reservations about the MP, particularly in relation to the self approval process. And the discussion this morning, has been very helpful in providing some further clarity will take away the comments of of national highways together with their post hearing notes and responding for in our written representations.

27:59

Thank you. But just to be clear, the discussions that we've had is something that that historic union would would welcome as well, because that again, this this issue about self approval process has been

a concern to Historic England as well. So that's correct. Yes. Okay. Thank you very much. So now, just yesterday may

28:22

clarify one thing, when I was saying that we would consider some form of consultation process involving DFT. That was specifically in relation to consultation before any approval was given under Article 53 by national highways to an amendment to an approved secondary, second iteration and, it's important to distinguish that from the self approvals that are proposed to be given by national highways under the act. And certainly we would not consider that it would be appropriate for those self approvals to be encumbered by some prior consultation with DFT. So it's only relation to any intention to use the power under Article 53 by national highways to change a second iteration then, as opposed to operating an approved second iteration and getting approvals under it. The so called self approvals.

29:38

Yes, well, that's yes. And, of course, the fact that the second iteration EMP will have to go through that consultation process will be the point in which then if there was concerns with elements of self approval, that could be raised with the Secretary of State? Yeah, by the parties. Exactly.

29:57

It's Roscoe. Thank To Mr. Owen, yes, this leads on to an area that I would like to consider, which is the operation, if you like, of the EMP, so we've been through the iterations, we've been through the amendments to the, to the process.

30:21

And so and then well, I'll lead that on to the third iteration, if you like as the final part of that. But it's the it's the self approval process. And it's a comparison between the regulation which has been put forward to us now, in terms of the applicants draft dcl, and what happened on previous CCOs. And I'd like us almost to bring the discussion back to two practical aspects, such as the mitigation map that we have before us in the examination, and the schedules that actually show the consultation arrangements and details for the internal approval of particular elements under any particular EMP that it might be, but also the self certification process, if you like, and the Chinese walls that have been talked about within the applicant organisation. So looking then at prior DC hours, let's call them generally you would have had these plans come forward and recent DCO have shown plans for various things to come forward to be approved by the Secretary of State, and they wouldn't be peppered throughout various requirements, in terms of a comparison with the situation that's proposed that's before us. Now, those matters, then wouldn't go back to the Secretary of State because they would be covered within that schedule, which is has the consultation and approval process, and it would come up against this Chinese wall within the organisation whereby it would be approved by a separate part of the organisation. So does that effectively take To me that seems to take the Secretary State up to a next level, if you like of approval, the Secretary State is, is approving the process if there is a more major change to it, that the Secretary of State is then taken out of the detail that might come confirm, that might transfer the overall mitigation map to more detailed proposals for a particular scheme in any respect, is my summary of that situation? Reasonably correct, Mr. Owen?



32:28

Robin, for the applicant? I think so the the impression that we would be very keen to dispel if that's the right word is that the scope of approval by the central state of the second iteration is not that wide. Actually, the second iteration of the EMP will need to include all of the management plans. And I believe most of the method statements that are going to be required. Now, the first iteration of the EMP does contain an outline of the management plans, for example, but it's quite clear from table three dash two, which is the the React table, the register of environmental actions and commitments, it's quite clear from that, that all of the management plans have to be contained in the second iteration M before it can be approved. And that's the commitment for your reference d dash, Gen G N dash 06. And that deals with management plans, the next commitment d dash Gen dash 07 deals with Method Statements. And it's very clear from both those commitments that the second iteration to be approved by DFT is going to be or each one will be a very full set of documents. And therefore, that's important to make clear, because the the scope there for subsequent self approvals, so called by national highways is actually going to be in practice reasonably limited, and will be in relation to the sort of operation as you put it off the second second iteration, and once it has been approved, and the I think that it might help just to give a give an indication of the kind of things that will be subject to the self approval provisions. And of course, the civil approval provisions in their overall nature and character will be set out in the second iteration then will therefore would need to be approved by the city state and approving the second iteration. So

34:50

could I just come in on that point, just for my clarification. So in terms of these detailed and more detailed aspects that you're just talking about now? Being in a second iteration, what is the regulation that requires them to be in that second iteration? Is it simply the reference in the the EMP? That that if you like, controls the scope of that?

35:17

Yes, I believe that is the answer and that the various different commitments in Table three dash two, so the Riak, make it clear what the second iteration then has to include.

35:33

Is that as powerful if you like being in the amp itself in the EMP itself? Or should that be reflected in the article? Or should or is it sufficient? Is there a difference between that being reflected in the article or being reflected in the EMP?

35:53

I don't believe there is a difference. So, the difficulty is, where do you stop? Where do you draw the line? You could go on for several pages if you put it in the article.

36:03

I think I think, Mr. Owen, I think you can probably see in my mind how I am comparing this to the situation to previous requirements that we've had in previous DC I was in trying to find the the comparators, if you like between the two. Right?

36:18

Yes. Sir, should I Please Please continue? Yeah, of course, when we refer to the second iteration, and having to be based on the first iteration, and everyone will know what the first iteration is, because it'll be a set of documents is important, just make that point as well if the DCO is approved, but I was saying that the scope of matters that the self approval process would apply to is in practice, reasonably limited. And yeah, the summary I can give us is as follows that the, I think the first area is that the second iteration amp will contain a number of ongoing obligations. obligations that don't require any active approvals from any party, for example, ensuring designs are in accordance with certain standards, or certain construction management measures are implemented. And the applicant will clearly monitor compliance with these as part of the overall arrangements with his contractors and making sure that contractors are doing what they're meant to be doing. And the obviously, of course, the local planning authorities would have a role given their enforcement functions under the Planning Act. So that's the first area. Secondly, there's the approval of an environmental management system. An EMS and the reference in the reaction to that is d Gen 01. Also, the approval of coordination systems D Gen 21. What we would say to be really, ultimately, administrative matters. A third area for self approvals would be the approval of phasing which will inform how the project will be constructed and in what order. Ultimately, this would have no bearing on the efficacy of the environmental mitigation secured and the outcomes that that mitigation must ensure occur. And given the importance of coordination across the entire, across the wider project, we think it's appropriate for approval by the applicant or facing rather than an external body subject. Of course, as with the case of all of the sub approvals to that being done in a functionally separate team, as the amp sets out, the that there's there's requirements for approval under the amp of certain ongoing matters are one off events such as those relating to contaminated land. And the last example I can give you is the approval of certain detailed design matters. For example, in relation to drainage, the reference there is d dash, R D, w e dash 02 in the React where strict prescribed parameters are set out in the in the EMP, for example, by reference, and I've got that area to me, that's industry standard. So, I think that there is, you know, we're keen to point out that the self approvals are not as broad as people might think and fear, given the breadth of what will have to be approved by the Secretary of State as part of the second iteration, and

39:41

I think that is that is an important point, the breadth and the detail that would have to be approved by the Secretary of State. And also if that is, if that is simply a text or more outcome related rather than going back to the mitigation maps. What is actually going to happen On each of those areas that have been identified, and it's almost to me that difference between that if you had a landscape mitigation plan to be approved in a previous requirement, how is that reflected in the EMP in terms of the level of detail that is approved at a particular stage? I'm not asking for any more on that now. But if that's if that's something, I'm just I'm just thinking now as to whether that could be brought together in a post hearing note, because that would seem to be a key, a key matter. In all of this to bring the more theoretical discussion of amendments back to in practice? What difference is that going to make to previous regimes? Is that something that could be done Mr. Rowan Foley?

40:57

Yeah, absolutely. Yeah. Okay, well, on behalf of the applicant. So there are just to reassure that there are specific commitments in that table has been referenced table three to the restroom environmental actions and commitments around the environmental mitigation scheme and landscaping design and the requirements for consultation on that. So the landscaping scheme is D LV oh two and the environmental mitigation design is D, BD oh, five and DB D, oh, six. But we can certainly come back on that point and put together a brief summary as part of our note about how those would follow through the process.

41:31

And it really is the level of detail. Yeah, which those and how that level of detail is regulated, if you like, in terms of what is actually being consulted within the React schedule. And what is being self approved, if I can call it that.

41:48

Sort of, perhaps there are, there are two things we could include in the post hearing note. Therefore, first is we could pull out of that table three, two, in the React a list of those plans and strategies that have to be prepared as part of the second iteration for approval. So you can see, you can see that rather than going through the table and putting them out yourself. And secondly, against each of those, we can give a comment about the amount of detail that you'd expect to have to be included in each of those plans before you could expect a central state to approve them or not. And I think in that respect, there's lots of obviously industry practice and expectation that would inform I think, the issue of how much detail you'd have to go to,

42:40

right. And because this is being taken away from requirements, how that these level of detail would be regulated by the DCO.

42:49

Yes, it may be, sir, that the React? I mean, I think we will look at whether the React makes appropriate provision for how much detail those plans need to contain if, for example, and I don't know, without checking the Riak refers in relation to each panel strategy to a whole host of British Standards and this, that and the other, then that's probably answered the question, isn't it? But we can look at that.

43:18

Yeah. I mean, it we have and then in terms of coming back to the dcl, then I would imagine that that comes in as under the certification of documents. Yes, I

43:27

think I think this year, that's all then catered for through article 53, subject to discussions we've had about re examining some of the wording, but the concept and the mechanism is that is there.

43:40

Okay. Thank you. Okay, can I just finally on this item just be taken through 53. Seven, please. And just the process for the third iteration. And again, just perhaps for the benefit of everybody if it could be

explained what that is. I think we touched on it earlier, but the what it is and the process of that approval process.

44:13

I wonder if it might assist to ask for article for three seven to be displayed on the screen. So that's article 53. Seven of the DCO which is a PP. 285

45:08

So it's page 43 of that document please. That's perfect. Thank you. So this this paragraph seven of article 53, regulates the preparation and approval of the third iteration of the amp, which is the operational amp if we can use that term. But the new terminology is third iteration, rather than an op amp as it used to be. And the paragraph says that on completion of the construction of each scheme, as we've been discussing, national highways must prepare and decide whether to approve in accordance with those same consultation and Termination provisions, we've been talking about a third iteration M for the scheme, and then you've got the tie back to where relevant, the second iteration, which of course, would have been approved by the Secretary State, either initially or if amended, subsequently approved. And then, of course, you've got the provision given that this is a operational lamp that will exist for presumably many years, a provision that national highways May, at any later time, decide to approve amendments to that amp. But again, you're looped back to the same requirement that it has to be based on your master must reflect what's in the second iteration nameservers, that's relevant to operational matters, of course, most of the provisions of the second iteration then would have been discharged, because obviously, they're relating to construction, but some of the provisions will have ongoing relevance in relation to maintenance and operation. So that is the essential provision, sir, for preparation and approval of the third iteration M, which is the operational amp.

47:26

So in terms of just again, for the benefit of everybody listening so that we're clear, the third iteration amp is a much thinner documents, presumably, because it it's no longer dealing with the construction elements, those have already been determined, we're now dealing with the operation elements. And are those operation elements contained within the current first iteration of the EMP? Or are they are they do they come after?

47:56

Sir, carry wallet, national highways? Yes, they are contained in there. So at the moment, there are a number of commitments relating to for example, monitoring of the effectiveness of mitigation or specific aspects of the design. Absolutely the reference, but one example I can think of is there's a requirement for the piers of the crossing of troutbeck to be constructed in a way that allows for scour. So there was a requirement for that to be monitored and to ensure that's being effective. So what the operational end relates to is other specific aspects of the road as it's in operation, that are unique to that to the to the design of the road has been implemented. And so it wouldn't incorporate, for example, standard routine maintenance, that national highways undertaken all of their roads. It's the specific and generally links the effectiveness and mitigation

48:41

and the difference here. So firstly, that has to be done in accordance with the consultation in determining provision. So the local authorities and others would be consulted upon such a document. But the difference being here now is it doesn't go to the Secretary of State it goes back to your sales to

49:04

approve that is correct, sir, because there is that tie back to the second iteration amp and therefore, it is felt that there was no requirement for central state approval.

49:19

Okay. But then, of course, you enter this field whereby if, for example, a local authority comes back and objects are raises concerns to a part of the third iteration emp, perhaps they feel it's not been constructed in accordance with how does that get resolved? How does that resolve itself really?

49:48

Well, so I think the answer is, in essence, I mean, clearly, national highways will maintain a close working relationship with each relevant local authority. Ultimately, as I touched upon earlier, the local planning authority for each scheme has the function of enforcement under the Planning Act 2008 of the terms of the developing consent order, and that is the ultimate recourse available to it. Should it consider that preparation of the third iteration amp has not complied with the requirements of article 53 as they end up as they end up being if the DCO is made?

50:39

And finally, for me it has has the determination of the third iteration from national highways, is that something that this is new for this scheme? Or is that something who would previously have approved a third iteration?

51:01

Certainly for development consent orders, I believe I'm right in saying that, to date to date that has required DFT approval, but as part of this new approach that we've been talking about this morning, that is another change that we are proposing, but with the safeguards that I've been explaining, so, if that is not entirely correct, we will give you additional detail in our written submission. But I believe that's the position it because I think DC owes require, at the moment, the approach that has evolved requires both construction amps and operational amps to be approved specifically by the Secretary of State. Okay, thank you.

51:52

Mr. Roscoe, and then I'll ask the parties. If they have any comments as Roscoe

51:58

Australian, I just wanted to focus again on the on the detail of what's being proposed here to try to get him a practical view on it if you'd like. And I'll come back to landscape mitigation because it's in an easy one to to think of in your mind. So in terms of the EMP second iteration, you've said that the detail of such schemes if I can call it that, within a project scheme, that would be set out in that, and you're

going to give me the note to actually explain the level of that detail, in terms of the cross over them for the maintenance of that landscaping, or whatever it might be, then I have assumed that that would take place in the third iteration. It exists in outline form at the moment. Now I'm interested then, in the level of detail, in which that landscape litigation, for instance, would feature in the third iteration at what level of detail, Australian,

53:06

so I think you'll get a far more sensible answer from Miss Molly than me on that, Molly.

53:11

Yeah, Carrie

53:12

Wally for the Africans. So actually, on that point, I would have visited the detail comes in the second iteration, because the, as it stands, the environmental management plan requires the contractor to bring forward a further detailed landscape and ecological management plan. And the intention there is that obviously, they are finalising the detailed design of the landscaping scheme and the environmental mitigation scheme. So at that point, they will be able to determine exactly what maintenance will be required to ensure that that that that landscaping is effective. So in that in that particular example, I actually wouldn't expect the third iteration to bring forward any further detail. It's then about the enforcement of the implementation of what was in the second iteration.

53:50

Right. So there is actually an overlap, then, as you've just said, between the second and the third iterations. And so that overlap, then I use landscaping as an example. But would that overlap occur also in various other forms of ecological mitigation?

54:08

Yes, absolutely. That's the case. So the way we envisage it would work is the second iteration brings forward the detail of what will be required in terms of the monitoring post construction. And so the third iteration would, on the large on the whole be a slimmed down version of the second iteration, the MP define exactly what needs to be implemented during the operation stage at its most anticipated, there'll be wholesale changes unless something has changed during the construction process, in which case it will go through the approvals process for second iteration,

54:37

right. Okay. And then if I can come to another form of mitigation, the drainage ponds that are alongside the scheme, then would they actually the provision of those in terms of their capacities and functionality if you like, that would appear because there are drainage approvals in the Riak shedule if you like it Would those approvals actually include maintenance for a period of time? Maybe a maintenance regime for a period of time in the second iteration? Would that be one of these overlapping things from the second into the third?

55:11

Absolutely, I would envisage that would include, for example, the establishment of any planting around and establishing that they are functioning in the way that they are intended to be functioned, which points following that initial establishment period, they would then be handed into the routine maintenance that I've discussed around the national highways carries out on all of its drainage ponds, and all of its drainage.

55:27

Yes, it's it's particularly the stabilising, if you like establishment situation, the establishment phase posting post construction. Right. Okay. But you've just said that that would be under the second iteration, because it follows on with the same people in the same process. Absolutely. Right. Okay. So it's, it's bit of a question now as to what is actually in the third iteration? Because if we're clearing out a lot of the mitigation in terms of it following through in terms of this the second iteration the The following are the overlap of the second iteration. What is what is the function then of the of the third iteration? What areas would that actually cover?

56:08

So the intention of the third iteration is that that captures anything that's arisen during construction that requires further monitoring or maintenance, ongoing through operation, this anticipates we are anticipating as much as that as we can now, and therefore, it's been specified in the first iteration, where we anticipate that the second iteration will bring forward a lot of that detail. But there are always things that can occur during construction where things change, things have had to be implemented in certain way or, and so the intention of having this third iteration point is to capture everything that's happened during construction and make sure that all of the monitoring in particular and maintenance activities that relate to what's actually been implemented on site then is carried forward for national highways. And from a functional point of view within national highways. That's also the point at which the contractor is obliged to submit as built drawings and environmental datasets to national highway so so as well as the commitments to mitigation, there are functional aspects that national highways control, the third iteration delivers as well. So you

57:08

could you could almost call it a quality assurance, compliance check, if you like on what is actually being constructed against the mitigation? Absolutely, yes. Right. Okay. So we have that then, in terms of the structure of that, then would it be possible to have were, from what you've just explained? Where can we find that in the evidence?

57:40

I'm not sure I'm fully understanding the question. So

57:42

okay. You've just explained the process and the overlaps? Yeah, yeah. And you've explained that sort of a lot of the examples that we picked, are actually part of the second iteration. It hasn't been clear to us about the direct overlap. It could be that in the in the shedule. It's, it's there, it's there somewhere. But this difference between the second and the third iterations hasn't been doesn't hasn't to us being

described in the way that you've just described it. Okay. And I'm asking, Where would where would we find that?

58:16

I mean, something we can take away and come back in writing, I think it was probably helpful to refer to the National Highway standard that this has been designed against. So there is a national highway standard, the design manual for roadbuilding la 120, which is publicly available document, but we can provide a copy to yourself before the examination. It's not a full examination. But in within the document itself. There was a description in section one around what the third iteration consists. And then within each of the commitments, it specifies the timescales at which that applies. But I think that's something we could come back to you in writing on and describe further Exactly, we can signpost to exactly where you might find that those descriptions as to what will be in second won't be in third.

58:55

So if we can just be clear, it seems as though and I was asked to note considering the same subject, but it was something that we would have got to anyway, in terms of a posterior note on this particular subject to describe what you've just described, refer to the manual for read and vitreous document that you've just done and referenced that and provide any extracts of that. And also to see Yeah, yeah, all Yes. A statement on what constitutes if you like a more decent slightly more detailed statement and what constitutes the third iteration in terms of the type of practical language and practical aspects that we've actually used because

59:45

we can certainly do that and I think la 120 within the design manual for roads and bridges will really help you to understand the thinking behind this, this this quite recent. Move away. by national highways from the old sort of naming conventions of design enps, construction enps and operation enps to the first, second and third iteration approach, and thereby I think it will also be helpful to you to buy by referring to that, as a 120, we can add in any additional commentary that we think is necessary to to be really clear from that what the operational lamp will and won't contain. So we will do that in the posterior node.

1:00:30

Yes, sorry.

1:00:33

I was only going to say yes, I personally would welcome that and seeing how it all fits together. Because I think that's been a lot of the questions that Mr. Roscoe and I have asked over the course this morning of how it actually is going to work together. So yep. So that would be helpful. Okay. Does anyone want to make any comment on what they've heard this morning that says that that concludes all the questions I had on that first part of the agenda. To one and to two suits. Is anybody wants to say anything? was going to look for hands up at all? I'll tell some awesome.

1:01:13



Okay. I just wanted to make the fairly obvious point that from the point of view, the public and local residents, they are actually very vulnerable. And what might seem like very minor changes like phasing, or I'm also looking at working hours, for example, could actually have a devastating effect on individuals. So I would just ask the everyone just to consider that. Now, when you're actually looking at the impact of people on the ground, who are living near roadworks. One of the questions we already asked national highways, well, would there be work at night, this is from a 90 year old, the working hours already quite broad, actually 730 to six, and they could be an hour earlier or later. You know, it's that sort of thing is can be changed very easily. Moment is supposed to be changed with the Centre for local authority. But if kind of safeguards aren't in place, then you know, this may not be a good example, people, people's lives may be really devastated. I hope that was appropriate at this point. But I would ask people to remember that because I'm just thinking of people in the cottage with bulldozers, not very far away. Thank you.

1:02:34

Thank you very much. With no other hands. Mr. Ryan has any final comment? You want to make either Dr. Martin or anything before I adjourn for lunch? So no, thank you. I

1:02:46

don't believe so. We do know at that point and absolutely understand it. Thank you.

1:02:53

Okay. I'm proposing that we take, again, 45 minutes for lunch. Is that okay for everybody? I'm not seeing any particular concerns from that. So it's just before one o'clock we resumed then at quarter to two, if everybody's happy with that. Okay, and then we will move on to Item three on the agenda and design and landscaping after the lunch so until quarter to two This hearing is adjourned.