

transcript_CAH1_session2_02122022

00:01

Thank you.

00:03

Right, I'll do that again. The time is now 1145. And the hearing is resumed. Thank you. We are now on. I'm sorry, I can hear conversation from a right hand side. Sorry. Thank you.

00:15

We're now on agenda item 3.5. Applicant to explain whether long term maintenance beyond the five year period in the draft DCO is solely enabled by the CEA of land, and REITs. What I'm particularly interested in is the handover, if you like, of, if you like DCO related maintenance, I call it that over to the applicants, usual maintenance regimes, if you like, and that covers various items, such as drainage or environmental mitigation, but it's the DCO. Ca and temporary possession, rights that I'm particularly interested in. Thank you.

01:00

Thank you, so Robin, for the applicant.

01:05

If I could start off with a bit of background here, we will assist I think, as is noted at paragraph 8.30 of the explanatory memorandum as a pp 286. Article 30 provides a power to temporarily possessed land for the purposes of maintaining the authorised development during the five year maintenance period specified in that article.

01:28

And this provision is intended to facilitate the resolution of any snagging issues that arise during the first five years of the project's operation.

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Typically, highways projects are designed to have a materials lifespan of between 20 and 40 years before any significant maintenance and upgrading is required. Of course, this will be dependent on material properties maintenance and usage. And there may be some elements including structural concrete and steel work, which have extended design lives about 220 years.

02:00

Consequently, it is the case that the applicant is reliant on the acquisition of land, the acquisition of rights over land, and also any contractual agreements, it may reach with landowners in relation to the use of land, so reliant on those to carry out the maintenance required for the project in the longer term.

02:22

As we've heard, we are however, seeking to acquire by agreement, the land and rites of land that we required to construct and maintain the project as we have explained earlier and set out in the statement of reasons but to safeguard the delivery of this nationally significant project we are seeking the composer's vision powers you have before you for maintenance, as well as construction purposes. So I think the short answer to your question is

02:51

longer term maintenance is is is is largely enabled by the composer acquisition of land and rights because of course, they may in addition be the contractual agreements to add to the mix.

03:05

Thank you. Was there anything else from anybody on agenda item 3.5. Just looking around quickly, and looking on the on screen? Thank you. Amen to agenda item 3.6. This concerns limits of deviation, Article Seven.

03:24

And the gender item could actually be take quite a long time to answer and that's why I've suggested that you may be requested to provide a schedule to more explain the the detail of these limits of deviation. I was conscious in the discussion that we had in terms of alternatives in this particular area of the reasoning for some of the limits of deviation in that area.

03:52

Changes in that area, I suspect might lead to changes in limits of deviation within the dcl. And I can see has been nodded.

04:01

And so I'm

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I understand that this response may be subject to amendment as we go through. And so therefore, I think that the principal, I'd like to look at whether these limits of deviation can be grouped, as I said before, in terms of the unknown interests, so I don't really need a line by line.

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But it's it's it is if that can be grouped into categories. And if you'd like a general description of the necessity of those categories,

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that can then be more easily amended if it needs to be when any

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application changes are putting if and when application changes are put to the examining authority.

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Is that a reasonably clear explanation of what we'd like to see on

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There's a bit more comfort as to the necessity for those extended limits of deviation, if I can call them that. So if I may respond later. Thank you, Heidi Slater for the applicant.

05:17

There is reasoning set out in a series of tables, which I think you're aware of in chapter two of the IES

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can I just check that what it is you're asking for by means of post hearing submission is an expansion of the detail that's provided in those reasons and why they are and more explanation of why they actually necessary. It's the necessity. That's right. That's right, it says are necessary in the agenda item. And that's yes, you can work out what each of the limits of deviation do, if you liked to the works. And you can put a pencil or log on a plant if you want to show where those are. But it's it's the reasoning behind it. And that's why I believe that if it can be grouped, then fine. And that will be easier to amend if it needs to be as it as it goes through. So that at the end of the examination, we have a supporting information against those, what you might call Additional Limits of deviation.

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So for example,

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looking at some of the reasons that are given in table 2.4

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For scheme four or five, in chapter two of the Yes. Where we've said, for example, that we are looking to ensure that the new cycletrack is delivered on the alignment of and within the boundaries of the Detroit t 66.

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A we looking to expand

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the necessity point within that explanation. Just taking that example that you've given me, it doesn't really describe why the limits of deviation need to be

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extended in that particular way. Is that is that in terms of the is that in terms of cycletrack works that you're talking about? For example, that is so big, right? Okay.

07:22

That they are simply confined to the order limit? Yes. Without

07:28

an application for limited deviation to the centerline there isn't there isn't a work centerline to go with specifically with the cycle track? Well, there is, but it doesn't have a three metre it doesn't have the standard three metre flex either way, because the order limits are sufficient to constrain it. Because it's supposed to very narrow corridor. Now Yeah. Looking for a better example.

07:56

On scheme, six, we have a lateral limited deviation that's shown by means of a fine green dashed line on the works plans. Yes, yeah. Yeah. And what we've said that is required for is to accommodate the detailed design of the junction in a way that will minimise impacts on adjacent Fenn landscape. So, so in that one, then why are you is it? Is it clear where the Fenn landscape is? Not UX? Are you trying to say that if possible, the whatever it is, will be moved away from the area where it can impact on the fan landscape. And so which direction is that it's it's just a little bit more if you like in terms of detail on it, it was quite hard to follow and to get the necessity for it.

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Because of a change the the limits of deviation into this has to have a reason why you want to go outside the works centerline to justify

08:59

I think we have an offer for you.

09:02

I've understood that correctly, of producing a set of annotated plans to show where we have non standard limits of deviation, and putting the reasons why they're required on those plans. Right. I'm all always conscious that I don't want to be asking for volumes and volumes of information. And I'm just trying to get in my head what the scope of those plans would be. But if they're not going to be too many plans, then there would be six sets, I think because there are nonstandard limits for deviation on schemes bar, one or two and 11. Yeah, so that might be one says, yeah, that's that that's that's a lot. I realised that this information probably exists somewhere in somebody's layers of plans. Is there any way that that can be put forward in a little bit in a category way in a narrative possibly as as has just been said?

09:52

Robbie, only the applicants, Sir, can I just if the conclusion is that it's simplest just to say

10:00

to update and expand the tables concern from the parameter statement to include greater detail and sort of specificity for the reason would that be? That'd be okay, rather than anything else including grouping? I think so thank you for the offer. I'm still interested if the grouping can be brought in somewhere because it makes it more easily reportable. And if I can say it that

10:25

so if you could bear that in mind when those schedules are being expanded? I think that would be thank you for the offer the plans, I just have to be very careful at this end that we don't take so much stuff that unduly burdens us.

10:41

Thank you.

10:54

And indeed, then if if if and when we talked about proposed changes before, and so that would allow those to be to be substituted? If If and when those circumstances might? Okay. Right.

11:07

The final part of agenda item 3.6, then concerned, the design dcl, article 54.

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Does that relate at all to limits of deviation?

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I'm not quite as as comfortable on this as what we're looking for, then I was on the

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on the other limits of deviation.

11:33

aspect.

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It concerns structures really? And are those structures then, within the limits of deviation? You've just given moment?

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Yeah, yeah, I'll just write clarification, there's more to do with the changes. The article 54, of course, allows a min the design to be changed, and whether that would have any bearing on the limits of deviation. That's where that that point is from.

12:14

Thank you. So I think my colleague Miss Rowan is intending to respond to you on this point.

12:27

Robin for the African Thank you, sir. That there is no provision within

12:34

article seven, for the limits to be subsequently changed.

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The point of the cross reference in article 54 to Article Seven is to preserve the ability to

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exercise the power to deviate under Article Seven.

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So that

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it otherwise it might be argued that

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there's a non compliance with article 54, in terms of

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not designing in detail and carrying out the scheme to be in a way that's compatible with the works plans and the engineering section drawings, if one deviates, so the purpose of that cross references to preserve the ability to deviate. And if there were to be a change approved by the Central State under paragraph two of article 54, that wouldn't

13:39

automatically allow, because there's no provision for it in Article Seven for a change to the limits. So I saw we see article seven as operating independently of article 54, but it's related.

14:00

Thank you.

14:05

Thank you.

14:08

Was there anything else on agenda item 3.6. Just looking around.

14:13

Thank you. Just before we move on to article 3.7 in the adjournment, I omitted to mention when we restarted after the adjournment, that we had looked at Agenda Item 2.6. In terms of this statement of reason, paragraph numbering. And our view is that is that there is still in the version that we have there appears to be an error in the numbering and if I could be just be clear what I think I believe we found is that we think that paragraph for instance, 119 I should be two to nine I and 110. Should be two to 10.

14:54

I'm not quite sure I haven't actually had the document in front of me, so I'm not sure but that was

15:00

Have you that we agreed to come back to you on? If you could just confirm that in your post hearing submissions. Just for some guidance, I'm being told that that era begins on page 22. So again, I'll leave I will just leave that with you.

15:16

Thank you, sir.

15:19

If Could I just ask sorry, Heidi Slater for the applicant? Could I just ask if we are unable to locate a version which has that erroneous numbering in? May we liaise with the case office at least to obtain a copy of the one that you have with the rogue numbering? Yes, yes. Yes, this is this is I should be clear that as I as I think I said previously, this I consider this to be almost an administrative matter. We were happy that we were talking about the same paragraphs. It was simply the numbering so is this. Yes. If we just leave that with you, then I think we can immediately see the issue itself formatting time, properly wrapped up. Thank you. Thank you.

16:01

Right, so

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I believe that we're now on agenda item 3.7.

16:11

And this is applicant to explain why the paragraph of the acquisition of land act is not being incorporated into DCO article 20. It's not explained in the explanatory memorandum. I'll deal with that first. Mr. Rowan, is there anything you wish to say on that?

16:30

Yes, sir. Thank you, Robin for the applicant. The general position is that unless otherwise excluded from a transaction to acquire land, the acquisition of land will include the acquisition of any mines and minerals forming part of the land. However, mines and minerals can be expressly excluded from compulsory acquisition by applying what's called the mining code to the instrument authorising the compulsory acquisition, for example, a DCO, or indeed a compulsory purchase order. And the mining code sometimes also referred to as the minerals code is the name given to parts two and three of sheduled. Two to the acquisition of land act 1981, which are the Saturday provisions this agenda item relates to

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article 20 of the draft DCO incorporates parts two and three of schedule two to the 1981 Act into the draft DCO, subject to some modifications.

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The effect of incorporating the minerals code into the draft DCO is that if the DCR were made, then national highways would not be entitled to require any mines or minerals other than where minerals were necessarily extracted or used in the construction of the authorised development unless these were expressly proposed to be purchased.

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And when the minerals code is incorporated into the draft DCO, as here it is, it is modified to exclude paragraph 8.3. And that's the key question you're asking. Paragraph 8.3 of the minerals Code provides that if the owner of the mines the mineral destroyed, is this the 50 pound or no access? Yes, yeah, yeah. That provision provides that if the owner of the minerals refuses to allow a person appointed by the acquiring authority, for the purpose to enter the mines or works under this paragraph, he will be liable on summary conviction to a sum not exceeding 50 pounds. The effect of excluding that provision is that it would not be possible for national highways to bring proceedings against a landowner who refused to allow national highways or his agent to enter onto the land containing the mines or minerals. And this exclusion of that provision follows standard drafting practice derived from what were modelled provisions published in around 2010. And this approach also follows what was then widely applied in a number of highway DC shows, such as, for example, the A 14 Cambridge to Huntington improvement scheme DCO, that similar Pantanal DCO and others that we can we can mention, so could you so just on that, then could you just put a little bit more in the explanatory memorandum, there's no need to go to chapter and verse on it. But just so that somebody looking through the explanatory memorandum on one side and the DCO on the other side, can immediately see what has been excluded and the fact that it has a certain relevance or a certain non relevance to, to what is the matter under consideration. So we're happy to do that. Yes, thank you. I think this comes back to my point yesterday, that sort of the explanatory memorandum is a is a useful document in terms of those who need to review the draft DCO after the recommendation report has gone in. Thank you, honestly. So thank you. Now, the this minerals incorporation, then, does that negate the need many or

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any of the unknown category one persons in the book of reference.

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I can see that being underlined. If you wish to come back to us on that point, then happy to do that. So I think we would like to do that because it could potentially be argued as the question puts it, but it is it is something that we normally would adopt a precautionary approach over so if we could come back to you on that, I would prefer to do that.

20:30

Thank you

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just on those unknowns as well, in certain sections of the book of reference,

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the

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the mines and minerals, the right there is referenced and the brackets actually say caution in respect of mines and minerals, there are some which don't have that reference to caution. And there are some which do have that reference to caution. The question is, what is the difference?

21:09

Slater?

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Thank you, sir. May we take that one away and come back to you in our post hearing submissions once we get to that and referencing team so if that could be added to the

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note that you just offered in terms of the unknowns? Indeed, right. Okay. I didn't have anything else on agenda item 3.7.

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Anything else from the applicant?

21:34

Right, just looking around the room? I see no hands raised. I see no hands raised online. So that was agenda item 3.7. And now move on to agenda item 3.8.

21:46

This refers to the applicant to explain why draft DCO article 22 Three is subject to various sections section strict schedules of the compulsory purchase act 1965. And if such an explanation such a brief explanation could be added to the explanatory memorandum, destroying that Thank you, sir. We can certainly add an explanation to the expansion memorandum on this point. And this is a standard provision. Would you wish me now to just give a brief outline of the reasoning?

22:17

Yes, please. Very, very briefly. Yep. Article 22. Paragraph three is an important provision based on a model provision which makes it clear that were the undertaker acquires a right overland compulsorily, it is not then required to acquire a greater interest in the same land.

22:36

This article is however, subject to the statutory provisions contained in Section Eight of and sheduled to a to the compulsory purchase act 1965. And in short, and subject to a range of qualifying criteria. These provisions allow a person in relation to whom it is proposed to acquire part of that landholding, to set a counter notice on the acquiring authority, requiring it either not acquire anything at all, in terms of part or alternatively to purchase all of the land holding. However, it's important to recognise that there is a patchwork of compulsory purchase legislation that has arisen since the 1965 Act which is not well suited to the compulsory acquisition of new rights as opposed to outright acquisition. And strictly

speaking, the counter notice provisions I've just summarised, apply only to the acquisition of land and do not apply to the acquisition of new rights over land, or indeed, to the imposition of covenants overland, and To remedy this, paragraph four of article 22 introduces shedule, five to the draft DCO, which contains the modifications to compensation and compulsory purchase enactments necessary to allow the undertaker to acquire rights compulsorily. And for those burdened by those rights to be properly compensated, and paragraph five, eight of shedule five modifies

24:02

the provision of the 1965 Act I mentioned a while ago, so that the counter notice provision procedure also works in relation to the compulsory acquisition of rights and covenants, as it does in relation to the proposed acquisition of land outright. So it's really applying the same procedure for the benefit and protection of property owners.

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And we can certainly as I say, update the EM to explain what I've just said. Doesn't need to be explained it at that level of detail, but you'll get the gist. It's just really to steer somebody to the right place. Thank you.

24:41

Anything else on agenda item 3.8. Just looking around quickly and on the screen, nothing Thank you.

24:51

Genda item 3.5. Then applicant to provide a legal explanation of why the power sought in draft DCO article 24 is still required.

25:01

Mr. Allen

25:03

Thank you. So article 24 provides for the overriding of easements and other rights in the main existing easements and restrictions on land that could interfere with delivery the project are addressed by article 23, dealing with private rights over land. And article 23 provides that existing rights are extinguished, where the undertaker acquires the land by compulsion or agreement. They're also extinguished to the extent that the existing rights are inconsistent with the rights or covenants acquired or imposed under the order. And finally, they're also suspended for the duration of any period of temporary possession. However, article 23 does still have gaps in relation to the exercise of powers conferred by the order elsewhere. Notably, article 14 covering protective works to buildings and article 15 authority to survey and investigate land, which those powers don't necessarily amount to possession of land. And therefore article 24 ensures that those activities can be carried out unimpeded by existing rights or restrictions, and that those who suffer a loss as a result of the right or interests being overridden, temporarily, may claim compensation. And

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once the Undertaker's activity has ceased, and the person with the benefit, the interest may resume,

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enjoying it, and therefore that is the reason for having article 24 as well as article 23. It's really addressing other situations, but we can also make that clear in the explanatory memorandum. Thank you very much. Again, it doesn't I don't believe it needs to go in at that level of detail. It's simply something to allow somebody to look back. Yep. Thank you, sir. Thank you.

26:49

Anything else on agenda item 3.9. Just looking around? Thank you.

26:54

Agenda Item 310, then applicant to explain why the notice periods introduced by the housing Planning Act 2016 appear not to have been applied to the draft DCO, article 25, four and five.

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I'm conscious that the notice periods are not actually in place yet is my understanding. And I see nods, thank you.

27:18

So it's it's really why the applicant hasn't seen it appropriate to move towards longer periods.

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So I think the position here is the position we've adopted is consistent with other other DCO since the housing and Planning Act 2016 was enacted, which, as you say, provides for

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a new temporary possession legal regime but has not been brought into force. And there's no indication currently that I also understand it.

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Yes.

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For context, it's worth briefly explaining some of the main changes of relevance to the compulsory acquisition provisions of the draft DCO that were brought about by the housing and Planning Act. So

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the counter notice procedure under that I mentioned a while ago under Section Eight of the compulsory purchase act 1965, that was modified by sheduled 22 of the housing and Planning Act, which

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introduced a new sheduled to a to the 1965 Act.

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And the purpose of effective paragraph five B of article 25 is to insert a new interpretation provision in scheduled, two A to the 1965 Act, which clarifies that the entry onto land, or taking possession of it under Articles 1415 and 29. And 30 does not engage the counter notice provisions. And we consider this to be appropriate as the relevant provisions contained powers that are of a fundamentally different character than the compulsory acquisition of land or even rights over land. So we're really just recognising that

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that's a different thing and was not really lying behind the thinking

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underlying the housing and Planning Act provisions. So basically, you're saying to me that the three month period the three months period isn't appropriate in this respect. That's the three and I can see not so that's being adopted. Thank you. Yes. And this is also this is really, first of all referring to the I mean, we've come on to the three month period in a minute, all right, sorry, this is referring to that accounting data first time. So those powers I mentioned articles 14 dealing with protective works article 15 authority to survey and investigate 29 temporary use of them for maintaining the authorised development.

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Those powers will authorise only a temporary interference with existing Damjan interests and to to apply the counter notice provisions that were introduced by the housing and Planning Act to the exercise of those provisions would risk

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rendering them non functional, non functional, as a person receiving a notice of the intention, for example, to enter onto land for protective works, because it could simply serve a counter notice requiring national highways to either withdraw the notice or require the whole of their land holdings. So it just, it could stall indeed. Yeah. And it's it's very clear for the provenance of those provisions that right intended to address them. Okay.

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Right. And then the three month

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the notice periods, right, yeah, that's okay. That's okay. coming on, then to the broad precedent, then broad precedents actually comes from I think, the explanatory memorandum, we've actually explained

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where this has come from.

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It says broad precedent.

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What do you actually mean by that?

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That's a reference to the vast majority of DCs made for highway project since the housing Planning Act 2016 came into force in general, not these provisions. And the indeed, the first national highways DCO granted after the coming into force of the act as a whole was the M 20. Junction 10, a DCO in 2017. Right, and it's interesting, if you look at paragraph 51 of the decision letter in that case, that records that the central state made the order with modifications to make sure that the provisions are aligned with legislative changes that have been made, which was a reference in effect to the housing Planning Act 2016. And since then, national highways DCA has followed the state's precedent and we can give you a list of that would help a list wouldn't help. But I think that again, if the explanatory explanatory memorandum could have a sentence or two added to it to effectively explain what's just been said in terms of precedent, certainly, so we can do that. Thank you. Was there anything else on agenda item 311. From the applicant, Mr. LEWIN dosa? Thank you, just looking around the room and looking on the screen. Nothing there. So that was Agenda Item three point 11. Thank you.

32:07

Item three point 12, then

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oh, I'm sorry. Yep. Miss Miss staples.

32:16

Sorry. Thank you, Louise staples for the National Farmers Union. I just wanted to say that the NFU will be looking to see

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whether national highways would really look at notice period, or before they take temporary possession of land, as we do have much longer notice periods. Now agreed.

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Especially on HS two.

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Right, obviously, is a big raid scheme, compared to some other raid schemes that have been approved through a DCS.

32:51

Thank you. Anything you wish to say in response at this stage? So that's really referenced to what we're going to come on to a 9312? I think yeah, we haven't really been dealing with temporal possession yet.

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So if we turn then to 312.

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Would you like me to address the item, sir? Yes, please. So this is the longer the longer notice period. And this is the legislation

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that isn't yet in force.

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So thank you. So this relates to article 29.

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Paragraph two of the draft DCO, which governs

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the temporary use of land for the purposes of constructing the scheme and paragraph two of article 29 provides that not less than 14 days before entering on and taking possession of land, we have to give notice to affected owners and occupiers and the question in effect is why we are sticking to the precedent 14 days notice as opposed to three months which is the notice period that

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will if and when the provisions in the labour Planning Act 2017 come into force dealing with temporary possession, they will apply and opposition is explained in paragraph 8.27 of the statement of reasons. A pp 299 which sets out that

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we are we are for good reason, adhering to 14 days and there is a lot of precedent for that since the 2017 Act came into being

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and that is referred to in that paragraph at the centre of reasons. We feel that if we are required to give three months notice it would significantly reduce the applicants flexibility in its exercise of the temporary possession, powers and

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An unintended consequence of this is that national highways made the need to make decisions on where it acquires land on a precautionary basis to avoid programme disruption leading to land being possessed temporarily earlier than would otherwise be the case, which would clearly be to the detriment of those owners and occupiers concerned and would also be to our detriment in terms of then having to compensate earlier than would otherwise be the case.

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And it should also further be noted that it's clearly in national highways interest to provide affected persons with the best available information in relation to intended temporary possession dates, particularly where that information can then be used to buy those affected persons to avoid or mitigate their losses. Therefore, clearly reducing national highways compensation liability. So

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I think that the clearly

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were more notice than 14 days can be given it will be given but the wishes to remain remain to the very well established precedent for 14 days.

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Which is we feel necessary to give sufficient flexibility. Okay.

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Yes, yes or no?

36:30

Okay. The staples, you still got your hand up? Was that to deal with this point?

36:36

Yes, please, if I can respond. Okay.

36:39

Briefly, sorry, I didn't mean to jump ahead before, certainly we say National Farmers Union.

36:47

I just wanted to raise that with more and more schemes. It is it is being seen that 14 days notice is doesn't give any flexibility. If you're talking about flexibility to national highways, it gives absolutely no flexibility to the landowners or or occupiers that are affected.

37:06

And I do believe that national highways are going to know long before 14 days, whether they then need to take that piece of land on a temporary basis. So I do think they could give more notice than the 14 days.

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And I do think there needs to be something

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where,

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where they said as in cost, they'll give more notice if they can. So we somehow need to agree how we could pick that up and how that would be taken forward.

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Thank you, Mr. Owen, is there anything that you might wish to add to what you've just said, you've given me your position previously on it?

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So thank you, Robin, for the applicant. So I think it would only be right for us to take that away and consider whether there's anything we can do. I've had what Staples has said, and that's perfectly understandable.

37:57

I've explained our position, but we will see if there's anything that we can do to provide additional comfort, for example, you know, some sort of commitment beyond the hard letter what's in the article, if you like to give greater notice where we can.

38:13

Thank you. Anything else on agenda item? 312? Just looking around and on the screen? No, thank you on that to agenda item 313. Applicant to explain how the testing after the certification of a receipt of a scheme for replacement land.

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would be given it would be would be given in accordance with section 131132.

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Just really centres around should the scheme be approved before certification in article 34.1.

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So before you carry on, did you mean to

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skip over item 311?

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I'm sorry? Yes, we did. We jumped to Yes, that's right. My apologies. If you want to be right, no, no, no, no, no, that was that was my error in being drawn to 312 and then not actually going back to recover item 311. Can we deal with item 311 Then first before dealing with item 313. So the applicant to explain why the drafting of DCO article 26 has been adapted and how it takes account of the housing and Planning Act 2016. This is really again, a relatively small addition to the explanatory memorandum, just to just to give a little bit more but if you wish to come back on this point now then please do so. Well. So I mean, it's it's we can certainly do that to the exponent remember and yeah, it's quite a convoluted subject in terms of the the legislation but we can we can certainly explain it

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in a little more detail in the

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expansion memorandum if you'd like us to, I think if it can be explained in a little bit more detail with maybe maybe pointers to, to assist with the accessibility, if you like, yeah, we will do that. So thank you very much. So that was item 311. Anything else on 311. Don't see any hands raised. We've done item 312. So now we come on to item 313. And this is the applicant to explain how vesting after the certification of a receipt of a scheme for replacement land in DCO, article 34 accords with section 131 and 132 of the Planning Act 2008. And it effectively does come back to the point of in article 34.

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Where the

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certification simply relies on the receipt of a scheme, rather than any approval of the scheme. And

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the

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although we recommend against the tests, in the dcl, in respect of this matter, the Secretary of State then has to rely on our

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rely on his judgement in terms of the test and be able to follow that through. So is a receipt should it be approval of the scheme. And not

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just receipt. I'm just wondering how the test is followed through. So so this is referenced, I think to article 34 One, which says, on the exercise by the undertaker of the relevant order powers, the special category land, which is open space in this case, obviously is not to vest in the undertaker until the undertaker has acquired the replacement land. Yeah, and the Secretary State in consultation with the relevant planning authority has certified that a scheme for the provision of replacement land is open space, and a timetable for the implementation of the scheme has been received from the undertaker. It is the question whether instead of saying has been received the Undertaker,

42:04

whether the wording should refer to well has been received and approved? Yes. Does that does the Secretary of State actually approve this?

42:14

I guess

42:16

that it's just that section 131. As I understand it, as the Planning Act requires in respect to a special category game requires the the replacement land to be acceptable. And therefore the question is whether there's conflict between the act and this article in that respect.

42:37

It's not just to acquire the land is to actually use get lands got to be acceptable as well. So that's the that's the crux of the question and adds on to what Mr. Roscoe was asking.

42:50

Sir, thank you the provision concerned in Section 131 12 of the Planning Act 2008 refers to defines rather than replacement land as meaning land, which is not less scenario than the order land and which is no less advantageous to the persons, if any, entitled to rights are common or other rights and to the public. Now, clearly, you'll be making a judgement as part of your reporting on the acceptability in terms of size and advance tediousness, if there is a word

43:23

of the replacement Mandan, so with a central state in determining this application, it is the point that a judgement on advantageous and this will then continue then finally be made once the scheme has been approved for the replacement land.

43:42

That was effectively going to be a supplementary, should there be a scheme for replacement land somewhere and if there isn't a scheme that is not just the replacement land identified.

43:53

But the in terms of the DCO article,

44:02

the scheme for the replacement land includes a timetable for the implementation of the scheme, for instance, now that wouldn't be available to us as a an examining authority. And so therefore, there is there is

44:16

a little bit of a

44:17

test remaining, if you like. I understand, sir. I mean, this, you know, provisions like article 34, they take on a number of different subtly different forms and article 34 in the draft DCO

44:35

is the same as that employed in certainly two recent DC O's that I've checked, the A 303 aims to break down DCO and the ace 63 Castle Street improvement and how, however, I do understand the point

you're making and could I ask you to take it away and we will consider whether there is an issue in terms of a miss

45:00

The match between the article and section 131. Yes, thank you can I can I say at this point as well, and this is the general point that

45:10

it, it does occur to me at various times, then other scenarios that it would be useful because this year was when you have a serial applicant, if you like an applicant who puts a number of these CEOs, and they obviously develop over time and change that's already been explained in these in these hearings,

45:28

that it is useful to look at how those changes have happened in particular items. And if the if the if some kind of basic sheduled could actually be produced where you refer to precedents so that it is more easily accessible as to how precedents have been made, and sometimes changed as time has gone on. And I've mentioned this to the applicants organisation in another forum not too long ago. And that would be a useful thing so that we can actually see when we come to examine these DCLs, how in terms of the applicant, they are developing over time? Yes, I mean, but I don't wish to have a discussion about that at the moment, I realised that we're poised for time. And that's really not for this for our faster, but we could have things I mean, all I'd say, Sir, is with local legislation, like the CCOs. They do evolve in time, for general very good reasons. People thinking of gaps and and better ways to express things and obviously updating legislation, they also clearly have to be suitable for each schema. And, and I've certainly worked on schemas before where the equivalent to article 34 needed to be changed for bespoke reason. The difficulty is that they often can get carried through inadvertently next scheme without people realising why it was made in that bespoke way. So we're taking it away. And thank you for pointing it out. And we consider if the if it needs changing, my point is that we don't have a scheme if you'd like a full scheme. Yes, I understand. Thank you. Right. Anything else on agenda item? 313. Just looking around, no hands raised. Thank you.

47:05

On our to gender item 314. And that is really a request almost in Article Seven. You've actually brought together the limits of deviation in terms of a tabular format.

47:23

I wonder if you could look at whether 34 five would be easier to to read in a tabular format.

47:31

34 5125.

47:36

So thank you.

47:39

I think we do feel that, certainly, I mean, all these things are ultimately a matter of judgement for the, for the drafter on a website, also, we quite accept it needs to be clear and readable for all concerned, we do feel and I could refer back to the same office of the policy council drafting guidance that I mentioned yesterday from June 2020, that actually relegating these details to a schedule dispatching material to schedules as the guidance refers to wouldn't be helpful.

48:15

It may be presentation only, rather more attractive to incorporate a table into the article again, can we can we consider that? I'm not so committing? No, no, no, no, it's not. It's it is simply it is simply really sort of presentation if you like it says it does, indeed matter. And I have referred to table not not scheduled. Yeah, not to have it taken out of the dcl. Well, I think the the agenda item did at the end refer to a schedule. So that's why I think we've we feel oh, I'm sorry. Yes, yes, yes, it did. Yes. Yes, that's right. Yeah. Yep. I take the point on that, but certainly on in relation to a table within the article. We're looking at that. So. Yeah. Right. Thank you.

48:58

Anything else on item? 314? Just looking around. Thank you. Item 315. That's just to draw matters to your attention. That's fine. Thank you. I just wanted to add on,

49:11

on matter that we didn't deal with yesterday, and that concerns article 15 authority to serve a land in the it was actually an agenda item for yesterday. We held it over until today.

49:31

So we there are various bullet points there.

49:36

I'll let you get the I've realised that I've haven't caught you immediately. completely cold on this because he was referred to yesterday but

49:44

in terms of when it's been brought up, I have Yeah. So article 15. Then in Agenda Item four from yesterday, authority to survey land etc.

49:54

We wish to better understand the powers that are sought here.

49:59

And in particular,

50:00

Killer. First of all, we'd wish to better understand specifically which land this article would refer to,

50:09

in terms of having regard to the term adjacent to

50:14

you could just pick off that point first.

50:18

So thank you, as the explanatory memorandum a PP. 286 says the purpose of his article is to provide national highways with the power to enter online to carry out surveys.

50:31

And it is important first of all to note that the power conferred by the article can be exercised only quote for the purposes of the construction, operational maintenance of the authorised development. And it also authorises entry onto land within the order limits. And were reasonably necessary any land which is adjacent to but outside the old limits. And I think that for background for all concerned, when you say adjacent to do you mean having a contiguous boundary with the audience order limits? Well, we it's not defined intentionally and we say it should be given his ordinary everyday meaning, which is to be next to walk near to the subject land. And we we do acknowledge that there is a degree of imprecision in the term, but given that the power of can only be exercised in relation to adjacent land where reasonably necessary, and for the purposes of the construction, operational maintenance of the authorised development, we feel its exercise is appropriately constrained. So for example, if a survey could be undertaken within the order limits, it clearly wouldn't be reasonably necessary for the undertaker to use the powers of this article to carry out the survey on adjacent land.

51:50

The UN, you asked about whether the power could be restricted to ecological ecological surveys.

52:00

In the agenda item, Australian, I just like to take a bullet point by bullet point and then we can understand the points if you like. So you've, you've explained the background to the term adjacent to thank you onto bullet point two, then the relevance to ecological receptors that are liable to move into and out of the order limits.

52:22

Does does the power in the article energy which is coming on to go further than the explanatory memorandum explanation because the power doesn't restrict it to eco ecological matters. For instance,

52:38

the survey could be for a lot of other reasons. So I didn't believe it. I think the two are consistent, namely the article and the explanatory memorandum, which gives ecological surveys as an example, but only as an example. But we we don't consider it to be appropriate to curtail the power to survey

52:58

to specific geographical areas of known sensitivity. There are all sorts of surveys that may be required and not limited to, for example, pre construction, ecological surveys for badgers, reptiles and bats, which may be required to be undertaken beyond the order limits.

53:18

Okay. And surveys, for example, another example surveys related to private and unlicensed water supplies that may be affected. Right, Mr. Allen?

53:28

Yes, I just wanted to take issue slightly with the explanatory memorandum because I'm not convinced it gives. It gives it as an example, it simply says this is particularly relevant with respect to ecological receptors that are liable to move in and out of the orderliness

53:48

and that's what that was the basis of the question, because the explanatory memorandum seems to suggest that it's only required for ecological receptors, but the power goes beyond that in the article.

54:09

I don't think my reading of that part of the expansion memorandum is not the same, sir. And that it does conclude by saying

54:21

this is this is particularly relevant with respect to ecological receptors, the level to move into and out of the order limits, but it but it

54:30

certainly doesn't suggest that that's the only purpose for the land. I mean, paragraph 7.40. So only purpose of the article that I meant, paragraph 7.40 of the of the expansion memorandum says that this article gives national highways the power to enter certain land for the purpose of surveying and testing. And there's no there's no indication there or elsewhere that the purpose is limited to ecological surveys and that is certainly

55:00

if not the, not the proposal,

55:04

I'm very happy to

55:07

look again at that part of the explanatory memorandum to make that clearer.

55:12

Or what I was going to suggest to you to do not necessarily to consider now propose to take away is to weather the two, just to be clear that that this article has a specific purpose of whether you would

consider under 15. One where this is the undertaker may for the purpose purposes, to add the words of this order.

55:35

And then at the end of B is mainly 15, one B, where we've had the questions not obviously not within the order limits, but where B where it says we're reasonably necessary, any land which is adjacent to but outside the order limits,

55:56

or which may be affected by the proposed development. We'll just tie that article up into making sure that it is in connection with the proposed development and then ties it better with the explanatory memorandum, not expecting you to answer that now, I'll just ask you just to consider those wording just to tie up I think the article better with the explanatory memorandum. That's all I'm asking us to just consider that and take it away. So we will do that. If I could just say that.

56:28

Two points, really, I think in fact, the some of the precedents that you've referred to refer to us to insofar as they relate to land beyond the order limits are actually broader than the power that we have drafted because

56:42

our reference to adjacent land, I think is narrower than you've directed us to. And the other point

56:50

is that it may not just be land beyond the order limits that is affected by the scheme, because you may need to survey land beyond your limits for ecological survey reasons, for example, to to ascertain what species are on there, but it's not land that's affected by the scheme is just land that's adjacent to the scheme. And therefore, relating it to land affected, we're not sure is actually the appropriate way to express it, because that would narrow the scope down because it would call into question whether you did have, for example, the power to enter adjacent land for ecological survey reasons.

57:30

Because that that land may not be affected by the construction scheme, but it's land that you need to enter onto a survey to understand what species there may be on it. So I'm not I'm not particularly convinced that for those two reasons that the precedents you've referred us to are actually well thought through. Okay, thank you.

57:50

So we take it away. So Mr. Owen, yes. Yes, it would be useful to have a note to include the latter points that you've just made and the reference to the ad for a 47 blofield. Scream, yes. As to as to a comparison between the two approaches, and indeed the other matters that you've just raised in that section. I have Abdi do that, sir. Thank you. Thank you.

58:13

Just was there anything else that you wish to say on yesterday's agenda item for

58:24

that nothing? 15 Right. Okay. So I can see that mistake was has 100 But there aren't any in the room. So, the staples please.

58:32

Thank you, do we use staples for National Farmers Union?

58:36

Yes, we would also like to raise a question again on why 15 B has to be included as just being discussed as in any land which is adjacent.

58:52

It does seem now that national highways are inserting that but actually it never used to be inserted in this article at all to be able to carry out surveys adjacent to

59:06

We would also like to see Yeah, if we can tie down what is adjacent to

59:14

if they if it actually was possible to keep it next to or near to the subject land, then I think that would be okay. But actually, you know, when when does it become that it's not near to or it's not next to the subject land. So can actually something be inserted that you know, you can only go so far out

59:39

from the order limits, so that landowners you know, really do know that actually then if they requested for a survey to take place, but they're not the national highways are not adjacent to any longer. right thing. I can understand the point that you made last row and if that could be in reference to that could be included in

1:00:00

The Note that you're going to provide. Did you have anything else? Miss staples? Yeah, my second thing that I would just like to raise this.

1:00:07

Thank you, we do see that national highways have included it 15. Three, that the notice does require that they must indicate the nature of the survey and or investigation that the undertaker intends to carry out. We have

1:00:26

requested and would like to see. Sorry, I'm just trying to find my notes.

1:00:35

Yeah, who exactly we'll be taking entry. So are they notified of which contractor it is, the date of entry and how long that survey is supposed to take. And then also to be identified as the equipment that they may be taking on. It's just there are so many surveys have been carried out that this information really does help the landowner and occupier. Thank you. Thank you, Mr. Owen Can the same apply to those the second set of points raised? Can I just say whether that also sorry, sure whether that also should include a justification for the survey in the notes. So under under Article Three notes is required must include the nature of the survey, and should also include a justification within that note is something for you to consider. Thank you, Robin, for the Africa, thank you for those points, we will consider them at the same time. And it may also assist in our note, if we refer to the relevant parts of the Environmental Management Plan, which set out or number of surveys that could well be necessary just to provide a bit of background to this. I would say I think it's gonna be difficult to be totally black and white in relation to a fixed distance, because for example, I touched on earlier surveys related to private and unlicensed water supplies.

1:01:53

It's difficult sometimes to know how far you have to go to serve over those.

1:01:59

I think there's just a genuine a general, I'm sure you've taken that there is a genuine

1:02:06

interest in whether this article has whether the powers contained within it on adjacent land may be too loose. And that's what we asked you to take away. And consider I understand that issue. So and we will do that. Thank you. Was there anything else on the article 15. In other matters, agenda item 316. Just looking around, no hands raised. Thank you. Just one other matter I wanted to raise in terms of the DCO and CA and it concerns the book of reference, Mr. Owen, and we've heard reference to

1:02:43

miss Nicholson has raised matters, some matters relating to sliced and how farm. And I'm conscious that the book of reference entry doesn't refer to all of the relevant representations that we've had, in respect of doesn't seem to represent all the relevant representations that we've had in respect of Slist. And how far I haven't chased it down

1:03:10

within these hearings, but I wonder if that could be just looked at, again, there is a single entry, a single person entered for sleep and how farm at the present time, you'll be able to see that name in the book of reference, but others have produced references. And I think I asked in the open floor hearing for a brief run through of who is who, so you should be able to find that from the record. So thank you, we will do that. Thank you.

1:03:42

Right, that completes section three in my agenda, just looking around to make sure that nobody else had anything else to raise on section three, no hands raised. Thank you.

1:03:54

On to section four, which is funding agenda item 4.1. Applicant to advise have any updates to the funding statement. I'm conscious as everybody is that some time has passed since the funding statement was actually put in first question then is are there any updates to the funding statement? Mr. Ela?

1:04:15

Mr. Slater is going to cover this Thank you, sir. Mr. Mehta. Thank you, sir. I just later for the applicant. I was actually going to say that our client would also Griffiths, head of DCR design is going to respond to you on this agenda item. Thank you.

1:04:31

Hi, Monica. coarser grid is not a high res.

1:04:34

So only question about updation funding, I can confirm that the cost estimate that the

1:04:43

fund the statement was based on is the latest available and is indeed the information and we used for national highways Department for Transport and Treasury approvals that were completed in August DC year. And the funding statement also includes

1:05:00

reference to blight cases. So I can confirm that at the point we submitted funding statement, we had four properties that were acquired on the blight. And we had another four properties that were

1:05:14

pending work on the consideration. At the moment, we've got five properties that were acquired under blight. And we've got three blight claim notices that have been accepted and under consideration. So the total, the total number of those properties is still the same. It's just one was moved from one category to the other category.

1:05:35

In terms of the remainder, the funding statement, is there any changes to that you've talked about costs and blight are no changes at the moment that a next a formal cost estimate will be fought after the examination concludes and is to align with detailed design development about what's going to be my next question. Right. Thank you. Was there anything else anybody wish to ask about agenda item 4.1. Just looking around the room and looking into on the screen, Nan, thank you very much. Agenda Item 4.1 4.2. Any other matters relating to funding looking around the room and on the screen? None Thank you.

1:06:13

Second, Section five, then special category land.

1:06:17

This is a general one that can be taken briefly the applicant to explain the application of section 131 and 132 of the Planning Act 2008 to the draft dcl,

1:06:25

particularly in relation to the subsections

1:06:29

of those sections in Australian

1:06:34

Mr. Slater's can take the first of these issues. Thank you. Thank you, sir. Heidi Slater for the applicant?

1:06:42

Section 134. Sorry, section 131. Subsection four is one of the exceptions from the rule in Section 131. That a DCO that authorises the compulsory acquisition of special category land, ie land forming part of a common or open space, or a fuel or fill garden allotment is to be subject to special parliamentary procedure. And the exception in Section 1314 applies if a replacement land has been given or will be given in exchange for land, and the replacement land has been or will be vested in the prospective seller and subject to the same rights trusts incidents as attached to the order land, ie the special category land, that's being acquired compulsorily. And the draft DCO makes provision for the compulsory acquisition of common land and open space land. With two exceptions, which we'll discuss, I think probably very shortly.

1:07:42

All such special category land is to be replaced through the provisions of paragraphs one, two and four of article 34.

1:07:53

Did you want me to expand on that to cover instances where that isn't perhaps the case? Yes, please.

1:08:03

Thank you.

1:08:06

The first exception where we don't have replacement land proposed in the audit relates to plot,

1:08:14

oh 40502 82, which is part of the playing school, school playing fields that can't be for school, primary school.

1:08:23

We've explained in the statement of reasons at paragraph seven to 16 to seven to 22.

1:08:32

That the need for this land to be included in the order and be proposed to be subjected to powers of compulsory acquisition arises in connection with works, they're required to relocate an existing wooden utility pole, which currently supports an overhead power cable, which passes above the playing field. And the proposal is to relocate that wooden pole on Highway verge, but the highway verge will be higher than it is currently was envisaged to be in the preliminary design,

1:09:03

such that the level of the redline would be raised, but it would still be there in its existing location. So

1:09:13

once the scheme was in place, if consent is granted, and the works have been completed, there'd be no change to the current position. But the land is shaded pink in the DCO. On the land plans at the moment to provide for them. We've mentioned this previously, to provide for a scenario in which the statutory Undertaker who owns the pole and the red line requires rights to be granted for the maintenance and access to that.

1:09:46

apparatus. Yes. Right. Have you to position Thank you.

1:09:52

Right, was that the only case?

1:09:56

The second exception? I think we've said exception, sorry.

1:10:00

Oh, yes.

1:10:03

I think we come on to discuss that. Probably undercrown land. Right. Okay with the playing field for the me. Right, right. Yes, we will deal with that. So the only other one that you've got to raise is the one about the playing field. And we've said, is the gate locked amongst other things? Right. Okay. Okay, thank you.

1:10:20

Was there anything else, then? That's

1:10:24

131. Was there anything specifically you wanted to

1:10:28

say in respect of 132?

1:10:32

That may or may not be.

1:10:37

Um,

1:10:39

in relation to Section 132.

1:10:42

We've considered section one three to three, subsection three, which provides an exemption from the requirement for the audit to be subject to special parliamentary procedure, as a result of the acquisition of new REITs have a special category land.

1:10:58

This exception to that requirement applies where the Secretary of State can be satisfied that the special category land, when burdened with the order rights will be no less advantageous than it was before to the person in whom it's vested, or to other persons, if any, who are entitled to rights of common or other rights and to the public. And, in the scheme, oh, 102, we do rely on the exception in Section 1323, in relation to the proposed acquisition of rights over special category land.

1:11:33

That's explained in some detail in the statement of reasons at paragraphs seven to 14, seven to 15. And in the accompanying table, that shows the relevant plots. And I should point out there that one of those plots was omitted from the original version of the statement of reasons. But we have added it by means of a revised table in our irata report, which is as double 09. Yep.

1:12:05

Thank you. Was there anything else in respect to agenda item 5.1.

1:12:11

Only to say, sir, that those plots are proposed to be subject to the acquisition of rights and replacement land is not proposed. Because

1:12:22

our position is that if the rights are imposed, the land will still be capable of beneficial use by persons using it as recreational land currently. So it's a marked for mitigation.

1:12:38

And with the planting, wooden planting was proposed in place, people will still be able to walk there in the way that they currently do. Right. So I do have the plans somewhere, but basically, you're talking about the area of land, which is to the north west of the Campoli. Round, the back, where, yes, where we've got the flat land at the moment, or the replacement land is on a slope.

1:13:07

Is that what you're saying?

1:13:10

But because it can still be accessed? Then you consider that land today? I think I've confused myself. But yes, that is the bit that I'm referring to. Right. And here's my description of the elevations and gradients, they're approximately correct. What I'm going from is a site visit, looking across from public land, the verge and a little bit of the footpath that goes in amongst the playing fields, looking up the housing. And there's a bit which is currently seem to be grazed on a slope, and that seems to be the replacement land.

1:13:45

That is correct. And the reason why we consider it is appropriate. Yeah, that's replacement land is because what we would be taking

1:13:57

doesn't isn't currently used by understanding is that it isn't currently used as part of the pitch, right? Yeah, yeah. Okay. So it's outside the current purchase. Yeah, right. Okay. Thank you.

1:14:13

I didn't get far enough down that footpath, to be able to actually look at the pitches and I wasn't quite sure about the status of various areas around there to be able to explore a bit more, but that's something that I can do. Was there anything else on agenda item 5.1. From the applicant, Mr. Rowan.

1:14:33

Thank you. So cute. Just looking around for any hands raised? I can't see any hands raised. Right. I'm conscious that the time is now just on one o'clock. We have got.

1:14:54

Right, okay, so we're now coming on to agenda item

1:15:00

5.2 But before we do that at one o'clock, it's obviously time for the lunchtime adjournment.

1:15:05

I have to say that partway through this morning, we have been advised that we need to complete

1:15:14

between 230 and three o'clock. I'm saying three o'clock in terms of the availability of this room. This is something that we were not aware of as a panel before.

1:15:24

I believe that we're making reasonable progress through the agenda to be able to achieve that did we have a page and a lot of those references are dealing with points to the applicant, really. So it could be

that if we're short of time at the end, then some of those can be transferred to post hearing notes, as we suggested might be necessary yesterday, but I'm just looking at the timing for the lunchtime adjournment now. And my suggestion is that we have a 30 minute lunch or German we've had a 40 minute lunch 45 minutes or German on previous days. I'm suggesting a 30 minute adjournment. I don't see any objection to that looking around the room. So the time is now I will call it one o'clock. I will adjourn the inquiry to be resumed at 130. That's 130 Thank you very much.