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01:33

Few things really to announce. You'll notice that somehow we've lost two members of the examining authority. Obviously, time has gone on a little bit. And unfortunately, Mrs. MILLIKEN and Mr. Humphrey have had to leave, got to some distance to travel. So their items were done in any event. And so it's rather than defer everything to written response. We are hopeful that we can just finish off the last of the items on the agenda, which I hope won't take too long. And we can do them fairly quickly. So if I could start on 3.2. And as I say, I really don't anticipate very long discussions, few minutes on each I would think. So on traffic and access, that the main concern here, Mr. Owen is the access to the Countess pillar. And you'll hopefully have got from the agenda item anyway. That the NSA wants you to have questions wants to question about the no pedestrian access to it to from the B six to six, B six to six to sorry, in the Penrith area, and that the only site access will be by car from the east to the car park and then by foot. I think what we wanted to ask, generally, was whether the footpath from the west could be in some way reinstated into the scheme. So so as to provide that pedestrian access.

03:33

Robin for the African. Thank you. So I think this is a matter for Mr. Poole carry, because it is a design issue, isn't it rather than the assessment issue of heritage impacts? So and I think we can confirm that there will be retained pedestrian access. Mr. Carey, would you briefly deal with the point please? And I'll then come back and just talk about how that is secured.

03:59

Yes, craftsmen poor carry for the applicant? You're quite correct, sir. In terms of the the current vehicle or accessories from the basic to so it'd be 6262 as advertised on the the heritage websites and walking distance from there, in terms of pedestrian access, there are PMAs that connect across, certainly so we can take that away to have a look at how we can then provide the rights of access over those routes due to provide pedestrian activity.

04:34

Thank you. It's just that the doesn't seem to appear any mention of the removal of the Western path or in the walking cycling and horse riding proposals a pp 10. And so I think we will not to ensure that there is still that pedestrian access from the west. Are you saying that there will be and is it is it illustrated in the drawings

04:57

that I think we need Where's the microphone? On? Can you hear me? Okay?

05:04

I think my microphones okay. I think John says just speaking. Hello.

05:11

My mic isn't working either. Right. I thought at first I'll raise my voice a little bit. I thought at first it it was because you weren't in line with the microphone. But to me as well.

05:21

I'm looking at the back to see if they can fix the microphones John to try now.

05:26

Hello, Paul. Sorry. Would you mind repeating the question? Sorry.

05:33

Yes. I just wanted you to confirm that there is a Western pedestrian access route to the Kansas pillar, and where it is indicated on the plans? And if it is not, would you be updating the plans accordingly?

05:49

Could I take that away, please, to certainly we are provided from a vehicular point of view from the former llama karma cafe, as indicated on the general arrangement drawings that are cited in terms of access from the west from a pedestrian route. I would like to confer with colleagues as to how the provision has been provided for not so we put that in the post hearing note, if that's acceptable.

06:13

Yes, thank you. And but but just confirmation that it will be provided, just want to confirm how it is being done. That's, but it needs to be provided?

06:22

Yes, sir. We can we can provide that that just need to go through the machinations of how so yes.

06:27

Thank you very much. Mr. Roscoe.

06:32

Mr. Owen, does this work in yesterday's? Mr. Owen, I understood that you are going to explain how that will be secured.

06:41

Thank you. So Robbie, and for the applicant. I was going to explain that and it may well be that we I mean, currently the Environmental Management Plan EPP 19, the reactive the flow? The Yes, yes, the React table has a commitment in it reference M W. C. H 02, which secures the mitigation required for in part access to the Countess pillar, I think we may need to in parallel with what we come back to you on as Mr. Karis just said, just review the precise wording there because it may be that the wording the commitment wording needs a slight tweak to cover access from all directions as proposed to be provided. So there is a proposed securing mechanism and it may or may just need to be tweaked.

07:35

Thank you, and apologies for not seeing that you wanted to come back on that. Mr. Roscoe?

07:42

Right. In terms of this agenda item, it's not within the agenda item. It's a little bit of a supplement supplementary, but it results from yesterday. And we've had some contact to suggest that yesterday and agenda item 2.3. In issue specific hearing one, that the the item, the part of the agenda item relating to the proximity of the route choice at Kirby thought to residential properties wasn't actually dealt with. It's my belief that it was dealt with because it was at that point in the hearing that the presence of mind workings was brought to my attention in terms of their proximity to the British gypsum site and the space, if you like that exists between the residential properties and the British gypsum sight at the moment. So I am satisfied that my particular question on that in terms of the proximity to residential properties was answered yesterday, and it will come out in the applicants oral summary of what was said. But I don't know if anybody else had anything else that they thought might not have been considered under that agenda item. So what I'll do I'll just go around again, anything at the tables? I don't see any hands raised anything in the room? I don't see any hands raised. And in terms of the screen, I don't see any hands raised. But what I particularly wanted to do is Miss Nicholson, I can see that you're still online. Is there anything that you wish to add to this particular point? And I can see your hand going up now. Thank you. I don't have I there's something wrong with your camera at the moment. All I'm getting is a lot of squiggly lines. Right, I can see you now. Thank you.

09:36

Okay, it's the agenda point had been raised. Simply to get sorry,

09:42

I'm sorry. I didn't catch the first words then.

09:46

Can you hear me? No,

09:47

I can. Yes.

09:50

If the agenda point had been really is just just to understand the proximity physically and you feel it's answered, then I can can understand that and I suppose more widely. It's goes in very close proximity to a school, a church, it has moved closer to housing than it was at the point of statutory consulting. And I would say that in the route choice selection, proximity to properties appears to have been appointed really given significance should have it's described, bypass bypass normally takes proper traffic further away. On just feeding or appointed day in respect of noise. I noted the wreck to the horse bear had been given some information about how noise would be reduced their sight issues once a year. Yes, there's quite a moment of time spent on aid for a granular set of an area of Barnet Council. Where that is impacted by traffic crashing. Kirby Thor is going to be absolutely enclosed by a 70 mile bar carriage way with no information about noise other than the font, bare feet in the air, we are told 200 Plus property will be personally affected. No breakdown of which properties those are no

description of how that will change for them. And I wonder in those circumstances, whether the panel agree that there should be more detailed, more is assessed and the draft Kirby soar.

11:55

And we're actually prepared. Thank you. Thank you for that. We've obviously got your points both on the recording and I've made notes as well. I'll just go to the applicant. Now. Mr. Rowan, realise it's slightly out of sync. But is there anything you would wish to say in response at this time? Or do you want to put a note in on it?

12:13

I think Carrie Wiley will just respond to that initially. Thank you.

12:19

Carrie Wally, on behalf of the applicant, I can confirm that a detailed noise assessment has been undertaken for the entire tire project. And that includes Kobe Thor. And that is reported in chapter 12 of the monitor statements, which is document app oh, five, five, and that includes details of the noise mitigation that's been incorporated around Kobe soil in particular.

12:40

Thank you. Was there anything else? Mr. Owen? No, thank you, sir. Thank you so much Nicholson, you've you've heard that we've now got a reference to be able to go back to in terms of the particular aspects that you've that you've raised. So that gives us the opportunity to follow this through further. Was there anything else you wish to say?

13:01

You I think there's a difference between it being completed. And it being shared no digestible way that be understood by the households affected, and can help inform the action, whether this is the right route? Or not. So simply being complete?

13:19

Yeah. Right. Okay. So I've obviously heard now the points that you're making that you may have wished to make yesterday and might not have had the opportunity to do so. I've now got the reference to be able to go back to in terms of the study that was done. Is there anything else you wish to bring to our attention? On this particular matter?

13:39

Will national highways share, activate a heatmap? With each of which properties are adversely impacted? And to what extent the ends of the road? No,

13:53

right, Mr. Rowan,

13:57

Robbie. And the details requested are all in the document that to carry what he just referred to, namely, the noise chapter or the model statement and the relevant dependencies.

14:08

Thank you is there is a some kind of mapping in the document.

14:12

There is an order the heat maps that are referenced, we can in the post here and they provide the specific reference to the one that relates to Kobe Thor.

14:18

Thank you. Thank you. So I've effectively then had a response to that point as well. Ms. Nicholson, was there anything else you wish to add on to this? Well, they have my maps. Yeah, it would come through at this stage at this stage, it will come through on the examination library as a response because all communications now in terms of the examination have to be through because it's been raised in the examination, it will be put on the website and you'll be able to access it and others will be able to access it from there.

14:46

And is that on the December while

14:52

that's that would be the date for submission of that, Mr. Rowe, and that's the 14th of December. That's effectively deadline one yes, it's effectively dead. On one, yes, yeah. Okay. Thanks. Bye. I hope that we've actually covered that. Thank you very much. Was there anything else on the subjects that I've just been talking about just looking around the room quickly and looking for any hands up on the screen now? All right, thank you very much.

15:15

Thank you. Let's move on to 3.5. And again, Mr. Owen, I'm looking to you we can do this is the sort of quick way or the long way really to deal with this. Essentially, the quick way will be would the applicant submit the app Oracle in impact apart cultural impact assessment into the application? So that can be known the location of the trees to be lost? The maximum number, admittedly, the document may may change through the examination, and that's fine. But what we don't know at the moment is the is the location of the trees that are coming out. The species and the quantum of trees a maximum number. There are a year there are reasons that I asked for it because I think the Secretary of State should know. If the answer is yes, you'll provide it then we can leave the lead that there and if not, then I'm going to have to ask you a fair amount of questions as to why not so I shall. I shall await your answer

16:24

for the applicant. The position, I'm afraid is that we do not propose to provide an agricultural impact assessment at this stage. We can explain we're ready to explain today if you wish as to why we have not completed and other cultural impact assessments are referred to as an Ay ay ay ay to date. Secondly, we can explain how the proposal is. We have the commitment to complete an AIA during the

detailed design stage and why we consider that is more appropriate. We could also address if you'd wishes to the other agenda item of the practicality of the two for one replacement policy for replacement tree planting. We address those issues if please. I think Mr. John Simmons who you heard from before, could I invite you to address those issues in turn, please.

17:24

John Simmons landscape architect for the applicant. The landscape and visual assessment detailed in chapter 10 of the environmental statement app oh five three, that was undertaken using a reasonable worst case scenario, allowing a degree of flexibility in the design without compromising the robustness of the assessment. In respect of tree removal, there was an assumption that all trees located within the Indicative site clearance boundary, as shown on figure 2.2 of chapter two, the environmental statement app six two would potentially require removal. This was to ensure that a reasonable worst case scenario was assessed. Tree and wooden cover was evaluated by looking at aerial photography and ratified by site surveys and site photography. On this basis and acknowledging the flexibility within the design provided by the limits of deviation, it was considered that the completion of an AIA the preliminary design stage would not further inform the reasonable worst case, landscaping visual impact assessment undertaken within the environmental statement or the associated mitigation requirements. Tree surveys because trees are living things and subject to disease wind flow felling form the basis down the tree service form the basis of an AIA are usually considered out of date after 12 months and require re survey. It was identified early in the assessment process. And that's one of the reasons why. But we did realise that it was important to recognise there are a number of important trees along the route due to their age, visual prominence or ecological value. And these notable veteran trees have been identified by site survey and are noted within the chapter six biodiversity of environmental statement. Specifically paragraph six, point eight. And that's ap 049 These are all represented on environmental statement on 3.3 environmental statement figure 6.2 Ancient woodland ancient tree inventory and habitats a priority important stats app seven. And the location of these notable veteran trees have been used to inform the design of the road alignment with the trees retained where possible, and I could give you some examples of this. But given time is short well, we can move on. But the commitment to complete the aid during the detailed design is more appropriate because as the design develops a targeted ad would be more focused in scale and extent, giving a more accurate measurement of trees to be removed with the intention of retaining as many existing trees as practicable through the desert detailed design process. The project PDB project wide principle for addressing committing to tree protection at the detailed design stage and I quote, the detailed design must minimise impacts on mature trees, root protection zones and mature tree canopy cover and suffices reading reasonably practicable carry out the detailed design, so as to retain mature and established trees as valued landscape features. And that's a document document 511 PDP LC o 3x, three, two D LV 01 of the 2.7 Environmental Management Plan, the app app 019 secures the requirement of for an AIA prior to the start of contractions construction, with tree protection plans prepared for the protection of trains retained in line with relevant British Standards within the within an immediately adjacent to the order limits. Moving on to the practicality of the two for one replacement. Well,

20:55

can we come back to that? Let's let's I'll do that into two Sumption. So I've certainly looked at all the references you refer to. Now, can I just take you back a step you talked about that you had, in the ES have done an assumption that all the trees are to be removed as a worst case scenario? Have you got a number on that? Do you know does the yes actually state how many trees would be removed as a worst case scenario?

21:26

Not a Number. But we do have an estimate of the area, we've got the areas on the plans that we use to prepare the designs.

21:37

You see, I questioned that you must know that you must have you must have know how many I think it's important the secretary of state knows at a worst case how many trees are to be removed, I would I would perhaps ask you to look again into that to provide that number, even if it's if it's a an absolute worst case. Principally, my concern here is about as you've indicated that you will be looking to preserve as many trees as you possibly can. I think that's the sentiment we will we will share. But But my concern is without the AI AI in in front of this examination. We are leaving potentially to chance trees being retained at the behest of the operators on the ground. This is this is a conversation I had again on a previous national highway scheme where you can perhaps identify an intention to retained trees. But then when you're actually there on the ground, or the operatives are there on the ground. Trees can be just removed because they're in the way they're inconvenience that just wants to get rid of them. And it just I'm just slightly concerned that at this stage of the examination, we don't really have much in the way of a commitment and action identification of the trees in which are to be retained, or at least a maximum number of trees to be removed to so to report that to the Secretary State. So I asked again, really as to whether that figure can be provided into this examination so I can report it to the Secretary State.

23:29

The Rubio and for the applicant was sitting take away the request for a number of trees that would be lost. In terms of the point you made just now about it being down to the operators on the ground, I would just reiterate the project of the project design principle, Project wide principle of addressing or committing to true relocation at the detailed design stage and there is this provision in a pp 302. And it's project design principle, LLC 03, that the detailed design must minimise impacts on mature trees, root protection zones and mature tree canopy cover, and so far as reasonably practicable carry out the detail design so as to retain mature and established trees as valued landscape features. And as we know, the product design principles are secured by article 54. So there is that commitment,

24:23

as is the words reasonable practical as well. And that's that's where I fear, Mr. Mr. About that trees are removed under that, well, it wasn't reasonably practical to keep them and there would be a lack of scrutiny on that. I would Okay, I'm going to ask that you think about that again, if not a full i i think it would be helpful to me to understand where the trees are to be removed and I A maximum figure that could be provided even if it's not a full AIA, I will ask you to take that away and reflect on that for me, please, we will do that. So thank you. Now if we can then just move quickly on to the tree replacement.

And as you identified there is a requirement as a commitment, apologise in the EMP, that trees would be replaced on a two for one basis. I'm just wondering, I'm just wondering how that plays out when, for example, if we take the template roundabout area, so in schema 102, the roundabout itself contains trees, all of which would have to be removed as a result of the proposal. And there is also a bank of trees on the north side of the of the a current a 66. Which would also have to go as a result, and there just to two areas of many along the route that I've certainly looked at. It's not clear to me were in that area, the two for one trees, tree replacement could actually be undertaken. So perhaps I could ask, Mr. Simmons, how old or how you how how that would actually work. I

26:26

think that is a matter for Mr. Simmons, please.

26:30

Johnson's landscape architect for the applicant. I think the simple answer to that is that they're not actually might not actually be plant replanted, where they've been taken away from, and that the mitigation design as presented in 2.8. environmental mitigation maps at 041 considers overall the value of woodland blocks and green corridors and seeks to restore these if they're disturbed by the proposed scheme. In all cases, the ecology and landscape teams work hand in hand to ensure the proposed replacement planting provides the right ecological balance and would not alter the landscape character. So there are places where you can plant trees in places where you can't and we heard about that earlier

27:14

today. And just the examination have the evidence of where you're proposing to put these trees to plant the honour to for one basis. And I don't even know what to two for one means I don't even know how many trees you're proposing to put back whether the area of land is big enough for that. So that the commitment as I look at it means very little at this stage.

27:37

Yeah, it's with regard to the practicality of replacing a rate of two trees for everyone lost, while the X exact number of trees that will be lost has not been assessed. The change in colour and changing woodland cover has in terms of area and the type of woodland there'll be lost. In the area of woodland mitigation planting, identified it, it's identified in the mitigation plans, is based on habitat multipliers and variables prescribed by the biodiversity net gain metric, which leads to a replacement ratio, which is typically greater than 2.22 for one for woodland woodland areas.

28:13

And I appreciate that Mr. Simmons, what I'm trying to establish is I'm looking for where it's obvious that that can occur. And I'm not I don't see it. And so therefore I question the commitment can actually be carried out. And that's what I'm asked. That's, again, what I'm asking for some evidence. So I can actually see that if it's your if it's your tree replacement strategy to say, well, then we can't as you've just said, we can't put them in the locations, we're taking them out for obvious reasons. Because if we take temporary roundabout, the the structure that's being replaced, would have no tree planting, understood. And I'm looking for the locations to think right, okay, on a two for one basis. Where could they go?

Where's it obvious that they would be replanted? I'm not I assume that would be in the AIA, which I don't have. It's an again, it's a question.

29:09

It's on the mitigation maps. I don't know whether they

29:12

Yes. The mitigation maps are quite high level though, aren't they? And they are generally just colour coded with landscape mitigation.

29:21

Yeah, the code, they're coded for woodland as well. So if you wanted to look where the wood blocks of woodland are.

29:34

Right, well, I'll I'll, I'll leave it there. But I'm not particularly convinced. I had to say this.

29:41

The mitigation maps were prepared, as I said earlier by the ecology team in conjunction with the landscape team to make sure that there was that ecological balance and it conformed with the landscape character of each area.

29:53

Okay. Mr. Roscoe?

29:56

It seems to be again to me a little bit like an A to BC situation like I was talking to before in terms of their climate matters, except this time, maybe it's a, b to a situation. We've got the mitigation maps that we can see the various types of habitat proposed. And we don't have anything which almost simplistically, more simplistically than the detailed study fingers actually brings that back to how many trees would be lost? Or how have those areas been calculated? Bringing it back to the specific subject of tree loss? Is there anything that can be given to us at a higher level of detail, if you like to, to inform us about how that has been done?

30:42

Robin for the applicant, I would hope there is something else we can provide you with in terms of information, I'm hearing what you're saying, of course, the overall difficulty is that we do not have a detailed design, we will not have a detailed design before a decision is taken on this application. Therefore, I think the most we will be able to give in terms of trees losses, the maximum number of trees that could be lost. But of course, the actual number that would be lost, as per the detailed design, would we would hope be less than that. So I think that's the essential position we're in but I, you're clearly wanting some more information. And we will take that away. And certainly the post hearing note, respond with what we believe we will be able to do it maybe that we can't provide all that information in the post hearing note, but if we can't we will say when we'll provide it.

31:39

Thank you, Mr. Owen for for that. Basically, though, it's it's how have you come by the areas like C DODDS from your team, the areas on the mitigation map in terms of let's just call it Woods replacement or tree replacement and work that back to how many trees that would allow to be lost? Due to one figure or however you wish to do it?

32:00

Yes. Point taken, sir. Leave it with us, please.

32:04

Yes. Because you know where the road is going. So you should be able to calculate within that the trees to be lost, even if you take a maximum number at this stage, which I think would be very helpful into this examination, and certainly informing the secretary of state of that, thank you.

32:20

So that's understood, thank you.

32:25

Okay, just before we move on to air quality, item three, six, just to inform you, Mr. Owen, we're going to be awesome to go through our action points in a little while. So if you could have those ready there were quite a few of them, but it would be not springing on you. But we will need to go through action points at the end. So if somebody is not working on that they may or may may need to write on air quality. Very quick point in Australian we're just reading natural England's relevant representation and I and I've got a hand up is that Miss Nicholson is is that a new hand? And if so, what item is apologies What what are you speaking against?

33:19

It's in relation to tree planting and mitigation on land ownership. It's very quick it's an observation of our experience of as landowners and the absolute and I think this will come up again and again tomorrow. The absolute uncertainty there is about the extent of mitigation and land that's required and it does seem to be because they don't actually know themselves and that is causing absolute chaos for landowners in terms of how much will be needed the figures vary all the time on so that it doesn't continue to bury as this goes ahead there doesn't need to be searching to find it hard to believe don't know how many trees it does feed into the basic questions like they also say they don't know how much it's going to cost for each section. But I think

34:27

I think we got most of most of that actually just asked the just the applicant want to respond to what they heard.

34:37

Robbie and for the applicant, all I would say is it's actually not hard to believe that we don't have a total costs for and details relation to trees precise details because we do not have a detailed design yet. So

it's it's self evident. I would say as to why we are in the position we are in and that is no different to any other major highway scheme.

35:02

Next thing any final point?

35:05

No, no, that's fine. Okay,

35:07

thank you can't see any other hand up. So I will move on to air quality. And as I say this was a very quick point please.

35:21

Yes, natural England's relevant representation and statement commonground says there are outstanding issues with respect to the guidance set out in dmrb la 105 in respect to air quality. I think naturally, we have now gone, which is a bit of shame. But I just wondered if you could update whether there's been any progress in respect to that.

35:45

So, thank you, Robin, for the applicant. Mr. James balandra, from Eric, who's a senior consultant responsible for air quality is just joined the table. Down the end of my left hand, I think he has been in charge of or been participating in the discussions with Natural England on this very point. And I know our meeting has been arranged for the eighth of December. But Mr. Manager, would you introduce yourself and just take the issue as brief as you can, please? Yes, thank

36:11

you, James Behringer, air quality lead on behalf of the applicants. So yes, there was a meeting arranged for next week with Natural England. And on the point of implications on the examination, I would just add that the assessment we have carried out is fully robust. And there's four key points that I can cover very briefly for you. Firstly, the assumption around the emissions factors used on the traffic data being conservative, that allows us to be confident in the results of our assessments, the air quality monitoring for ammonia, there was scheme specific monitoring, without which we wouldn't have the absolute certainty in the concentrations predicted within the modelling, there's undertaken for the air quality assessment. The third point is around the use of the ammonia modelling, which is one of the key points which Natural England were previously concerned about. And therefore by listening to those concerns and taking that into account with Ana modelling, we are able to calculate a full view of the tight total concentration changes. And then the last key point is around the fact that we have been able to take into accounts the natural England's concerns in terms of relying on the loss of one species metric. And I'll hand to my colleague on the ecologist team to elaborate further on that point.

37:40

Thanks. Thanks, Tom house to biodiversity specialists for the applicant. Notwithstanding conversations have between Natural England and national highways outside of this project. at a project level natural

engines have indicated that they do not support the use of dmrB la 105, specifically with reference to the loss of one species metric. But just to be clear, the assessment is not based on that metric. The loss of one species metric was reported in line with dmrB. And for consistency with other road schemes. However, the metric does not form the basis upon which the assessment was made. That was made using other sources of information, including habitat mapping, to inform on the presence of qualifying features within the potential zone of influence date on the current pressures and condition of the site professional judgement and robust ecological principles. The loss of one species metric was not used to opinion on the adverse effects on site integrity. And crucially, I think no designated sites were screened out further assessment based on the loss of one species metric, and that was either screening stage, which is application 234 or during the appropriate assessment. And that's app 235.

39:11

Can I assume then that the Natural England weren't aware that you that you hadn't used the LA 105 modelling on the one species one species modelling is that

39:23

I, because it's presented in the report? I think there's some confusion about how much it was relied upon.

39:33

Okay. So you're hoping that that confusion can be resolved? What at your meeting on the eighth?

39:41

We're confident of that? Yes.

39:42

Okay. Okay, well, I'll wait to the day. Don't lose. I'm on response on that. Thank you very much, indeed. Thank you. Anybody else got anything sound air quality? Nothing in the room? Nothing online. Nope. Okay. Thank you very much. Moving on to cold Through heritage. Mr. Owen, I don't propose that we necessarily need to deal with this too much. On the bullet point two, we've noted you have already made a response, I think in relevant representations. So I think we can take that already. And on the first one, I think we're happy to take a post hearing response on that, I think the issue is set out quite clearly there. I'm very happy for you to respond to that, if you'd like to, or you can provide a response now, if you prefer, I think Clary,

40:36

Wally will just give you a short response. Yes, thank you.

40:40

Yes, Carrie, why, on behalf of the applicants, I think I can give a quick response because of context. And we can always provide some further detail if it's helpful. I can confirm that there's a TV wasn't prepared for the limits of deviation and I can explain the reason why the zone of theoretical visibility is prepared using a series of

40:57

packages slowed down a bit. So I can make a note of this thank you course I

41:01

can. The Zed TV is is basically formed using a variety of models and mapping data. So we have the the engineering scheme itself, which is in an engineering model, we have digital terrain data and GIS mapping, we don't have an engineering model of the limits of deviation, because they are limits of deviation, they're not that we take the illustrative scheme to do their TV. Because the limits of deviation are to allow flexibility around variations we don't we simply don't have a model. So it's not possible to produce as a TV of the extreme limits of deviation. So instead, what we use is that TV we have we use site surveys, we use a variety of other information to inform what we call sensitivity tests. And each of the topics including heritage have been through the limits of deviation, they identify the particularly sensitive receptors where the assessment conclusions could be affected by a change within the limits of deviation. And then they use the relevant sources of information for their assessment to do those sensitivity tests. So I can confirm that that was done. And it didn't use as a TV model, but it used other information such as setting assessments, some of the some of the photography we have on site visit.

42:22

Thank you. Okay, thank you very much. Okay, so there's no other points on that. Yeah, I'll do it now. On the draft development, consent order, Item four on the agenda. I think Article Two, we've already debated at length. I don't propose we go there. And on Article 15. I propose that we will discuss that tomorrow in the CEA hearing. Mr. Roscoe wants wants to talk about that on from a CEA point of view, and then I can do I can perhaps piggyback onto that tomorrow, if if perhaps that, that save time, that's helpful. Okay, Mr. Owen, I'm

43:17

an Australian, I'm taking care in the widest definition of the term. And doing that.

43:22

I understood that so thank you. Okay. So on Article Three, and if you could just bear with me talking. Just get my question on it, please. Yes. Again, I will only be a few minutes with this. Okay, is referring to the DIS application of legislative provisions? And I'm particularly just want to ask a couple of questions on one A, which is sections 28 II and 28 h of the wildlife and countryside act 1981. As I understand it, Mr. Owens, the provision would disapply a triple si to be designated. So if it was a rather if it was to be designated on any part of the order ordered and also the order limits sorry, if it's designated on the order limits, it wouldn't have effect within the order limits. You would you therefore would still be able to construct the development that I understood that to be correct. A trip that a designated triple si would have no no effect. Just seek of guidance on that place.

44:48

Just one moment sir, please of course. If you do that, that's fine now we're gonna so thank you for that Robin for the applicant. If I can just explain the thinking here in that section 28 II of the wildlife and countryside act of 1981 requires owners and occupiers of land within a site of special scientific interest to triple si to give notice to Natural England before carrying out an activity that is specified in the original

notification of the site of special scientific interest. And the other provision, section 28 H imposes a duty on public bodies such as national highways to give notice to Natural England before carrying out activities likely to damage the features of scientific interest over triple Si. And as we explained in the explanatory memorandum, paragraph 610 and 611. And that is a pp 285. We consider the DIS application of these provisions is appropriate. If development consent is granted, because issues relating to the management of sites of special scientific interest potentially affected by the project will have been thoroughly examined through this process and appropriate measures required to safeguard and protect their features are already included and will be included in the environmental management plan and therefore secured through the DCO. For example, Measure D slash d dash g n dash 07 in the register of environmental actions and commitments, provides for methods statements for working in or near a special area of conservation. Sorry, can

47:29

I get that reference again, please? Sorry,

47:31

it's D hyphen, G E, N, hyphen 07. So that's one of the provisions in the in the register of environmental actions and commitments. And that requires, rather, that provides for method statements for working in or near a special area of conservation, and measure. For example, D hyphen, BD hyphen, four makes provision for the protection of the special area conservation crossing at troutbeck. And the, the rationale for this application is wholly in line with the One Stop Shop concept. And we do wish to ensure that there is a framework for securing the protection of all these features through the Environmental Management Plan, which is not then duplicated through existing legislative process that seeks to achieve the same outcome. So that is what we're seeking to achieve. And we believe that in line with what we're saying this morning, the environmental management plan is the right home for this single sources of truth, if you like in terms of mitigation and management of the construction impacts of the project, and therefore, that is why we are proposing to disapply through this article of the DCO. The those two provisions of the wildlife and countryside act.

48:51

Thank you, I just want you to understand that that is what would if Natural England were to designate part of the the order limits as a AAA psi, it would have no effect to that sense. It would it would if they were to walk out and say actually, we're going to, you know, bit of scheme, eight is going to be in the triple Si, if this provision would would say well, that doesn't matter because we're still building it that I just wanted to kind of understand not saying it's the wrong thing to do. I'm just just trying to understand that that's what the article would do,

49:29

in effect. So what it would do is it would it wouldn't prevent the designation of the triple si taking taking place. But it would mean that one of the effects of Lam being notified as a triple si wouldn't prevail because of the DIS application and the key effect being the obligation on owners and occupiers of land to notify before carrying out activities so that wouldn't apply if the land concern became a triple Si, and also the public bodies duty. I mentioned about giving notice of carry out activities in in in Section 28. H

wouldn't apply. So it wouldn't prevent the designation proceeding. But it would mean that the normal rules relating to works in AAA size wouldn't apply.

50:18

Thank you. And you're not aware of Natural England intending to AAA psi, any of the any of the land within the order limits is not, it's not something you're aware of.

50:31

Personally, I'm not aware of that at all. I don't believe the project is either Macquarie wall is agreeing with me.

50:37

Okay. That's all the questions I had on that. Yes. Miss Roscoe

50:43

was throwing just in terms of Article Three, one F, which is relates to Section 80 of the building act? I'm not quite sure in my mind, at the moment is the where that sits in terms of prescribed legislation under the guidance or not. And if that could just be checked.

51:06

Robbie, over the African is the question whether that provision is within section 150 of the Planning Act in terms of Yes, right. I, I can't remember whether sheduled two to the regulations includes that provision. So we can easily confirm that in the post hearing note. Thank you.

51:27

I do have one final question on the DCO. It is, if you'll forgive me, it's a kind of a nuclear option question. But one that nonetheless, I have to ask and one that could. So possibility, I suppose would be with the Secretary of State, and it's this. It's whether either the examining authority, or the Secretary of State finds that one or more, but let's go with one of the schemes is unacceptable environmental terms, for whatever reason, and without prejudice to your position. And I want to make that very clear. Is it possible that the Secretary of State can remove one of the schemes from the order and grant consent for the rest? Or is it a one out all out? If if one scheme is unacceptable, the whole development is unacceptable. And as I appreciate that, that may never happen. But it's a possibility. And I just want to get your view that if the Secretary of State arrived at that position, what would he do?

52:36

So I think the position there is that the central state, under the provisions of the Planning Act of governing the role that the Central State plays at the end of this process, he or she have a number of options at their disposal, and there are a number of courses of action open to them. If you're recommendation were to be that one of the schemas, for example, wasn't acceptable. Clearly, the sexual state would take a view about that. And he or she might agree with that recommendation or not in the event that it they didn't agree with that recommendation, then clearly, they could proceed to if they if everything else was satisfactory, in their mind, they could proceed to make the development consent order. If they were to agree with that recommendation, then there are a number of options

open to them. They could, for example, invite national highways to reconsider the aspect of that scheme that was causing the effect which was considered by them to be unacceptable. Based on your recommendation. There is flexibility in the planning acts in terms of the options that the tools available to the Secretary of State in that eventualities. So there are a number of permutations there, sir, that I think any one of those could could apply.

54:12

Yes, I'm grateful for that. And as I say, I fully accept that, that it's not your out what you are seeking to achieve. And I appreciate your downside, obviously, without without prejudice basis, because you consider the all of the schemes are acceptable in environmental terms. But I just want you to understand that he could the Secretary State could could refuse one of the schemes but allow the others. It isn't a case of if he were to arrive that no one of the schemes aren't acceptable, the whole order would fail. That's I just want to understand that and I'll reiterate on your answer is without prejudice.

54:58

So I think the issue that needs to be remembered here is that the scheme objectives, in effect, make this one project comprising aid schemes as you know, aid schemes, and therefore, there may well be in the eventuality you're, you're referring to the need to balance the overall public benefit that the project as a whole would bring with the environmental impact of the one scheme concerned that you're referring to? And if that's why this is quite a complex issue, because you're the central state would need to consider the overall project as well as the individual components.

55:50

Okay. I'll leave it there. Thank you. Any other comments on the DCO?

56:02

Not from ourselves today, sir.

56:05

None for the local authority, and no one online. Okay. Well, that brings us most of the agenda, the the item six, is there really, if you want to respond, you'll know that the XA issued a number of supplementary agenda questions alongside those were designed to free up the agenda a little bit. And rather than ask questions that were yes, no, sort of type answers or clarification questions. Is there anything you want? You may not wish to say anything other than yes, we'll, we'll do what you ask or yes, everything seems fine. But is there anything you want to say against the supplementary agenda? Additional questions other than, you know, your provide an answer. But is there anything that you're looking at thinking, you know, that we need to be aware of stage

57:00

Rubio for the applicant? No, sir. We are busy working on answers to those and they will be provided at deadline one as requested. So we don't need to take up time today.

57:11

Thank you. Is there any other business that anyone any that anyone wants? Just there's only the council left, and here in the room? Anyone on line? Anybody wants to say anything, as I look to draw the hearing to a close? No hands up at all? Okay. It just leaves us to go through the action points. Again, I have around I think 2028 Or so I think maybe. So if I could ask if you could just go down your list and I'll see if we were aligned up.

57:58

So Robin for the applicant, we have 33

58:03

That's exactly why I've that's why I get used to read them out rather than I do. So yes, if you could go through them and then I can sort of tick them off and add the ones I've missed throughout the day. Okay.

58:18

The first concern DCO drafting certainly, this was before lunch, do you say drafting issues. So, one explanation of the legal basis behind the applicant's view that an operative provision in the front of the DCO is as enforceable as a requirement contained in a schedule to a DCO. So, this is sort of Article versus requirement. discussion we had to relating to article 53 to consider whether to add definitions for second and third iteration enps.

59:11

Three, again, article 53. Consider whether to amend the article to refer to schemes rather than part of the authorised development or if not provide further commentary on what part would mean in practice

59:27

I hadn't got that one down because I thought you'd agree to change that and and yeah, and that okay, but that should be there. Yeah.

59:36

Thank you. Number four. To cover a number of drafting points we discussed in relation to the following wording taking into account the views you expressed in DC a precedence so for a iterations of the EMP being substantially based on the approved slash certified EMP When compared with in accordance, or substantial in accordance, the the whole issue of material new or materially worse adverse environmental effects, addressing both the worse aspect and also the extent to which the use of adverse helps or is required in terms of interpretation or whether it can be removed. And then for See, in comparison with the modal statement versus as set out in the environmental statement. So, whether which of those two formulations should be preferred. Number five, generally review article 53 to see whether there is anything further that can be added to clarify where national highways determinations, as opposed to such a state determinations would apply in relation to changes to the EMP. And number six, consider whether to include drafting within article 53, or indeed the EMP itself that provides that before national highways self determines a change to the EMP. The central state is provided with information and has an opportunity to comment on the proposed change in some way. And that the intention there being to avoid complications about how disagreement on this matter will be dealt with

later. That concludes there may be some others towards the end of the afternoon but certainly this morning that was that was all the drafting points. So they're moving to the EMP itself. Number seven. Mr. Carter for the Environment Agency sought something in the EMP that would require a degree of engagement prior to triggering the formal consultation provisions in the EMP, and we were going to consider that. And we also committed to consider any further representations that may be received about timeframes in relation to consultation under the EMP and mystical. Miss Nicholson raise that point. And I believe so did the local authorities later on

1:02:22

this semester. Oh, and just before you go on to four, I had an additional point relating to the MP and paragraph 149 of that in terms of further information in a post hearing note of basically how the how would the heritage mitigation strategy work in practice? Has it just been worded differently?

1:02:42

I think I'm coming to that right so I haven't seen this document this list but

1:02:48

perhaps you could when you got to Carter, it's when you got to Cartier I knew that we were out of sync then

1:02:53

Could you could you park that? We'll do that thought please sir. Number eight. Consider whether to produce something similar to the illustrative construction method and management statement that was issued for consultation as part of each second iteration and submitted for approval to set out an easy to understand commentary on construction methodology.

1:03:25

Nine to provide an explanation as to how the carve out in the definition of the starter works to find in the EMP in relation to archaeological matters. That's to say those works that can be undertaken before the EMP provisions bite in relation to second iteration EMP approvals. So consider how that tallies with the detailed heritage mitigation strategy given that would not be in place for these advanced works and also provide an explanation of how changes to the heritage mitigation strategy would be managed slash approved. Thank you 10. A note to consider how measures for example in relation to a landscape scheme would progress from first iteration and second iteration amp changes and third iteration amp so

1:04:25

as you just carry on, I'll tell you to stop if I need you to

1:04:28

11 provide a list of plans and strategies etc that have to be prepared as part of a second iteration and for sector state approval and against each of those set out the amount of detail that would be expected at the approval of the second iteration stage for that plan or strategy by reference where relevant to guidelines and best practice etc.

1:04:59

12 Have a commentary on how the third iteration EMP process would work. In terms of preparation and approval, and how its secured and set out what the third iteration amp would include, by reference to extracts from, for example, la 120, and other relevant documents. 13 just

1:05:22

under that one, Mr. Rowe in mind, my note was a little bit different in basically in that it was an explanation of the description of the process that had been given. It was a statement on what constitutes the third iteration effectively, I mean, these are all talking about the overlap that we were talking about at that particular time. And details of those overlaps. I'm not sure whether that is included, basically, in the words that you just said, Yeah, I think I'm sure we can

1:05:51

capture that and slightly on overly someone is typing on my screen. And it's not me, as we're speaking. And that's very clever system. Fine 13. In relation to each of the new suggested viewpoints for untreated montages. We will list those and say when we anticipate they will be able to be produced by and also show the locations on a on a map. 14

1:06:26

stereo in just before you proceed, I just had something else on it related to something that was raised by Dr. Martin in terms of local vulnerability and night working. And it was said I've got it recorded here that sort of that matters deferred could be in a post hearing note.

1:06:43

So it was this in relation to summarising what the EMP currently provides for and what the second edition will provide for in terms of working hours. ACDS roles and working hours.

1:06:53

Yes, yes. Is that been included in one of your previous ones?

1:06:57

I don't think it has around we we will include that. That was missed. So perhaps someone who's doing the typing can add that they'll be very helpful.

1:07:19

We got as far as the viewpoint, yes.

1:07:21

So the next number, which I think was 14, but it's now possibly 15. But let's let's keep keep the numbers 14. Note on a design where the whole issue of note on the design prefer briefer structures, and consider opposition in relation to whether or not that should be secured. And I believe that there was also was another related issue, which Mr. Carey was commenting on in terms of what evidence is already before you in terms of how the design, the the preliminary design of the structure is concerned, has been arrived at with reference to the design principles.

1:08:07

I've got design principles, Mr. R and I seem to have skipped the viewpoints for some reason. Immediately after lunch. We actually went through the viewpoints. And you agreed to come back in terms of some of the viewpoints in terms of time, and some of them that

1:08:28

was my 13. So I thought oh, I'm sorry, right. Yeah. I covered that. And I said we weren't obviously sorry. Yeah, that's okay.

1:08:37

So I am now up with you probably in terms of EMI 04 to 08.

1:08:43

Yeah, so after viewpoints was the design brief for the structures concerned? Yeah, the extent to which that would be appropriate to be secured in article 54. And where else where and how we, what evidence we can provide you with in terms of how the, I mean, maybe the design brief is all we need to provide, but and how we've arrived at the current preliminary design for the structures. Is that correct?

1:09:17

Yes. Yeah, yeah.

1:09:20

Then in relation to the Brookfield fair site,

1:09:24

we just one more thing is quite difficult to actually sort of match the two different wordings. I've got a post hearing note on the date of submission for the design principles document. For some reason, request time for Mr. Allen as to when

1:09:38

the design principles document or an application document, aren't they so

1:09:43

it came from when Mr. Carey was talking about preliminary design. And Mr. Carey had previously said about images of other other structures being included.

1:09:55

Well, we, we did commit which we need to add to this list. Yeah, details or other structures that we've illustrative while other schemes where we can demonstrate that what we're posing here has been done babbling

1:10:11

on basic point running through it. Yes. Yep.

1:10:17

Okay, so brownfield fair site a number of actions there. The first was, this is number 50. And I think that we would submit an amended version of the plan that we had on screen showing the existing brownfield first site and the proposed replacement site. Setting them out side by side.

1:10:38

Sorry about this, Mr. Owen, I just had one more thing before Brookfield fair, and that was article 54. One, the edition of design brief, you may have already covered this edition of design brief to the list, and you reserved your position and said you take it away.

1:10:52

Yes, indeed. We were going to consider whether whether it would be appropriate to add it to that list in 54. Thank you. We were going to second in relation to Brookfield fair site we were going to submit the visualisations and photo montages. Whatever they were I haven't seen them. But you know, what I'm referring to that were provided to Mr. Welsh, electronically in April and in hardcopy yesterday.

1:11:34

We're going to, again ERATION to Brookfield fair sight, reduce the noise, the further noise assessment, modelling work that's been done that Mr. Herrera spoke to. Were also going to submit the what evidence we have in relation to the Royal Charter. We don't have the Royal Charter itself. But we have, I believe, from the county records office, an extract of it in in in another document I recall from seeing it some time ago, we were going to consider whether article 36 to a could be amended by including an obligation within it to consult a representative of the Gypsy traveller community in relation to the scheme for the replacement land.

1:12:28

I also have a plan overlay drawing showing the existing and proposed sites and how they physically relate to one another.

1:12:36

Is that I covered that earlier, sir, you did. Okay. Thank you. We were then going to provide in the post hearing notes. Something that relates the rights that we understand may apply to the raffle fare site to article 36. Five. And also explain why there's no mention of these in the book of reference. We are going to confirm there is nothing in the local edge. There is nothing in local legislation relating to the site. And we're also going to confirm the rationale for on need for the temporary suspension of the brothel fair rights. In that respect. I can just add a postscript that and we will confirm this that we we've been discussing this with the contractors with the contractors this afternoon. And they've confirmed that the construction of methodology will not require at any stage the fare to be not held and therefore we no longer need that provision. It was put in as a precaution when the order was applied for because the contractors had only just been appointed. So we will confirm that that provision article 36 Three can be removed which I'm sure will be welcomed. We will also add detail on why the existing roof Hill fare site is not considered to be in quotes, open spaces, close quotes for special category land purposes. And

we will add something in the explanatory memorandum and also consider whether the statement of reasons can be augmented in its treatment to that point.

1:14:44

Then we had an obligation in relation to I believe this was the principal principal areas of disagreement summary statements submitted by the embargoed agency that we would provide I made a note showing, giving our view that none of the issues in there are incapable of resolution within the examination. I think that was the the agency, wasn't it?

1:15:12

Yes, that was that was within the Environment Agency. Yes. Mr. Carter, was it

1:15:23

then there was the reference. Table 669 from a pp 237. The qanbar about how the cost of carbon had been arrived at we were going to explain that we were going to submit the IEMA guidance referred to on cumulative carbon assessment. We're going to justify the 8% figure used for modelling line providing references providing references to where the 8% figure is derived from Yeah. We're going to explain the timescale for when a draft of the carbon strategy might be available. You remember, Mrs. coarser graph has said that it would be available within them examination, but we will say precisely when we will correct the mitigation schedule with references to the climate change elements of the environmental statement. Then on traffic and transport, we will provide a note on pedestrian access to the Countess pillar, and consider whether in connection with that, we need to supply further details of what is proposed. Including a possible need to tweak the register of environmental actions and commitments to maintain pedestrian access.

1:17:03

We will confirm were in the noise chapter of the environmental statement. We have covered noise contours and noise mapping for Kirby thought and response to the point raised by Miss Nicholson.

1:17:27

Then in relation to trees, we will consider what further information we can provide in terms of a maximum number of trees that would be lost on a worst case basis. And we would also explain how we can achieve the two for one replacement tree ratio with particular reference to the locations within the order limits where we believe those additional those trees can be replanted. And the note I have here also refers to a wider explanation as to how trees lost leads to the areas required for woodland replacement. This became a thing Yeah, and then, for the purposes of proscribed, consents and the whole business of dis applications in Section 150. The Planning Act we're going to confirm whether the building act revision listed in Article Three is a proscribed consent or not. I'm told by my colleague Mr. Leary it isn't but we will confirm that so I think though that's 33 or thereabouts that that is the note we have of the promises we've given you that we will do as I say we will we will do them by deadline one or two extent we can't we will say Our deadline when when we will do them but the vast majority of those so I would expect to be able to do at deadline one thank you

1:19:19

did you did you cover the whether a code of construction practice or similar can be submitted to provide more accessible guides to the construction methodologies. Did I miss that?

1:19:29

I did. So I did cover that Yes. That's on the list

1:19:37

and you covered the habit heritage mitigation strategy being allowed in advance at the start. Yes, you did. I do remember you should we parked and then yes. Yes. Okay. Okay. One or two that were there. Good. Okay, so there's that Anybody have anything else they want to say? There's no hands in the room, there's no hands on the online. Okay. So I'll just remind everybody that the next deadline for the submissions we've agreed is and for all submissions deadline one, which is in the draft timetable is Wednesday, the 14th of December 2022. That may change once we've fully considered the applicants and the council's requests for it to be pushed back. And I'll also remind you that the next event is tomorrow, the compulsory acquisition hearing, which is at 10 o'clock in this room, it just leads me to say thank you ever so much to everybody here today. And online. And the for their contributions. It has been a long day. I accept that. But it's been a very rewarding day, I think we've managed to get an awful lot of information that would otherwise have been put in written questions. Rule eight stage and I think the applicant would have been faced with what what is usual hundreds of written questions, and I think the process over yesterday and today was to try and not to have that to try and get as early stage for us to get as much information and evidence that we need to avoid those hundreds of written questions. So I hope that has been recognised. So thank you again. I think we're all ready to go. So it's just gone. 2025 past six. So thank you all again, and this hearing is now closed.