

# transcript\_CAH1\_session1\_02122022

00:16

Good morning, everybody.

00:20

Everybody hear me clearly.

00:24

Thank you. Good morning. It's now 10 o'clock. And this issue specific heat up this compulsory acquisition hearing into an application made by national highways for proposed 866. Julian project is now open. Firstly, can I just confirm that the live streaming has commenced? Yes, thank you.

00:44

My name is Richard Allen. I'm a charter town planner, nominee examining inspector and I've been appointed by the Secretary of State to be the lead member of the panel of inspectors appointed to examine this application. If I could ask my colleague in the room to introduce himself, please. Good morning. My name is Steven Roscoe. I'm a chartered civil engineer and I've been appointed to be a member of this panel by the Secretary of State. Thank you. And if I could ask the panel members who are online today to introduce themselves, please.

01:15

Thank you. My name is Mary Louise Milliken. I'm a chartered town planner. And I've been appointed by the Secretary of State to be a member of a panel of inspectors to examine this application.

01:28

Good morning. My name is Neil Humphrey. I'm a chartered civil engineer and I've been appointed by the Secretary of State to be a member of this panel.

01:36

And together we constitute the examining authority for this application. Now in the arrangements Conference, which preceded the start of this hearing, you will have already spoken to and those who are here this morning, you will have spoken to Max Weber who is from the case team. He is supported by Kailyn. Atkins from the also from the case team, the planning Inspectorate. Before we consider the items on the agenda, we will need to deal with a few housekeeping. Keeping matters in general observations, as always,

02:07

mobile phones, if I could just make sure they're switched off or silent, please. And I think

02:15

if I could just check with Mr. Webb that was the fire testing done this morning. It was so there was a fire test already done this morning. So no more planned. So it's the fire alarm does go off it will be it will be real and we will need to evacuate the building. There are fire exits either side of of our table and obviously the door at the back.

02:40

Just says I always have to, I'm afraid say a few words again on the general data protection regulations.

02:47

And our rule six letter off the 17th of October

02:51

set out that this event is being recorded as well as being live streamed to interested parties who requested this, the digital recordings are retained and published. And they form a public record record that can contain your personal information and to which the general data protection regulations apply the planning Inspectorate practices to retain and publish recordings for a five year period from the Secretary of State's decision on the application. Consequently, if you participate in today's hearing, it is important that you understand that you will be recorded and therefore you consent to the retention and publication of the digital recording. We will only ever ask for information to be placed on the public record that is important and relevant to the planning decision. It will only be in the rarest of circumstances that we might ask you to provide personal information of the type that most of us would prefer to keep private and confidential. Therefore, to avoid the need to edit the digital recordings. Please can we ask that you do your best not reveal information that you would prefer to keep private or confidential? Does anyone have any questions on that?

04:02

None. Thank you. So this meeting will follow the agenda as set out in our rule six letter dated Monday the 17th of October 2022. This letter is on the planning inspectors website and can be found at examination Library Reference PD 006.

04:20

Annex F sets out the agenda for this meeting for this hearing. A supplementary agenda was also published last week, two weeks ago on the 22nd of November, in which further details

04:33

of the areas we wish to discuss was set out

04:37

the XA has decided to hold this compulsory acquisition hearing because we wish to discuss matters concerning the compulsory acquisition of land and to ensure that any effective person has the opportunity to make oral representations should they wish to do so.

04:52

There will be a further opportunity for affected persons to be heard as a subsequent compulsory acquisition and any such request will be made at

05:00

deadline one. Subsequent compulsory acquisition is if requested is currently timetabled the week commencing the 27th of February 2023. Mr. Roscoe so few more words on that shortly.

05:13

Purpose of today is for the examining authority to examine the information submitted by both the applicant and by affected persons and others. As a result, I'd like to reassure you that we are familiar with the documents that you have sent in. So when answering a question, you do not need to repeat at length, something that has already been submitted.

05:33

If you want to refer to information already submitted, be very grateful if you could give the appropriate pins examination Library Reference, and could I please ask them for the first time, use an abbreviation or acronym that you give the full title to ensure that everybody listening and participating knows what you're referring to?

05:53

The hearing today will be a structured discussion, which Mr. Roscoe and I will and other members of the X eight will lead based on the agenda that has already been published.

06:04

This is a hearing and not an inquiry and therefore, unless the examining authority have specifically agreed to it, there will be no formal presentation of cases are cross questioning about the parties. Any such questions that you may have should be put through the examining authority.

06:21

throughout the morning, certain issues certain issues, may reoccur as we examine them from different angles, or in relation to different elements of the scheme are therefore asked you to bear this in mind when you give evidence and to focus on answering the question that has been asked.

06:38

For the purposes of identification and ease of reference. Could I ask that every point that you speak this morning that you give your name and who you represent,

06:48

we're conducting this meeting in accordance with sections 92 and 94 of the Planning Act 2008 and infrastructure planning examination procedure rules 2010. Specifically, rule 14, you're reminded that the examining authority can refuse to allow representations to be made at this hearing. If the examining authority consider them to be irrelevant, vexatious or frivolous, relate to the merits of policy set out in the national policy statement. Repeat other representations already made, and relates to the compensation of for compulsory acquisition of land, or have an interest in all rights over land.

07:29

As I've already said, the hearing is being recorded. The only official record of the proceedings of the proceeding is this recording, which will be uploaded the inspectorates website, as soon as practicable after the hearing tweets, blogs, others and other similar communications arising out of this meeting will not be accepted as evidence in this examination.

07:55

So if I could now turn to the agenda.

07:58

The agenda of these hearings was placed on the inspectors websites as a say on the 17th of October 2022. And the supplementary agenda published on the 22nd of November 2022.

08:11

We consider the main items to discuss today are the statutory conditions and general principles, summary of the development consent order provisions, the funding statement, special category, land, Crown land and interests, and statutory undertakers.

08:32

We have a list of those parties who have registered to speak hands of the above items, and we will invite you to speak at the appropriate moment, however, should an intro to an effective person wish to raise a question on another part of the agenda, the XA will hear that at the at the end or on another matter. The agenda is for guidance only, we may add other issues for consideration as we progress. We will seek to allocate sufficient time to allow each proper consideration of the issues on the agenda should we need to do so we will take a short comfort break at a convenient point hope probably around half past 11. If for medical or other reasons. Anyone requires a break at a specific time. If you could please inform Mr. Webb at the back of the room. And we will hopefully try to adjust the programme to suit your needs.

09:22

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

09:47

Finally, it is important that we get the right answers and the questions we're going to ask, as I've mentioned several several times this is predominantly a written process. Therefore if you cannot answer the questions that have been

10:00

Being asked or required time to get the information you need to prevent giving a wrong answer. It would be better if you were to respond in writing. And we can defer consideration of that to a later point.

10:17

Or any questions at this stage about the procedural side of today's hearing or the agenda?

10:24

Nope.

10:26

So I'm just going to ask those persons present just to acknowledge I don't have got a list of who's here.

10:35

Mr. Owens, I can

10:38

always good when the applicants here. So very good morning to you. Again, I will direct as we've been doing direct questions to you and you can introduce your team as appropriate. Good morning, sir. Yes, thank you. I should add that this morning, I'm joined by my colleague on my left Mrs. Heidi Slater. We're going to be sharing the

11:02

the job today.

11:04

Thank you.

11:08

And good morning spark. You're.

11:13

And this has changed. You're representing the four authorities as before. Is that correct? For the record? Yes. Thank you.

11:25

And I have

11:27

Miss Teasdale and sacrament from Durham on line today. I think is that correct?

11:35

Suck when you have your hand up?

11:39

Yes, it is correct. And good morning, Dora Ackerman. I'm representing Durham County Council. It was just to say that as no Council land is supposed to be affected. We don't expect to be taking part in this session. But we will be maintaining an opposite presence. Thank you very much indeed.

12:02

Mr. Carter from the Environment Agency, online. Good morning, Mr. Morning. Thank you. And Mr. Salvin. You're in the room Good morning. And we have Miss staples from the NFU also online this morning.

12:21

Wanting me staples. Morning. Good morning. Thank you.

12:29

I don't have anyone else specifically.

12:33

That has that has theirs here and registered speakers there anyone else I've missed or anyone who wants to introduce themselves?

12:42

Nope. Okay, thank you.

12:52

So for those persons joining online,

12:56

you may, you may switch your cameras and microphones off if you're not participating specifically in the discussion. Should you wish to raise a question please raise the Microsoft team's hand function and when invited to do so please.

13:11

Switch off your microphone and camera to participate.

13:16

Can I inform everyone here that Mrs. MILLIKEN and Mr. Humphrey will also have cameras switched off during the discussion on the main agenda. This is to save on the broadband weights and to allow the anyone who does want to speak

13:31

as much brand bandwidth as possible to speak. But I can assure that they will very much be listening to the debate as we go along.

13:42

And for those people watching on the livestream, can I also advise you that should we at any point take a break these these proceedings, we will have to stop the live stream in order to give us a clear recording file. And as a result at the point in which we can recommend the hearing and restart the live stream you will need to refresh your browser in order to continue watching.

14:08

Is there any other points that wish to be made before we turn to the agenda?

14:15

Without K without further ado, then we'll turn to the item two on the agenda, statutory conditions and general principles. Mr. Roscoe? Thank you. And just before I start on agenda item two, I just wish to emphasise that this compulsory acquisition hearing compulsory acquisition hearing one is for the clarification, our clarification on certain matters at this stage, which is the start of the examination. There will be the opportunity to have a further compulsory acquisition hearing if required, and if requested by any affected person. And that gives us the opportunity to address your matters possibly more fully and certainly again. Now that request has to be made by deadline one in the timetable, and then the intention

15:00

Is that that any additional compulsory acquisition hearing is held on Thursday the second of March. But that date may change in terms of the examination timetable, because the examination timetable is only a draft at the centre at the present time. And that hearing will be formally notified within the appropriate timescale before the hearing. So I just want to emphasise that this compulsory acquisition hearing is effectively an extra opportunity. And the primary purpose is for us to clarify certain points relating to the applicant and the parties matters at the present time. So with that said, I'll now move on to agenda item two, which is statutory conditions and general principles. And I'll move on to agenda item 2.1 applicant to confirm that the application includes a request for CA zero, and this is something that I have to do. I'm happy for a single sentence answer.

15:55

You Yes, is the answer, sir. Thank you. Thank you very much.

16:00

Item 2.2. On the agenda, then is the applicant to set out briefly whether and how the purposes for which the CEA powers are sought, comply with the relevant section in the 2008. Act as drawing. I'm going to hand over to Mr. Slater for this agenda item. So

16:17

thank you, Heidi Slater. For the applicants national highways.

16:23

Yes, the applicant is satisfied that the condition in Section 122 of the Planning Act of 2008 is met. Mrs. On the basis the louder could you just speak up a little bit probably I have to mic the mic. I think you

probably only need the one microphone. I don't know if that might cause any feedback at certain stages. Thank you.

16:41

Yes, on the basis that the land which is proposed to be subject to compulsory acquisition powers is either needed for the development or is needed to facilitate the development or is incidental to the development or his replacement land, which is to be given in exchange for the other land under Section 131 or section 132. of the Planning Act 2008.

17:02

And in the compulsory acquisition schedule, which is document reference a pp 300. The applicant does set out the purposes for which each plot is required both in terms of compulsory acquisition and temporary possession instantly. And that's in respect of each numbered work, as identified in DCA schedule one and on the land plans. Sorry, the works plans.

17:27

Do you need a reference for the works? No, that's fine. I have that. Thank you very much. Thank you.

17:33

Just one thing, I wonder if you could keep your voice just a little bit higher or move a little bit closer to the microphone. Thank you.

17:40

Disturbing was that everything on agenda item? 2.2. Thank you. Was there anything else on agenda item? 2.2. Just looking around the room? Well, any hands raised on the screen

17:50

slighter? Actually, yes. If we may be wondering whether we may have an opportunity to explain that the applicants approach to compulsory acquisition just because we are conscious that a lot of affected persons are concerned about the amount of pink land that is shown on the land plans. And we wanted to just make clear why that is the case. In briefest possible terms, it's what's there on the land plaid represents a worst case scenario. I'm happy for you to do that, if you wish to do so now briefly, if you want to carry on, okay, thank you.

18:27

So where we have pink land on the land plans,

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it doesn't necessarily mean that the land will be acquired, because the articles are drafted in the DCO in terms which allow pink to be rolled back to blue, so that acquisition of rights may happen instead of the acquisition of land outright.

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Similarly,



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where there's pink shown on the land plans or pollution on the lamp hands,

18:57

is possible for that to be that power, of course requisition to be done, graded as it were to a power of temporary possession if the scheme could still be delivered through the use of that less power.

19:10

So there is flexibility in that regard. It's the pink that's shown on the land plans is very much a worst case scenario. But it does need to be there in order to ensure that the applicant is in a position where they can deliver the scheme. Ultimately, if for example, alternatives to compulsory acquisition such as acquisition by agreement and proceed.

19:32

Similarly, the order limits represent a worst case as far as that is the full extent of the land that could be acquired. But if not all of that land is needed, then not all of that land would be acquired. And this is an approach that has been used in other highway sdcos where the consent is sought before the detailed design has been taken forward, or has been settled. So it allows flexibility to accommodate that sequencing in the process. Could I just be

20:00

Will you continue? Could I just ask one more thing? I'm not quite sure, I believe it can be heard. But I wonder if it could be improved by ensuring that the microphone is almost in line with you. Your mouth facing downwards? No, no, in terms of bending the topic there.

20:14

Thank you. Is that any better?

20:16

Yes, it's much, much better. Right. Thank you. Clearly, yes, thank you.

20:24

Was there anything else

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only insofar as to say that

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the applicant would only wish to acquire the land that is actually needed for the projects, whether that be the acquisition of land outright, or the acquisition of rights over land. And that the preference obviously, would be to acquire land by agreement. But the compulsory acquisition powers are there in the way that they're shown in the documentation as a worst case scenario to ensure the deliverability of the project ultimately.

21:02

Was there anything else?

21:05

In Article 19? The wording

21:08

in that article is quite specific, insofar as it says that the applicant would only acquire so much of the land as is required for the authorised development.

21:18

Thank you. Could you just repeat that, please? Because I don't believe it came over very clearly.

21:23

The in article 19.

21:26

The wording is quite specific insofar as it says that the undertaker may only acquire compulsorily so much of your land as is required for the authorised development. So that assessment and analysis of what is needed is done at later stage.

21:43

Thank you.

21:47

Is that it? Was there anything else? Thank you. Thank you, because it's a little bit more on that. Just looking around quickly. Was there anything else anybody wish to raise under agenda item 2.2. Just looking around. Thank you. Amen to agenda item two point through 2.3. Then the applicant to explain briefly whether and how consideration has been given to all reasonable alternatives to ca in temporary possession, Mr. Owen.

22:16

Heidi Slater for the applicant?

22:19

Yes, the applicant does confirm that consideration has been given to all reasonable alternatives to compulsory acquisition and also to temporary possession.

22:29

And those alternatives have been considered in a number of ways in the widest sense, in terms of considering alternative mode solutions and alternative route options for each of the schemes comprising the project. And I know that these were covered in some detail in issue specific hearing one, so I don't intend to revisit that.

22:47

In terms more specifically, in the context of compulsory acquisition and temporary possession powers, as is noted in the statement of reasons, section 5.5 of the statement of reasons, which is document reference a pp 299.

23:05

In designing the project and in determining the land that would be needed for compulsory acquisition and temporary possession, the applicant considered alternatives during that preliminary design process and modifications to the schemes in order to try to minimise potential and take and those modifications were consulted on.

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And the preferred route for each scheme comprising the project was chosen based on a thorough consideration of those issues and the modifications.

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That process that was gone through as described in detail in chapter three of the environmental statement, which is document reference a pp 046. And also in chapter five of the project development Overview Report,

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reference for which is APB 244.

23:56

And also in chapter two of the case for the project, which is eight pp 008.

24:03

That selection process included taking into account various factors such as the views of consultees, environmental impacts, affordability, and the project objectives, as well as safety and operational considerations.

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But the fact of the matter is that none of the alternatives that are considered obviate the need for compulsory acquisition powers or temporary possession powers.

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Therefore, the order limits are drawn as tightly as possible they extend no further than land that is believed to be understood to be required at this stage preliminary design of the process in order to facilitate the construction and the operation and future maintenance of the project and mitigation of its effects.

24:52

In order to minimise as far as possible, the impacts of compulsory acquisition and temporary possession on land

25:04

The statement of reasons also explains that in terms of specific alternatives to compulsory acquisition and temporary possession, this is in sections 5.7 of the statement of reasons.

25:16

The applicant has sought to acquire land by agreement as the ultimate alternative to compulsory acquisition. I don't know if

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you would like us to explain where acquisition has been achieved by agreements already in respect to the project, or whether that's something that you would prefer to see in post hearing submissions.

25:37

There is actually a compulsory acquisition acquisition schedule, requested in the examination timetable, and that would be the location to actually put the current status of matters relating to a particular affected person or particular plots. Could we just clarify exactly what what is required in I mean, to that request, because we have two documents currently, which sit within the application documentation. So one is a schedule of negotiations. And the other is the schedule of compulsory acquisition and temporary possession, which is the one that explains what the land is required for on a plot by plot basis is the one that I mentioned earlier. Right? It isn't the one that is the schedule, that sets out what the land is required for, because effectively it is a document that can be updated during the examination, to show where you are with thee. It is it is effectively the parties that you have already identified in the schedule that you have provided to us. It is actually if you like a live version of that. And so that will give us an update on the matters that you've just talked about in terms of reaching agreement with affected persons. So an updated version of the schedule of negotiations, which is a PP 301 it is it will also it will also I believe there is a template possibly somewhere for this, but it isn't an absolute that it follows that template, it will have to describe whether the rights sought are an agreed to a compulsory acquisition or temporary possession. Because of course, you've actually said that the order limits and the pink land at the moment is a worst case scenario, you may well have reached agreement on a smaller area with a particular affected person at this stage. Because obviously, it's a number of months since the application went in and design and other things couldn't continue. So really the compulsory of the acquisition scheduled is a current snapshot of where you are with that particular party. So it is further version of what's been provided. But it just brings it up to date as to the current status and where you are. And in terms of CI and TP.

27:49

Thank you.

27:56

Was there anything else under agenda item 2.3 from the applicant? First of all, thank you only really to confirm that

28:05

we would like to assure the examining authority that all reasonable alternatives to compulsory acquisition and temporary possession have been considered.

28:14

Thank you. I have a hand raised from Miss staples online. If I can take that first and ask if there's anything else in the room? The staples.

28:26

Thank you. Yes. Staples for the National Farmers Union. Just before you start off Miss staples, I wonder if you could just explain your your status if you like in the in the hearing. You are a representative of the NFU. As I am aware from what's been put in so far.

28:45

are you appearing as well, let me give you the full spectrum as an affected person or representing certain affected persons. So just representing members that have been are affected by this proposed scheme. And when you say members, what do you mean? So, so and so National Farmers Union members, NFU members. Okay. Thank you. If you'd like to continue, please. Thank you. Yes. And I did provide a list of names earlier this week. And I will confirm those again.

29:22

Really, this is just, yeah, in response to the points just being discussed. And also the first point.

29:31

It's been brought to my attention over the last two weeks by

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the land agents who are acting direct for our members, that they are very concerned about the amount of land that has been taken on a permanent and temporary basis.

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They've also raised there's really been no discussion with national highways in the last six months.

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They've highlighted that they've been so

30:00

permitting issues raising concerns wanting confirmation. And national highways has not been responding.

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I think they believe that there is too much land within the pink shaded area.

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And normally, it's felt that national highways would be further forward on design, and they are at the moment, and that they are taking large areas of land,

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some of which definitely would not need to probably be taken on a permanent basis. And then he needs to be taken temporarily.

30:34

And I think some feel that if negotiations or more discussions had happened in the last six months, then further agreements could be reached, they feel that there's been no real negotiation on one to one meetings in the last six months at all to reach any voluntary agreements instead of compulsory acquisition. Thank you. So if I was to summarise those the points that you've just made a lot of its centres around uncertainty. Yes. Thank you. I mean, I've obviously got all those points taken down, I just wanted to sort of, you know, have something that maybe describes a few of them. Thank you very much. Australian, was there anything in response to those points?

31:17

This row, and I will always say you and then I will give you the opportunity to pass it to another member of your team.

31:22

I think at this stage, I'll just ask Mrs. Slater, if she wishes to make any comments in response.

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Thank you.

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In response,

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the applicants position is that

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the detailed design work is being progressed. And that will facilitate conversations. In the meantime, national highways has

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offered through its

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acquisition completion, premium policy to acquire land outright, at this early stage with an uplift on market value, and that offer is available to affected persons. If they want to sell land at this stage, it's

32:09

an option that they may take. The alternative is to wait until the detailed design is progressed further.

32:19

Thank you.

32:20

I should just say at this stage that I've been asked to turn my mic off when I'm being spoken to. So you will have to excuse me if I forget to turn it on afterwards. It'll be on and off quite a lot. Right? Was there anything else on agenda item 2.3. Then just looking around the room and I have two hands raised? I'll take those first. I don't see any more hands raised on the screen.

32:45

Solvent first of all, please. Thank you, William salva in Waltham estates.

32:52

We have been provided with acquisition plans. I have them with me

33:00

this morning. They show

33:06

everything in pink to be permanently acquired. I appreciate it that it's worst case scenario.

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But it does seem to be a bit of

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considerable overkill, because quite plainly, there are areas a considerable distance away from the proposed scheme that are nonetheless shown as to be permanently acquired.

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And that doesn't seem to be any justification for those permanent rights or permanent ownership.

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To give you an example, there was an area of the park coloured in pink, which when queried, it was explained that that was for one of the statutory undertakers to be able to reroute their apparatus.

33:58

Be that as it may, it defies logic that the applicant should seek to acquire permanent ownership of that area. It just merely creates more uncertainty and more work for the interested parties. And I would certainly urge the examining authority to bring such pressure as you can to bear on the applicant to progress matters

34:28

at speed, to reduce the the uncertainty and the and the workload directly.

34:38

That will obviously flag up those areas that are better dealt with, by way of licence for temporary possession or whatever.

34:49

But there's also an opportunity to secure what the applicant seeks through other means and reference was made.

35:00

it by Tim Parsons, one of the earlier hearings to the use of conservation covenants

35:07

to secure the environmental mitigation measures. And I would certainly encourage that approach rather than the heavy hammer of a CPA order, which as I say, as currently stands shows those rights

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of ownership in perpetuity, which, given that we are dealing in my clients case with a historic state, where, you know, no assessment has been carried out as to the impact of the proposal on that historic environment, it's particularly important that we try to safeguard as much of the historic interest of the estate as possible. And currently the proposal is drawn provides considerable obstacles to achieve that. The other point I would make, and it's quite unusual, I grant you that an interested party should be saying that the CPO plan doesn't go far enough. But as you know, from earlier in the week, we have this standoff between the black option and the blue option. With regards to the rugby junction, there is nothing within the draft CPOE

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that indicates that the applicant has

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sought to secure such rights as they may require

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for the blue option. And that may well be because they haven't actually worked up the blue option, despite our our best endeavours. So I just would be interested to

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have a greater understanding as to the applicants current thinking towards the flexibility that they should be ensuring, as they wrestle with the submissions that we have made in favour of the blue option, as opposed to the black. Thank you, Mr. Sullivan, just on those points, just before I asked the applicant to respond, We've obviously had the issues specific hearing on the options, this hearing that



had a specific function. And this hearing has a specific function, which is to consider the compulsory acquisition powers that the applicant has put into the application.

37:35

Excuse me, and so therefore, that that effectively splits that response a little bit. The second part of that really refers to the issue specific hearing, we are examining what's actually been put before us in terms of the compulsory acquisition request, if I can put it like that, in this hearing, if you wish to actually

37:55

build on what was said in the issue specific hearing and look at the merging of those two points that you've made, or that I've identified, if you'd like from that from those, then I'm happy for you to do that in your written representations. But today, it's quite important that we stick to the application as made having dealt with the alternatives if you like. So I'm happy for you to actually put more in in terms of the written representations that you'll put in a deadline one, I'm sure on this. But today, we would need to stick with the application as has been made.

38:30

So I've hope that clarifies what we have to discuss today. I don't know if you want to come back on that very, very briefly. I can see you. I understand that point. Completely. Thank you. But obviously the two are intertwined, I can see how you are making the point that the two are intertwined, and that intertwining I believe should be done in your written representations. That's the point I'm trying to make. Mr. Rowe, and then your response, if you wish. Thank you. So I would like to address some at some of the points that Mr. Sullivan was making.

39:03

The first is to emphasise that this is a

39:08

it's more more than a single stage process, if I can put it that way in that as you are aware, at the moment we have a preliminary design for the project.

39:19

Contractors are now appointed and the long and lengthy detailed process of detail design is now getting underway. That is not a process that will have concluded by the time a tight but by the time a decision has taken on the application for this development consent order and therefore, at this stage at the DCO stage stage one if I can put it that way.

39:43

Clearly, national highways needs to demonstrate and is demonstrating we say to you and the secretary of state that the extent to the land, over which compulsory acquisition powers are proposed and temporary possession powers are proposed. So the pink

40:00

Blue and green land is necessary and there's a compelling case in the public interest for it all those tests for the stage the project has reached. But crucially as Mrs. Slater mentioned a moment ago, the terms of the actual general consent order itself impose a second stage because the power of compulsory acquisition under Article 19 One only applies to so much of the order land as is required for the authorised development. And likewise under Article 22, the power to acquire rights over land and impose covenants is restricted back to the same limitation I just referred to have so much of land as is required for the authorised development. And finally, in relation to temporary use the blue land, again, the power there under Article 29 can only be used in connection with the construction of the authorised development. So, there is this crucial second stage that national highways will have to go through before exercising any of the powers that the order if made would granted in relation to land and demonstrate to itself that that land needs to be acquired or used for the purposes of the then finalise detailed design. So, and so what we're proposing is nothing unusual for the development of a complex highway scheme such as this. And I think it's important to be to be clear that national highways have that ongoing obligation in relation to the acquisition or use of land.

41:42

Mr. Sullivan also referred to conservation covenants, we do not think, as things stand at the moment that they are an alternative to any of the powers of compulsory acquisition of land or of rights over land and covenants affecting land, including included in the draft development consent order,

42:06

until it is established that the conservation covenant, which is a very, very new thing is is capable of being used and brought forward and as in and is in place to have the same certainty as compulsory acquisition powers to deliver the project overall, we fail to see how it's how it's an alternative and how it would mean that we could not make out a compelling case in the public interest, which we clearly have to make out for the powers and the DCO. So we think conservation covenants are they're they're an important new addition, brought in by the environment act of 2021. But they are in a very early stages and would not provide the certainty, which is what we need to replace any of the provisions that were seeking in the draft DCO. Hope that's helpful, sir.

43:01

Thank you.

43:03

Right, I saw one or the other hand raised, I wonder if you could just identify yourself first, please. Thank you, Mr. Inspector, my name is Simon Nixon. I'm from Madison's Chartered Surveyors and I actually represent 16 different parties, principally on the eastern section of the bypass and as far as getting less, I think the microphone will have to be pointed down towards you. Sorry, is that better? I wonder if you could start again, please. Yes, my name is Simon Nixon. And for Madison's Chartered Surveyors, representing 16 different

43:32

potential claimants on the scheme.

43:36

We actually have four representations, unique references today, which is a FP 128414207. Yes, and 146. So if I could just go through those then those are Mr. S and Mrs. C. Gil, J. G. Nixon. Yes. Mr. T, right. Yes. Mr. S hair, correct. Could I just ask if Mr. G. Nixon is either Mr. G or Mr. GJ Nixon. Do you know? No, Mr. G. Next is Mr. Graham Nixon GJ is not there's what I don't believe that the same people. Thank you. So that's Mr. Graham Nixon. Yes. I have made a representation in writing. Yes. Which is 28112022135012. That was sent to you on Monday. It relates to the subject of acquisition. Yep. As a surveyor, obviously, that concerns me most of all, it deals with the point of project speed, which has been offered by the highways and the inability to take up project speed properly until recently.

44:40

I wasn't intending to be here. I was watching it on screen and then of course Miss Miss State Mrs. Slater. My apologies. I believe I believe your office is only a matter of 400 yards. Am I correct? That's right. I told you that this morning's carry on needed.

44:53

So I run down and that's why I'm taking time to recover. Okay, but we have a problem. The problem

45:00

was not related to the How much land has been taken per se. It relates to the fact that we've had two years in negotiations on specific issues such as ponds.

45:10

Upon bridges crossing over and taking out houses and so forth. A building's been removed a boat station for example, we now had a new plant produce which produces an area which is definitely identified to be acquired, which are generally thin strips of land. The remainder of this pink area is to be acquired by option.

45:28

Now, initially, that caused me concerns, as you will see, because I put a postscript on my representation of following meetings on the 18th to the 19th, with national highways have both haul that concerns related to project speed. The original dates for the 28th of March to be resolved and settled and conveyed by the 20th of March this year coming 23 has been removed to the 20th of July, we still don't have survey plans to allow us to work out the areas or indeed what those silly plans are currently going to be for, whether it's offset land or whether it is acquisition. The schedules don't make it clear to me adequately and I'm not getting proper answers back. First and foremost, we've had since obviously, from the distributors office, who take instructions, straightforwardly yes we can acquire all the land or we can agree an option with you based upon a figure to be agreed, which is fine. And we will tell you what we want to take later. I have problems in three cases particularly in that respect to some of them aren't represented today. But Mr. Gill is the other is our talent. I've had both station and possibly Mr. Tunstall in Bose will have issues where they may require replacement settings, until we know what sort of level of compensation we're going to get. And that means we need to know the extent of what we're dealing with, we cannot mitigate costs. We want to avoid the planning, we're not prepared to go to planning before we know where we are. So we could do we could afford to reinvest, and we're stuck in

a knot. It's not good for the public purse in any way, shape, or form. Because if we don't get to know and you take possession of the Highways Agency take possession, I beg your pardon Natural England take possession, then we may have lust for sales. And we have all sorts of claims, which we're trying to avoid, for a number of reasons. So I'm not happy with that approach. The approach is only developed itself in the last few days. The early negotiations, which had been going on have been almost finite, be balancing ponds, removal of balancing ponds, leaving the national at the national highways, people thought that was the case. Obviously, we have now got the contractor on site who is trying to cost save. But that wasn't a thing in the early days, it is now maintain, what I've suggested as a solution is very straightforward. Rather than have options to buy, give us a period under Project speed, once you've determined exactly areas and for what so we can then say of six months, so we can assess for the district value of the actual valuation, and then getting transferred over at before the end of the six months to obtain the 20% Extra which is obviously concerning to the clients if they've been offered it, and then can't receive it. If we can do that, that resolves the whole issue, from our perspective is far easier, simpler and better on the public purse to do that, than to try and acquire too much land.

48:14

Right. That's an excellent, thank thank you for that you've covered quite a lot of ground in quite a short period of time. Thank you for that. I've written some notes, we've also got the recording to actually look back on. So that is our record of the representative that the representation that you've made at this hearing. Thank you. This is of course, as you probably heard on the first part, this is you are given the opportunity to request a further compulsory acquisition hearing a deadline one and you're obviously aware of that because you nodded your head,

48:39

you also have the opportunity to put in a written representation. And that is can be corrected mid December as to as to where you are in mid December. Mr. Owen, you've obviously heard what's been said, it relates to quite a bit of detail and often some detail, which was maybe slightly outside the examination process in terms of individual negotiations with individual parties. But having said that, I don't wish to go down into the detail at this particular stage. I'll come back to you in a moment, Mr. Nixon, to go down to that level at this particular stage. But is your Is there anything that you'd wish to respond to in terms of what's just been said? Thank you. So Robin, for the applicant, I believe Mrs. Slater just has a couple of points to come back on this later. Thank you. Thank you, sir. I wanted to go back to a couple of points that Mr. Sullivan made.

49:31

Firstly, in relation to the extent of land required and the distance from the highway.

49:37

The likelihood is that land is required for environmental mitigation or for landscape mitigation. And in that sense, it is needed to mitigate the adverse environmental effects of the project. And it's essential to the delivery of the project and that is why it's showing coloured pink on the land plans at the moment. The pink as

50:00

We've said is the worst case scenario, but it's there also to protect the applicant in the event that agreement can't be reached in a timely manner.

50:10

Or where, because of the mitigation being carried out on the land, the state of the land is changed and is no longer acceptable to the original owner. So in that scenario, it would stay with the applicant, if the owner no longer wanted it in its change state with the mitigation in place.

50:31

Third reason why it might be pink is because in some areas, we do require land to accommodate statutory undertakers diversions, and where that is the case. And we anticipate statutory undertakers would require rights to be granted for their benefits for the purposes of their undertaking, we can't acquire the rights directly for them, we have to acquire an interest out of which we can grant those rights for them for their benefit. And so there is pink land, within the audit limits for those reasons.

51:04

That doesn't preclude

51:07

a solution, which is less draconian than the pink would appear on the plans. Because as we've said, already, it's still possible to enter into an agreement desirable to enter into an agreement. And I know that national highways is looking at potentially the use of Section 253 agreements under the Highways Act to mitigate the effects of the highway on land. So if there was there anything else? That's all I want to thank you? Thank you?

51:40

Right, just looking around, and so I've heard the response, Mr. Nixon to the points that you made previously, they go down to a detail of sort of negotiations between the parties, but I've obviously heard what's been said, and you'll have the opportunities as I outline just as you're finished, is there anything else you would wish to say briefly? Yes, please, Mr. Inspector, really, the only reason I've gone to detail is to try and explain what would be sensible, worthwhile and practical. And I've got to regulate consent order. And I've got two records of that. I've got the notes. And I've got the recording, which we've always you've also got my representation.

52:15

Right. I wanted to make the point clearly, that the opportunity is there to do this without having to have what if scenarios to do it in time after the surveys have been done, like message costing in our case? Okay. Thank you very much, Mr. solvent. I thought at one stage I saw I saw your hand raised as we were going on that note, right. Thank you. I see a hand raised on the screen. That's Miss staples, Miss staples, please.

52:46

Sorry, just waiting for my camera to come on. Thank you, Louise staples from the National Farmers Union. I just really wanted to respond to some of those points. Just to confirm that also.

52:56

It has been raised to myself about the area of land that has been taken for Habitat mitigation. That's been raised by numerous agents to myself, and that national highways. Yeah, I have no clear explanation as to why certain areas are needed. Thank you further. Also,

53:19

it's been raised to me about balance ponds, which have just been mentioned this morning. Thank you. And again, that's the number of balance ponds.

53:30

When I think it's already known that some of them are cited in the wrong location. In some places, there definitely could be one balance point instead of three. So further design is needed there. I think we all say it's also been raised about the discussions that have been happening with the Divi.

53:52

In starting now, Mr. Staples, if I could just hold hold you there. We're just starting now to get into the level of detail that sort of is a matter of between the parties. I'm happy to hear from you on this, but briefly, please.

54:04

Yeah, so it was just an because another point was raised earlier.

54:08

In regard to the

54:11

Yeah, I think it's supposed to be what's called this the speed process. And that actually, that just is not working at the moment, what's been put forward in regard to a 20% uplift, just because of the amount of land that's been highlighted to be taken permanently. So are you basically saying to me that you have received the same kind of responses that have been explained to me already so far in this compulsory acquisition hearing,

54:39

just reinforcing that some of the things

54:44

I've had other agents and other national NFU members that are affected. Thank you. I was looking for a single word I gave you uncertainty before but you've given me reinforcing now. Thank you very much. Thank you.

54:57

Mr. Owen, was there anything that you'd wish to come back on?

55:00

that. So just one matter, Robbie Oh, and for the applicant,

55:03

forgive me, but I neglected to deal with one point Mr. Solving mentioned, which I would like to do so briefly, if I may, just for clarity, which you'll remember that he was talking about what LAN may need to be included in the DCO for the Blue Route or worse that effect. And I want to just to be crystal clear that we are not proposing the Blue Route. We've had that discussion on Wednesday. And therefore, none of the land, including the DCO is relevant to the Blue Route, because that's not what we're promoting. And none of the changes that we're bringing forward, as you heard on Tuesday, will relate to the Blue Route, because national highways is proposing the black route and that will not change.

55:46

Thank you, Mr. Chairman.

55:49

Mr. Nixon, I see your hand is raised. I'm conscious that you've already had a couple of opportunities. But if you've got something to say, very briefly, I'll hear it. It was really just a clarification and Mrs. Staples. I mean, to be fair, to the Highways Agency, very much latterly, they have offered the option or route. And this has taken that point. I've heard the point that you were making that the latterly, yes. With regard to mitigation. We have also been in the position to offer them bng land

56:17

on the scheme edge as a mitigation for those who don't want it? Yes.

56:23

Right. I'm trying to recall that from your representation, and I think I can, yes. Okay. Thank you very much.

56:30

Was there anything else on agenda item? 2.3? Just looking around quickly? Nope. Thank you very much. In terms of agenda item two point for

56:40

the applicant to explain briefly, whether and how that lights, the land and rights proposed to be acquired, and necessary and proportionate. I wonder, Mr. Owen, if you've already responded to that particular point. Is there anything you wish to add?

57:00

Robin for the applicant, I think we have covered that issue already. So thank you. So I just wanted to go on to the detail of some of the matters now which are in the second part of that agenda item.

57:11

And really, it's the first part of it centres on site compounds. Why these subjects are ca and not TP whether or not proposed for subsequent environmental mitigation. And I gave an example there of plots one or 201 35.

57:28

I'm looking at the examination documents that are referred to in the square brackets following that it's basically an area which is next to the Cumbria County Council.

57:41

The depo, Cumbria county council depo next to the sixth roundabout, if we could just deal with that one first place. Mr. Slater will cover that. Thank you, Mr. Slater. Thank you.

57:53

Yes, as I mentioned a moment ago in response to one of Mr. Nixon's points. One of the reasons why land is coloured pink in the on ramp plans is to cover a situation if you like in which a landowner no longer wishes to retain the land, and it's changed date. And that's the case in relation or that's a strategy that we've adopted in relation to compounds in some areas where there is a risk that the remedial works that were necessary to reinstate the land to its previous condition might prove more costly than the value of the land itself.

58:30

And in that sort of scenario, the applicant might need to acquire the land, simply to mitigate his exposure to costs in relation to this specific example that you have, then there are a number of plots that we are ready to respond to all about. Could I please call my colleagues,

58:54

Mr. Steven banal, and Mr. Frank loi, to explain the particular pop scene question. Right. Okay. So what I've taken from that, then is that I can see your point about the

59:07

I was gonna call it remediation, but it's not necessarily returning the plot to its original condition being more expensive than the value of the plot in the first place. So therefore, I can, I can understand what you're saying on that. As you said, I then have a number of other plots to go through briefly. And you're saying that your colleagues then are better placed to respond to that from the design team. Okay, I'm happy to hear from others then. Thank you.

59:34

Could you Could you identify yourself first. Hello.

59:40

My name is Steven bagging from me. I'm a chartered engineer. I'm sorry, I didn't catch your name properly. That is Steven Bagnell.

59:48



Engineer with me and I'm design manager for a few of the schemes along the route. And

59:58

in terms of the first plot

1:00:00

There's 0102 hyphen 01035. This, we had acquired this land.

1:00:11

It was hoped that we could use this, the office buildings within our site as potential side offices during the work. So that's one of the reasons we we required that.

1:00:24

In terms of the next plot 0102 hyphen 02 hyphen 05. This land was acquired to allow us to construct an outfall from the retention pond to the revery. Mont.

1:00:42

Again, that was

1:00:44

coloured pink and the plans.

1:00:48

Referring to what Miss referring to what Mr. Slater said this was

1:00:53

we we chose to acquire that permanently in the first instance, with the with the intention hope that that could be given back to the to the landowner

1:01:05

following following construction, so is it still the intention to construct a retention pond on that small rectangle of land? This small, there's, I think that it's the small rectangle of land that I'm talking about the one which is on the mitigation map just above the letters EFB. In that area?

1:01:25

It says

1:01:32

Could you put that is it is plot 05 on sheet two of two. And it is basically a rectangle, which is coloured white on the mitigation maps and is coloured pink on the land maps. It isn't all of plot 05. And I can see the point that you're making about a balancing pond and the discharge to the river that's at the bottom.

1:01:54

So you could just explain that against I've just got the map up so apologies. Right. Okay, which which are you at the mitigation map, I'm on the land plan on the land plan, then you'll see plot

1:02:07

just bear pot 05 on sheet two of two, which is effectively plot a 1020205.

1:02:18

And you'll see that that that plot has a triangular shape to it. And in the top right hand corner of that plot, if you keep your finger on that effectively in terms of the mitigation maps, you have a white rectangular shape, if I can call it that. And it's that area, it's these areas which have nothing proposed on them. There's no

1:02:40

retention pond on it. There's no mitigation proposed. And that's the question.

1:02:49

Mr. Rowan, if this gets too complex, and you wish to come back to me on it at some stage, you're welcome to we will just there it is. Now we were just wondering if it would help to display

1:03:00

one of the drawings. Okay, you're actually on sheet two of that set.

1:03:06

So that will have to be scrolled down to sheet two.

1:03:09

Yeah, this is right. If this isn't working, I'm happy to be approached.

1:03:16

Or I'm happy for you to take this away. I think

1:03:20

we ought to take it away, given this could take a while. Yep. Thank you. Are you clear from I mean, it's a reasonably detailed agenda item. I've explained why I thought I'd explained the principle in the agenda item. But the principle is the white the areas that under question are white on the mitigation maps, and then the pink on the land maps. And that is the point behind it. And I can see nods from your team at the back. So I'm satisfied that that's been under we understand it. So yeah, thank you.

1:03:51

If I could just say I think the intention for that plot was that it will be used to construct an outfall. Sorry, Heidi Slater from the applicant and outfall from the retention pond down towards the river aiment. I can see that intention from the extension of that plot. I think the words are parts of plots 10205. And it's that particular white part on the mitigation maps that I'm interested in. Thank you. Right. Okay. So does that

effectively get me to that would be a post hearing note then please, Mr. Owen, would that get me to the bottom of agenda item 2.4.

1:04:37

To hear more detail about the other plots, you're going to come back to well, if we can get them all away, why do these I would rather have them taken all away rather than spend time Yes. Right. So and if I was to get you to approach them, the plans are quite small and whatever. So it's probably better done in a note. And one other thing to say that the O one o two

1:04:59

o

1:05:00

135 For the first one, and you'll be able to take what I'm saying from the recording. That isn't the only plot in that location. There are other plots nearby, hence the agenda item is written such as at plot a 102. There are other areas on sheet, a 102, a one on plot, oh 303 36, that's Oh, three of 336. My point there is that there is a triangular area of land, which, if you look at it on site, it, it almost appears to be part of the residential gardens. It's near a caravan storage area, which is different, but it's fenced from the rest of the field. And I don't know whether that is effectively by customer right or just by use part of the residential properties. But the pink gland shows that you are of a mind under the worst case to take that.

1:06:02

So I hope that is, is clear. And that's plot 0303 36.

1:06:10

I hope all of that should be reasonably clear. And I look forward to receiving the note.

1:06:16

Does that get to the end of item 2.4? I believe so. Say you're just looking around the room to see the spark, Michels heart and in this particular instance, I'm acting on behalf of Cumbria county council on this item. I just wanted to clarify from the County Council's purposes, and my instructions there that plot to plot 0102 Dash 01 Dash 35 Just to pick on Mr. Pick up on Mr. bagnoles point. And there have been negotiations with national highways. And for permanent landscape of those offices. Those offices are for essential childcare services, including abuse and other such services. And the county council has made that point on a number of occasions to national highways. I've been instructed that that permanent land take is nice suggested to be temporary land take but the negotiate we need more meaningful negotiations in respect of that land particularly. And I just wanted to put that on the record. So thank you very much for that the spark. Mr. Owen, I think that gives something to be added to the notes that you're going to be provided on this. And I recognise that circumstances relating to these plots might have moved on since the application plans were put in, in late summer. Thank you. Thank you. So that then completes agenda item 2.4. And I now move on to agenda item 2.5.

1:07:43

Briefly, applicant set out briefly, briefly in capital letters having regard to Section 122 Regarding the compelling case for land to be acquired and the balance between public benefit and private loss. Thank you. Thank you. So Mr. Slater, we will deal with this briefly.

1:08:02

Thank you, sir, briefly, then,

1:08:05

the applicant has considered the wider public benefits of the project against the impacts that would have on the land holdings of private individuals and under land interests.

1:08:17

And as has been explained in Section 6.3 of the statement of reasons, that's a pp 299. The applicant does recognise that the project will have an impact on privately held interest in land, and understands that this is very difficult for those persons whose ownership and occupation of land is affected by the project. However, as we noted earlier, it wouldn't be possible for the project to come forward without affecting land, which is currently privately owned.

1:08:47

And whilst the applicant acknowledges the values of the existing land, it does note that those interests can be compensated. Whereas in contrast,

1:08:58

the wider public benefits of the project couldn't be achieved without

1:09:02

the use of compulsory acquisition powers. If authorised.

1:09:08

The applicant does consider the non balanced the wider public benefits, which are outlined in the case of the project,

1:09:16

which is application document AP P. 008. Would if realised if this game payment scheme came forward if the project came forward, thank you pardon.

1:09:26

Those those benefits would outweigh the losses that will be suffered by private individuals, both on an individual basis and cumulatively across the project as a whole.

1:09:39

I'm hoping that that is sufficiently brief. Thank you. Cheers. Yeah. Just writing some notes on your final sentence there. Thank you. Thank you. Was there anything anybody wish to say anything else anybody wish to say on agenda item? 2.5. Just looking around. Thank you.

1:09:55

We'll move to Agenda Item 2.6.

1:10:00

Whether it's on the limits of compulsory acquisition of this particular one, but after going to explain briefly whether in the context of the need for infrastructure established in the NNPS PS, the proposed development would include any upgraded technology to address congestion and improve performance and resilience at junctions. This is because it's in a statement of reasons. Paragraph if you like, I think the statement of reasons paragraph is numbered incorrectly. As I said there on the document that we had that I seem to see this later.

1:10:33

Thank you, sir. We were puzzled by that. Right. Right. What I will do, then I will have a check done on that to make sure that my reading of the document was correct. And then we can we can come back to you on that administrative matter. Thank you, for from our perspective,

1:10:52

we understood the reference to be to the description of the project, which in our version of the statement of reasons at least runs from paragraph 2.1, point one through to 2.1 point 125. It is quite lengthy section, section 2.1. But the numbers are sequential. And so we run quite sure where the reference to paragraph one point 1.9 I, or 1.1 point 20 came from. Right. Okay. I will look at that from our side. And if we if we need further clarification, we can get back to you.

1:11:27

By the I am referring to the paragraphs in the same type of reasons. And I think you've been able to pick those paragraphs out. The reason for this question. It's it's particularly relevant in terms of the improvements suggested yesterday, for instance, to the existing route, and also to tie that into the policy. So if we could have just a brief response to that place, indeed, thank you.

1:11:52

My understanding is that

1:11:55

there are traffic signals, which have mover technology, which I understand is microprocessor optimised vehicle actuation. That the signals and that technology is currently installed to control all movements at the MCX junction 40

1:12:13

junction and also at the company bank, complete bank roundabout and Scottish corner. And that is part of the project, new traffic signals and motor systems will be installed as part of the junction upgrades at these locations. So on scheme, a one a two and scheme 11 to help facilitate traffic through those junctions.

1:12:33

There are in addition, proposed to be six variable message signs, BMS signs which have been proposed along the route to advise of incidence and journey times.

1:12:45

Key junctions on the route and those messages are proposed to be installed on schemes I wanted to

1:12:52

Oh, 30607 and oh eight and they are shown on the general arrangement drawings by means of an orange spot. Case.

1:13:02

Thank you. Anything else on agenda item 2.6. So can I just be clear precisely what you're expecting us to come back to you on in relation to this item? You mentioned a note just a short while ago. Oh, that was to do with no that was to do with agenda item 2.4. I got that which yes, is an add on two points on on this, I said that we would actually go back and look at why I recall having seen. I appreciate that. I thought after that you asked for something from us. And I did not negate things no. And I can see Miss Slater shaking their head as well. Thank you. Was there anything else on agenda item 2.6. Just looking around quickly.

1:13:41

Can't see anything on that. And so Agenda Item seven any other matters relating to statutory conditions and general principles. Again, just looking around the tables in the room first of all, and on the screen can't see anything raised. There. We move on to section three of the agenda then summary of DCO approved provisions, agenda item 3.1 applicant to set out briefly, which draft DCO articles engage compulsory acquisition and temporary possession powers. I believe that we've dealt with some of this already in your explanation so far, but just a brief run through Thank you. Thank you. So Robin for the applicant. The key articles in the draft develop consent order, which engage powers of compulsory acquisition and temporary possession are the following. For compulsory acquisition, we have article 19, which provides for the compulsory acquisition of land and that applies to all land shown coloured pink and blue on the land plans.

1:14:43

Article 22 provides for the compulsory acquisition of rights and restrictive covenants over land as opposed to the outright acquisition of land that also applies to all pink and blue land shown on the land plans.

1:14:58

However, in respect to the

1:15:00

Three land shaded blue on the land plans unlisted and schedule for the new rights which may be created and acquired are limited to those specifically listed in column three of that schedule.

1:15:13

We then have article 27 which provides for the acquisition of sub site etc

1:15:22

and indeed acquisition of land and also new rights in sub soil below it and airspace over the order land.

1:15:32

Turned into temporary possession article 29 provides for the temporary use of land for constructing the authorised development and that's the land identified in shedule, six to the DCO and shown coloured green on the land plans.

1:15:47

Article 30

1:15:50

will finally provide for the temporary use of land for maintaining the authorised development for a period of five years.

1:15:57

Thank you, sir.

1:15:59

Thank you. Anything else on item 3.1 of the agenda just looking around and I don't see any hands raised in the room or on screen. Thank you.

1:16:10

Item 3.2 on the agenda applicant to summarise briefly any other provisions in the draft DCR relating to compulsory acquisition and temporary possession Australian. Thank you sir. Other powers relating to compulsory acquisition and temporary possession, which are also along with the powers I've just been referring to included in part three of the draft Decio are as follows.

1:16:33

Article 20 deals with compulsory acquisition and incorporation of the minerals code. Article 21 contains a time limit for the exercise of powers to possess land temporarily or to acquire land compulsorily. Article 23 deals with private rights over land.

1:16:54

Article 24

1:16:56

provides the power to override easements and other other private rights. Article 25 modifies in its application to the developing consent order provisions set out in part one of the compulsory purchase act 1965.

1:17:13

Article 26 deals with the application of the compulsory purchase vesting declarations act of 1981

1:17:21

article 28 deals with right rights over or under streets. Article 31 deals with statutory undertakers article 32 also deals with statue Undertaker's in terms of the apparatus and rights in streets stocked up under the terms of the DCO.

1:17:41

Article 33 also relates to Sasha undertake as operators and provides for recovery of costs of new connections.

1:17:49

Article 34 deals with what is termed special category land.

1:17:55

And that provides support the provision of replacement land in exchange for special category land which is proposed to be acquired under the order

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article 36. As we begin pardon article 35 First deals with Crown rights and provides nothing in the done consent order would authorise national highways to take use and recon or in any manner interfere with any Crown land, or any rights over land which are held by the Crown without the written consent to the appropriate crown authority. Article 36 deals as we just as we discussed yesterday, with the relocation of bluff Hill fair,

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then there are three articles dealing with compensation as opposed to the compulsory purchase process, article 37. In relation to the disregard of certain interests and improvements, article 38, providing for the set off for enhancement in the value of retained land setting off from compensation payable. And article 39 is a standard revision writing for no double recovery. So that's a brief summary, which I hope is sufficient. Thank you, Mr. Owen. Yes, thank you for that. Can I just explain why that is asked for in the context of the hearing to it increases the inclusivity of the of the event, if you like in that others can listen to the recording and get a very quick summary of the articles and the relevant sections of the DCI that that are being spoken about. And that gives somebody the it makes the recording more accessible to people. Thank you. Thank you, sir.

1:19:34

If you could just give me a moment.

1:19:49

I've just had clarification on the on the suggested errors in the statement of reasons. I don't intend to deal with it with it at the moment because I'll look into it.



1:20:00

In an adjournment, and then I may just return to that later on. So that was agenda item 3.2. And there wasn't anything else on that on now to just looking around now. And now to agenda item 3.3, which concerns the book of reference, and it includes many compared to other books of reference category one or category two persons identified as being unknown, and particularly in respect of

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mines and minerals.

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And I was wondering that how those types of unknown interests have been identified. The statement of reasons actually gives a brief, if you like, the explanation of the process. But I was just wondering, particularly in respect of those unknowns, how that was done, Mr. Allen,

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this is something Mr. Slater is going to cover sir.

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Thank you.

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Heidi Slater for the applicant.

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The applicant did carry out diligent inquiry by appointing a land referencing agent as has been explained in sections 4.4 to 4.8, of the statement of reasons.

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Summarising that process. It included an initial desk based assessment, sometimes called non contact referencing, which was carried out by the land referencing agent on behalf of national highways. And then that exercise was followed up subsequently by the issuing of requisitions for information,

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sometimes called RFIs.

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And including what's often referred to as an ally queue, so land interest questionnaire, those land interest questionnaires, requisitions, for information were issued to all persons and properties that had been identified through the initial desk based referencing work.

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So when returns came back, with the land interest questionnaires completed, that information was locked. But where returns didn't come back. From that sort of second stage, they were followed up by additional correspondence and telephone calls in the quest for information. And where that was

unsuccessful. The land referencing team being unable to identify contact persons with an interest in land site notices were erected at those locations inviting owners or occupiers of the land to come forward. Just like if I could just come in here. It's it's not really the land that you can see on the surface. It's the it's the the reference to unknowns, and that is, particularly in respect of mines and minerals. And it's the fact that yes, you can have a land plan and you need to make sure as far as you can, that all of that is referenced and identified as known if you like in the book of reference, but it's these bits underneath it, how did you find out whether there was the possibility of mines and minerals rights underneath a plot of land?

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In response to this agenda item, the land references have carried out an analysis and you mentioned that it might be necessary for us to provide a schedule, we have prepared that schedule already. It

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indicates that these are known unknowns, particularly in respect of minerals, interests, Mines, Minerals, four largely into three distinct groups, which are unregistered land in the first instance. So land in respect to which there's no registered freehold interests.

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And so it's not been possible through the contact referencing that I just described. Are you saying that on the surface, there's no registered freehold interest? Yes, thank you.

1:23:59

There are also a large number of unknown mines and minerals interests, or mines and minerals interested in unknown ownership, where the title information at hm land registry specifically excludes mines and minerals from the freehold title, but then provides no further information about the ownership of those mines and minerals.

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And it's not been possible, subsequently to identify their owners through the contact referencing. So the important word there is that exclude excludes actually features somewhere. Absolutely, yes, I can see notes from elsewhere. Yeah, yeah. And then

1:24:35

there are also unknown persons in part three of the book of reference. So this situation has arisen where the title information at hm land registry includes reference to rights or easements, third party rights but then doesn't attribute and attribute them to any particular party. So they're referenced and they're included in the book of reference, but it's not impossible to through the subsequent contact referencing to identify

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by who they belong to. So from from what you're saying the fact that it's appeared to us as being a lot of them does actually come just as

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an indication of the history of the area possibly, or some something to do with that, that just it's a function of the location rather than a function of something in the process, which happens to sort of, you know, this centre of the Earth thing in terms of landownership. That sort of change that slightly. Right. Okay. Okay, thank you was, I would be happy to receive the shedule. At deadline one hand, I'm just wondering about the extent of it, bearing in mind, the number of unknowns. And I would just say that one of the most interest, one of the interesting things that came out to me in the things that you've just said, was the grouping of these kind of rights, unknown minerals rights into categories. And that's what I thought that sort of,

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I thought that you might be able to get to.

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So if the shedule could be arranged in that in that type. And it really is the categories and what how the categories have been approached, is currently a spreadsheet with three tabs, right, or each

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type you have to have just outlined, would you prefer? I'm just wondering how large it is. I realised that it's come from various other layers of land, land, searching information, if you like, but how large is the document is quite extensive. That's I thought it might be that's why I was looking at really, that's why I was saying that the applicant may be requested in the hearing to provide a schedule, and if I'd have been requesting it now, I would have said that right. Okay. I would be happy with the groups that you've identified. And I would be happy with a summary. If that can be made. I don't need everyone to be chased down and explained. Okay, we can provide that you might have jumped the gun. But I'm grateful overall. Anyway. I see my submission. Thank you. Thank you. Is there anything else from the applicant on agenda item? 3.3?

1:27:06

Nope.

1:27:08

Thank you. Anything else from anybody else on agenda item 3.3. Can't see any hands raised if just give me a moment?

1:27:37

Right, I'll proceed now to agenda item 3.4. And this is the applicant to explain what factors were used in the desk based assessment of potential compulsory purchase access to 65. Section 10 matters together with any spatial or distance parameters that might have been used in the assessment. Mr. Allen,

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thank you so Robin, for the applicant. In a nutshell. So And by way of background explanation, and section 10 claims may be made by parties who have an interest in land or property, which is affected by

some physical interference with a legal right, that they are entitled to use in connection with their land or property. Whilst interference with the right would need to arise from the construction of the project.

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The land benefiting from the right could be located at some distance from the project itself and could be some distance beyond the order limits. Therefore, in carrying out our desk based assessment to identify a category three persons who would who would or might be entitled to make a claim under Section 10 of the compulsory purchase act 1965, we refer to them as potential section 10 claimants.

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National Highways specialist land referencing agent

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did a number of things they identified a buffer zone, which extended in all directions resistance are 300 metres from the centre of the engineering boundary, which is the boundary of the land which was considered to be needed to accommodate engineering works. And that was done along the full length of each of the schemes comprised in the project.

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All and interests within this 300 metre buffer zone were included in the initial desktop land referencing work, and were served with requisitions for information, including land interest questionnaires, which included questions designed to elicit information, which would help the project team to identify potential section 10 claimants

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and all of those who receive those land Indras questionnaires were also included in the pre application consultation. And the buffer zone was deliberately extensive in order to make sure that it was a robust and precautionary approach. Given that the design the project was continuing to evolve whilst land referencing work and consultation were being progressed.

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However, the land referencing team did not just rely on 300 metre buffer at

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If it were an example, and access track off the a city six was within the buffer, then the team would follow it along its route to identify the associated farm or other property. As such, the land referencing work would have picked up parties further away from 300 metres as part of the precautionary and inclusive approach that was adopted.

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I should also say that in preparing to identify section 10 claimants, the land referencing agent considered the nature of the project, and determined that areas where access from properties to the public highway might be obstructed during the construction of the project, being the execution of public

works using section 10 language, and where no alternative means of access might be possible or available during that process. That too could potentially give rise to Section 10 claims.

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Therefore, as the design of the project continued to evolve, the land referencing team systematically reviewed the emerging draft order limits to identify properties, which looked to be at risk of being cut off as it were during the construction of the project.

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All of those properties were then considered by a multidisciplinary team comprising members of the land referencing team, the engineering design team and the legal team who reviewed the areas and properties in question by a GIS platform hosted by the land referencing team. Each area was discussed in detail, with consideration being given to how the design might impact on properties and access to them during the construction of the project. Other factors considered included the potential impacts of construction such as noise, dust, fumes and vibration arising from construction works and related traffic. Although it was acknowledged that the prospects of such short lived temporary effects were less likely to cause depreciation in the value of property, which is the test under Section 10 than other factors such as interference with REITs, for example, through severance

1:32:00

as well as this desktop referencing exercise I've summarised were meeting in person with affected persons. The project team has endeavoured to establish whether those persons interested in land are subject to any third party rights which might present grounds for a potential section 10 claim and any any information ascertained in this way has been included in the land referencing database used to inform compilation of the book of reference.

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And in relation to all of these methodologies that I've summarised a precautionary approach was taken to identifying potential section 10 claimants, given the wording in Section 44 of the Planning Act 2008, which asks the applicant to identify persons who would or might be entitled to make a claim where there was uncertainty about whether a person might be entitled to make a claim, they were included in the book of reference as a precaution to ensure that no part is that the applicant thought might be able to make a claim were inadvertently excluded. So I hope that is a sufficient explanation of the factors we used in the database assessment undertaken.

1:33:12

It is it is thank you very much. I don't have any questions on that. Just looking around the room see if there's any buddy else has any other matters which to raise against agenda item 3.4. Don't see any hands raised don't see any hands raised online. So that takes us to the end of agenda item

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3.4 The time is now 1133 will be my intention to take the morning adjournment. So the time now is 1133 and I'm proposing a 15 minute adjournment. So the hearing is adjourned to be resumed at 1145. That's 1145 Thank you