

transcript_CAH1_session3_02122022

00:10

It's now half past one

00:12

is compulsory acquisition hearing is resumed. Without further ado, I'll hand over back over to Mr. Roscoe.

00:22

Thank you. In terms of the agenda items, I believe we were up to agenda item 5.2, which is the applicant to explain

00:34

why the playing field owned and used by the mid is said to be open space special category land, which does not attract the Planning Act 2008 requirements for replacement land. Mr. Owens, I think that could be taken possibly, for our better understanding into sections, why it is said to be open space, open space special category landed in the first place, and then why it doesn't attract the 2008 requirement. But if you need to join them together, I'm quite happy with that.

01:07

Robbie over the applicant? Thank you. So I think certainly the statement of reasons I

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believe it's correct to say sets out why the playing field is set to be open space category land.

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If you need more on that, then we can certainly provide that. But I think I think the

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the more important point is that, even though

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it is of course proposed,

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and the applicants proposals do include replacement land for the MO D playing field.

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And that's in that cert for reference shown on sheet four of six of the general arrangement drawings for scheme. 06. So that's a pp 14. And it's also shown on sheet four of six of the general scheme outline plans for the scheme, the ones that were submitted, last month, PDL 006.

02:07

And that's on sheet four of six. Yes, it's the most recent submission, the combined plans I've actually got in front of me so that I can see the works at the same time as the auto land. Yeah, yeah. And also the replacement land is included in non linear work number 06 dash nine,

02:25

where it is shown on sheet four of six of the works plans for scheme six, that's a pp 321.

02:33

So, that is the proposal to provide this replacement plan for the MO D playing field. And it's our understanding that the MO D intend for the arrangements applying to the current playing field to continue the replacement site when the site is not in use by the MO D. So, that is the proposal. We do not consider, however, that

02:58

the statutory provisions of the Planning Act Relating to the requirement to provide exchange land are engaged. And I can explain briefly why we consider that the starting point.

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Of course, they've given it his Crown land.

03:18

And given what article 35 of the draft DCS says nothing in his order, prejudice, see, prejudice, prejudicial effects, any any estate, right power, privilege, etc, of the crown. And therefore that means that, you know, the powers of compulsory acquisition

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of land cannot be used against the Crown. So that's that's the starting point.

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However,

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the DCO does seek power compulsory acquisition over the current Cricket Ground,

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given the possibility of there being other interests in relation to it. And

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one, section 135, subsection one so 1351 of the Planning Act provides that a DCO may include provision authorising the compulsory acquisition of an interest in Crown land, as long as it's a non crown interest and the Crown consents.

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So here we're talking about a compulsory acquisition of an interest in Crown land and I emphasise that phrase and interest in Crown land. The circumstances where exchange land is required to be provided

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are two as y'all know, section 131 and section 132.

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Section 131 requires exchange land to be provided where a DCO

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in effect requires exchange to be provided. If you want to avoid special parliamentary procedure, where a DCO authorises the compulsory acquisition of law

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And so the whole, it authorises, compulsory acquisition outright. And then section 132,

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in effect has the same requirement for exchange land in relation to an order authorising the compulsory acquisition of a REIT Overland. So there you've got two situations compulsory acquisition of land, section 131. And section 132. compulsory acquisition of a right Overland. We're not proposing either of those, we are proposing with consent of the crown compulsory acquisition of an interest in Crown land. And therefore for those reasons, we do not feel that the

05:37

formal requirements for exchange land are engaged

05:42

those formal requirements in Section 131 and section 132. But as I say, it is proposed to provide a replacement for the cricket for the for the playing field. I think it phase one, in any event. So I hope that answers the question. And we don't feel that section 1353, which the agenda refers to is at all relevant because section 1353 relates to Section 1352. And section 1352 is engaged by the order. But not in relation to land provisions at section 1352. Relates provides that a DCO may include any other provision, other meaning other than relation to compulsory acquisition,

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in relation to Crown land, but again, with the consent of the crown authority. So in any DCO, you need,

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you need that consent under under Section 1351. If you're planning compulsory acquisition of a non crown interest in Crown land, and then section 1352 says that you also need crown consent for any other provision applies in relation to Crown land. So for example, it works power. And the provision you've referred to 1353 relates to that second type of consent you need for the crown in relation to

works and other things. So it's, we don't think 1353 is engaged at all in relation to this issue of compulsory acquisition of an interest in Crown land. So I appreciate that's a high level summary of

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quite a complex interaction of various different Saturday provisions. But that was that's our view. So, Mr. Owen, and I don't actually see reference to the the interest which is sought

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in the statement of reasons.

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Is that somewhere else in what's been put before us already as a panel,

07:51

do you mean the interest in the current playing field? Yes, well, the interest that is, you you referred to

08:02

the fact that the DCO sought an interest in Crown land, and I don't see anywhere reference to that interest in Crown land as an interest

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if I can put it may not be expressed in quite that same way. That is in effect what what is entailed given what section one through five

08:26

says right?

08:29

So I then have the plans that I was talking about a moment ago in front of me, which is I think it was it's just hidden by something else at the moment I think it would shoot for at six

08:42

and it was the combined plans that were put in I think at the PDL deadline

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and I can identify I believe the area of the of the playing field if I can call it that

08:56

on the road then between the railway station station road and the existing a 66 so I can see then that that area of land has

09:07

a drainage pond on it and part of the junction road

09:14

and that I believe is the field that we're

09:18

talking about listing pages

09:20

or am I in the wrong place? So just give us one moment yes

09:36

yeah

09:39

yeah.

09:43

It might help if we

09:47

turn to

09:51

was it current?

09:58

So would it help first just

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Turn up the

10:02

land plans. Yes. So we can see

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the current playing field and the proposed replacement. So first of all,

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are we able to get the current land plans up

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to sheet? Sheet three of six?

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So the current so the land plans are a PP.

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It's actually split between two sets, isn't it is so for instance, if I take the Eastern mouse plot it's Oh, 60406.

10:55

So,

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yes, so the land plans are updated. So the reference is a s, dash zero, 14. Those are the land plans for scheme. Oh, 405. And I think this parcel current playing field is on the cusp of sheet three and four, isn't it?

11:24

We could also perhaps in a minute, look at the Crown land plans as well.

11:34

Sorry, Mr. Owen, you said scheme? Oh, 405.

11:39

Yes, it should be Oh, six. I mentally six. And it shouldn't be between sheets. Three and four? As far as I think you did say? Yes. Yeah. So I'm there. Now. I haven't got the land plans in front of me at the moment. But I'm looking at the plot plans. And the plot plan on sheet four then is

11:58

Oh, 60406. And that is about a third of the playing field.

12:06

Oh, 60406. Yes, yes. Right. And if I then go to the combined plans that we talked about before, and I'm on sheet four of six. And I'm on the left hand side of sheet, four of six. It shows part of the junction road and a drainage pond on that particular area of land. Yes, that's rolling field. And so I'm not quite sure why the

12:36

I'm not quite sure how that

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there are there are works proposed on that site, you're giving you say that you're giving replacement land. But if I look at the statement of reasons, it says that.

13:00

I'm looking at paragraph seven to 26 for the statement of reasons.

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That says that.

13:09

no risk, no replacement land is proposed because the special category land is also Crown land.

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I'm not sure how far we're actually going to get with this. But I mean, I think the

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the reference there to no replacement, none is proposed. I think it was referenced to no sort of formal replacement land in the in the planning. I sense, right? There is a proposal to provide

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a replacement

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playing field. So maybe the best way forward, so would be for us to just consider some added or changed

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wording in the statement of reasons and possibly also

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in the explanatory memorandum. But certainly the same two reasons, I would think to explain the position about why we don't think the provisions in the Planning Act for providing exchange land are engaged. But nevertheless, there is a proposal to provide

14:18

within the sort of the crown context, if you like a replacement facility which the crown the MO D will make available as we understand it when it's not being used by itself, I think, excuse me, I think in the first instance, it would be useful to have a note to cover, obviously, in summary, the oral summary that you've just given me,

14:38

and also to cover the points be they relevant or not raised in agenda item 5.2. Some of those were addressed in the oral summary that the oral evidence that you just gave

14:53

to explain the situation more fully, because I think probably that explanation may indeed be

15:00

Be a little bit too much for the statement of reasons or the explanatory memorandum. Yeah, but it will give us the what we may need to come to a recommendation on this particular element of the scheme. So we can certainly do that. And, yeah, right. So what the things that

15:21

we wanted to concentrate on is

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why the open space special category land does not attract the Planning Act 2008 requirement for replacement land, which is what you've just said, even though you'd refer to replacement land previously.

15:40

And then

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it's almost as if, why the first part of that agenda item is why the playing field is said to be the open space special category land in the first place. Because the words made available to the public for recreational purposes, used in the statement of reasons aren't used for the purposes of public recreation, in the acquisition of land act. So our point is that it possibly isn't open to everybody, all of the time. And it seems to us that that area may be gated and locked. And so is this area actually used on an unrestricted basis? Or by prior arrangement? And if it's by prior arrangement? Is it indeed special category land? I'm not coming to the view one way or the other. But I would like those those questions to be answered in that context, how you've come to the view, that it is special category land in the first place. And then if you could also add on the inverted commas, replacement land that you've spoken about. So we can cover all that. And yes, you know, we have received confirmation from the mid that the land is kept gated and locked. And we're also informed if it helps just to say now that by the mid that the land is, it's not used for recreation on unrestricted basis. But that it is, or has been used by prior arrangement in a number of ways that there's an arrangement with a local primary school. Right land is used annually for the school, the local community fair, and other arrangements. So

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we do know more now than we did and the application was submitted. So it may be that we need to review

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what we've said about the status of the land. I've explained why we think irrespective of that status, it doesn't engage the requirement for replacement land, but in any in any event, there was a proposal to replace the facility. Yes, which was not going to change. But I think given that we do have more information now about this land and how it's used. And we did six months ago, we will just review what we send the same two reasons about this. And, yes, and then the note, as we've said, to cover the whole lot, and in that, yes, also, I would be particularly interested in the position of the MO D.

18:08

because obviously this will fit in with their

18:11

general consent if and when that might come.

18:15

So if you have anything on that, in the meantime, to update me, as to the MO DS position on this, including correspondence copies of correspondence, if that's appropriate, or whatever, but I'd like to have the current situation on it. Yes. Thank you. So we will.

18:32

Does that give us a way forward on agenda item? 5.2?

18:37

Mr. I, I think so. So thank you. Thank you. Just looking around the room. Was there anything else on agenda item 5.2. I'm looking at the screen now. There isn't anything else? Thank you.

18:52

Amen to the agenda item 5.3.

18:56

This really concerns the if there are any material differences between the draft dcl article 34 special category and an article 38 of the wizzley DCO. They they seem to be similar.

19:14

And is the wizzley junction. In fact, the precedent. That's what the first bullet point is saying. And, again, we touched on this earlier, why hasn't a special category land, a special category replacement land scheme been incorporated within what's been put before us and indeed incorporated within the draft DCO or documentation supporting the draft dcl. So I think that in terms of agenda item 5.3.

19:45

I think possibly as a panel, we don't actually need to deal with that now. And we'd be happy to have a note to cover the points that are raised in that agenda item. But Mr. Roman, would you be cool

20:00

tend to that approach

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will serve by coincidence, I was going to suggest much the same approach, if I could just by way of certainly on the on the sort of DCO drafting and sort of legal issues that you identified. If I can, however, just address very briefly, the question about what has prevented a special category replacement lands scheme being incorporated into the draft DCO?

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The answer that is straightforward, we think is in common with many other

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projects like this, which is that the project is just not at a stage of design, where it is currently practicable to provide the details of a scheme for re-provision. And it's highly usually in my experience for provisions such as article 34, virtually always to provide for a scheme to be submitted and approved later, that I can't think of a case where a scheme has been bound up into the DCO and has been approved at the same time, there may well be an isolated example to but I can't remember one. So

21:09

that's the reason why. But yes, I think it's sensible. If we wrap this up with the item we discussed before the lunch Germans and deal with them together. I was just that would be helpful. Thank you.

21:25

Was there anything else on item? 5.3? Just looking around nothing?

21:30

Right? I didn't have any other matters on special category, land. Are there any others that people wish to raise? Again, just looking around? No hands raised? Thank you.

21:41

On to Section six then, which is Crown land interests.

21:46

We're looking for an update on discussions with the Ministry of Defence and the public trustee, if we could deal with the Ministry of Defence first

21:59

and update on discussions to date.

22:03

And how you would envisage that that could progress during the examination at this stage, you've said in the near future in the statement of reasons and I just wonder what that means. Mr. Chairman, thank you, sir. Mr. Slater. We'll deal with this later. Thank you. Heidi Slater for the applicant. Again, this is an item in relation to which I'm going to invite our client, Monica, Kosta Griffiths. Thank you.

22:31

Monica courser Griffiths national highways. Yeah, I can update you though we've been in discussions with Dao on behalf of mld. Over the past few months, we are working towards having a statement of common grounds agreed to the meeting January. But as we stand now, we are in agreement on the land we need for the project.

22:58

Mr. Irwin mentioned some DCO changes we would like to introduce one of them will be related to a mouldy land an issue or just the environmental mitigation we need within the land to avoid any impact on the operations.

23:18

Thank you. Just on this, then you mentioned a statement of common ground. Is it your do you see yourselves an MO D working towards a statement a letter from the MO D or other Dao? In terms of the necessary consent? Yeah, so we've got a draft a crown long consent letter that was submitted to mo D. This is under consideration. We are prioritising the statements of common grounds for January, and we will be working on the consent letter following that. Right. So you'll be working with the consent letter alongside the statement of common ground and your envisaged date for submission on that, then is

24:01

the statement of common grounds submission will be January the consent letter will follow.

24:11

I don't need to emphasise the importance of matters such as that.

24:17

Right.

24:20

The Public Trustee,

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similar question really? Thank you. So Heidi Slater for the applicant.

24:28

I'm informed that the applicant has also been engaging with the public trustee in respect of Crown land on scheme seven

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and has had a number of meetings

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with the public Trustees appointed agent

24:43

with regard to the acts of acquisition by agreement by national highways of the MHA Crown land

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and a meeting was held in August, at which provisional agreement was reached between the parties for the acquisition of that land.

25:00

And the good news is that on the 25th of October, Friday, just gone. Heads of terms were signed and entered into. So the acquisition is proceeding.

25:12

But we have been made aware that there are procedures associated with this, which will take some time, insofar as the next step now that the heads of terms have been signed, is for the public trustee to consult with the stint holders, who have grazing rights in respect of the land, because they need to consent to the acquisition also. And once that consent has been obtained, the process involves applying for a court order to enable the transaction. Sorry, it's the other way around, the transaction can go ahead and then the court order can be applied for

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we've just been advised of that in the last few days. But

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whilst we don't have certainty about the timescales associated with applying for a court order and obtaining that order,

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the Public Trustee sister has said to us that in meantime, they will be happy to submit a letter of comfort to the examining authority to confirm that matters are proceeding as quickly as possible. Albeit, that's their processes do you need to be observed? It's, I'd had hoped your letter of consent, they're not comfort, and you started with the see. And I thought that's it. And but no, it's not. Right. Okay. My position is that they can't issue the the crown authority consent without the court order in place. Yeah, yeah. Right. Okay. So

26:41

obviously, it's for you to keep as much pressure if that's the word to use, or to mentor I on this momentum with this particular issue, to get to. And to get to the furthest point that you possibly can, by the not the end of the examination, but towards the end of the examination.

26:59

And to, I think, to pass the test, it's a letter of consent, it's the consent of the crown authority, it's not the actual acquisition of the land. And I'm wondering how that fits in with the process that you've just explained. And so you could have a situation where that letter of consent could be issued, possibly, without the full acquisition, court order and whatever matter being taken forward, or matter being completed. The grazing rights issue is obviously of concern, because that is something that could reasonably call consent to be withheld if there are others who have rights on the land, and somebody's given their consent to the acquisition of that land. Yeah, okay.

27:54

Right, I wonder if you could just look at that situation, it would be useful if I could ask for

28:04

an update on that situation. And I'm just I'm just wondering when that when that might be, if it was a deadline, one, it's simply going to be almost a copy of your, your oral evidence that you've just given.

And that would come to us anyway, I'm just wondering if at the deadline to in January, or however, the final timetable actually ends up as then

28:33

an update could be provided, then I'm looking for a point in which you've had the opportunity to maybe discuss the matter a little bit further with Mo J. and actually have a timeline, if you like, and that timeline might have a letter of consent in it somewhere. And hopefully, that's, you know, not before the end of the examination, but I don't know if that will be the case or not. And also to get the thing in as best situation as possible. That if it was appropriate that that could be handed over to the Secretary of State so that it's it's clear where it stands, and just what is needed to actually finally finish it off. Thank you. So we have shared a draft form of Crown authority consent, with the emoji. Yeah. So it's not something that they're not familiar with.

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But I think if we keep engaging them, and it's just getting it to a situation where it's where it's clear, we know what's happened. We know what still has to happen for the letter of consent. I think that's the the primary thing. Understood. Thank you. Thank you.

29:47

So that just to, just to just to be clear on that, just to confirm it. So that would be an update at the January deadline.

30:04

Just give me my own

30:11

right. Okay, so that that deals with the mid and the public trustee and we've dealt with in the near future thing, the

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an update on any discussions or contact with the Crown Estate commissioners I use the word any then just to just to collect together. Mr. Owen, has there been any contact for any reason with the current estate commissioners?

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No, sir, thank you.

30:46

Item 6.3. Then other matters relating to Crown land and interests, I want just want to touch briefly on the Brookfield fair rights that

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we were talking about yesterday, it's mo D land at the moment. So obviously, I assume presume that that would be included within the envelope, if you like, or the the MO D Land to be subject to consent.

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The rights that would be transferred in your proposal to the

31:17

the fair community if I can call them that?

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How would you see that actually happening because that land is owned by the MO D in the same way as the existing site is owned by the MO D, there are no book of reference or, or any, any idea of any registration of those rights at all that just sort of historical customer practice or whatever you might call them?

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How briefly, would you intend to give those rights on the MO D Land?

31:49

Robins for the applicant? The mechanism for that, sir, in terms of the transfer of the bundle of rights, whatever they are, from the current Bruff Hill fare site to the proposed replacement site currently owned by the Ministry of Defence, the mechanism is that provision of the DCO we were discussing yesterday article

32:11

36. Thank you.

32:13

That is the mechanism which will affect that transfer. But how because the rights

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because the rights aren't in existence in a known place. If I can put it like that, how would those those rights be transferred and incorporated in the new in new site? They aren't in the land registry. They aren't don't seem to be entitled deeds, they go back the only thing that we were going to be offered really was the Royal Charter translation of the Royal Charter and the fare could be anywhere. Well, so they they are mentioned in Title these I mentioned yesterday we you did seven conveyer right. Yeah, it was it was something some instrument. Yeah. That conveyed the land to the current owners. I think I'm correct in recalling subject to those rights. So it was a conveyance subject to the rights that

33:08

related to the to the fair, so that they have disappeared from the landbridge, the office copies

33:14

the language loss, because I can't comment. But I do think it matters, because, as we said yesterday, we don't believe they are proprietary rights. But in any event, the transfer will be affected by operation of law, because of the DCO. So providing, so how will you and I haven't got the article in front of me at

the moment. So the article would then prescribe those rights. How would you know what those rights were?

33:41

I'm not sure you would. Right. So it's simply a transfer of what was written down in 1947? Well, possibly not even that, right.

33:51

I think the formulation used in the draft article 36 is similar, certainly similar to the wording used in 1947.

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But the difficulty is that we don't know quite what those rights are, this DCO process isn't clearly appropriate to make a determination as to what the rights are. Therefore, the formulation we arrived at was,

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as we discussed yesterday, what draft article 36 provides for and, therefore, and that's not

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completely without without precedent, I think I'm right, in saying in legislation, you do see some provisions like that in legislation.

34:36

I've come across before, I appreciate it's not entirely black and white. Yeah. And therefore it's not completely ideal, but we are not sure how otherwise to deal with it. Yes, we have seen and it's also worth adding. So given the context of Crown land here that discussions with the Ministry of Defence in relation to this issue, have progressed very well miss

35:00

Cisco. Griffiths can, I'm sure, confirm that if you'd like to, and the Ministry of Defence is content, I'm instructed that the proposals for the replacement site are ones that it agrees to. And therefore, it may be that we produce a separate crown consent for that piece of land, separate from the landed, walk up that the training centre, which is obviously impacted to an extent as well.

35:27

You've you've said to me, one thing that you haven't said before, I think I haven't seen evidence is the is the precedent of the transfer of rights like these.

35:39

I wonder if that would be useful to have a note on on that. I mean, you've referred to it now. i It would be unreasonable to ask for those now, because you've just referred to them, or you just refer to them.

35:53

I'm just wondering if a short note, just to just to explain the current situation in the way that you've explained it at the moment. I know, it was the subject of discussions in the hearing yesterday.

36:03

But just to bring together to bring it together in respect of the rights, that the rights and the land, if you like, how that mechanism would actually take place and how I mean, we can the historical precedent has been provided. In terms of other

36:23

evidence that we've got before us. This just this thing about the actual, the transfer, if you like, and what actually happens, what would be given to the fair, the fair pay, they've the fair community, on the new site in terms of the rights? I mean, so it's, we can certainly, I was just

36:42

add to the note we were discussing, yes, yeah, in this respect, excuse me.

36:48

And in doing so we can try to give an indication of where that formulation has been used before. But I remind myself, it's it's no different really, to the standard article included in DCO. So you'll be very familiar with about

37:03

exchange land where the article concerned often refers to the the bundle of rights applying to the open space land to be taken for the project concerned, any rights transferring to the replacement site, and equally as we don't in article 36, it doesn't define quite what those rights are. So it's an approach that is often taken, not I can see in relation to this rather unusual type of rights compared with public rights of open space, etc. Yeah, right. It would be useful if that that those particular points can be added to the note that was offered yesterday. We can we can do that, sir. Thank you. And then if you want more than obviously, you can ask for more in written questions. Thank you.

37:51

Right. Okay. I didn't have any other matters relating to Crown land interests, just looking around the room to see if there are any, I don't see any hands raised. So that completes agenda item 6.3. On to Section seven of the agenda that concerns statutory undertakers applicant to explain the current position in relation in relation to negotiations with Su's, particularly in relation to protective provisions. So what I have, what we have before us at the moment is the statement of reasons sheduled

38:24

that relate to apparatus, and the second one relates to land to be acquired,

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I should say rights rather than apparatus, the first of the tables, and the second one then relates to

38:42

acquisition.

38:45

Right. So, I just really wanted an overall update in relation. Let's take protected provisions first. Excuse me.

38:55

In terms of protective provisions, how are you going with those how you getting on with those? That's massive for Mrs. Heidi, Mrs. Lisa to deal with? Thank you, Mister.

39:06

Thank you.

39:08

I just laid her for the applicant.

39:11

Article 48 of the draft DCO and shedule. Nine parts one to four currently contain generic protective provisions

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for the protection of the following parties. So in part one, we have protected provisions for electricity, gas, water and sewerage undertakers. In part two, we have protective provisions for operators of electronic communications code networks, in part three for the benefit of National Grid, and in part four for the protection of the environment agency, although that's a short draft at the moment. But as a backdrop to that, whilst I should say first of all, whilst we believe that those of you didn't say Network Rail in those, no, but that those protective provisions will be in the next iteration

40:00

The draft this year, they're not in the current draft, all right.

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Which is why Network Rail appeared at the preliminary meeting.

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Whilst we consider that the protective provisions that are in parts one to four, would provide sufficient protection for the undertakings of the parties whose apparatus or land is affected by the project,

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we have, nevertheless, then draft protected provisions to all of the statutory undertakers and other utilities who have land or apparatus with the potential to be affected by the project. So is that basically the list in tables? Seven dash? Seven, two? Yes. One in the same two reasons. Yeah. Although with reference to those tables, I think, since the book of reference has been updated, following section 51, I

think we probably need to take another look at the tables in the statement of reasons and update them accordingly.

41:03

In terms of parties with whom protected provisions are proposed to be used, and where protective provisions are going to be included in a bespoke basis, in the DCO, or with side agreements as well, being currently drafted and negotiated, I've got a list here of 16 Undertaker's, I don't know whether you want me to go through each party on the list and let you know where they are up to or whether that would be best put into a post hearing submission. I think it would be better to put into submission, it can be sort of go in as part of your call or summary summary because you've you've referred to

41:46

the list, though.

41:49

You your your view on the list, are there any particularly difficult ones in there? No, not that I have been made aware. I think it's all progressing

42:02

very positively. And we don't anticipate being in a position by the end of the examination where we have any section one to seven

42:11

representations that have been submitted, not withdrawn. So that's on me. That's on the compulsory acquisition side. Obviously, that's yes. April 7, one.

42:22

Sorry, I'm jumping ahead to your No, that's okay. That's okay. Excuse me.

42:31

So that's on seven, one. On seven two, then which is general protective provisions. Then, in terms of seven to the list and set in Table seven, two, do you see any potential difficulties with that?

42:45

No. Okay, lead, right. And I had a particular question relating to Network Rail in terms of

42:57

indemnities terms of the protective provisions, it's often a touchy subject in terms of the level of indemnity sought.

43:08

And

43:10

I can see the looks on your faces. But here, you've got situations where you're not exactly for instance, replacing a rail bridge or whatever it is simply

43:22

writes underneath a bridge, which remains intact and is subject to no other real pressures, or land going up to an over bridge abutment, which isn't actually over an operational rail line, I think you can probably visualise the areas that I'm talking about. But so have you been able to come to an acceptable indemnity solution in the protective provisions? Not yet? No. Right. Okay. Is that the only item which is outstanding?

43:59

I think it's fair to say that engagement is at a relatively early stage, but what has been agreed is that we will be entering into a an overarching framework agreement with Network Rail, and they are keen for that to be progressed as quickly as possible. Right. Right. So you still see yourself being able to come to acceptable protected provisions by the close of the examination. Right. Okay. But that you're still at an early stage. And you possibly haven't fully touched on the subject of indemnity. No, that's correct. Right. So that still has to be bottomed out. Yeah, right. Okay. Again, I would emphasise the importance of having these things in place. Because if these are left hanging at the end of the examination, they are left hanging for the duration of our reporting period, and they will inevitably have an impact on the length of the decision period.

44:57

What you do now, doesn't just

45:00

As of the time that you can see, it saves more than that. We completely understand. Thank you.

45:10

So I think in our discussion, then I'd probably dealt with

45:16

agenda items 7.1 and 7.2.

45:23

Let's consider, just first of all with that there's was there anything else anybody wishes to raise on agenda item 7.1 and 7.2. Just looking around the room and on the screen, nothing seeing Thank you. Agenda Item 7.3. Then applicant set out in the event that agreements are not reached, with the snatch agenda takers how the relevant tests could be met.

45:49

So if you if we get to the end of the examination, and you haven't been able to complete these agreements with any of the statutory undertakers what would be be given to report on?

46:06

opposition would be

46:09

policies Heidi Slater for the applicant? opposition would be that the protective provisions that are already included in the draft DCO for the benefit of statutory undertakers would make sure that there was no serious detriment made to the carrying and carrying on of those statutory undertakers undertakings, because the provisions that are already in the draft DCO provide

46:32

an obligation on impose an obligation on us to submit

46:37

plans prior to carrying out any works to carry out any requested protective works for the benefit of the Undertaker's apparatus. They oblige us not to acquire any apparatus without consent.

46:50

And they also make provision for the payment of costs and compensation for any loss or damage. So we consider that notwithstanding the absence of any bespoke protective provisions, there would be adequate protection in place to satisfy the statutory tests of no serious detriment. Okay.

47:09

That will indemnities.

47:16

They fit within that, within the categories that you've just just give me if you like that note, no serious detriment to the extent that we would be obliged to cover payment of customer compensation, right. I would say yes, yeah. Network Rail may beg to differ. But yeah, I think our position would be that it would.

47:39

Okay, thank you. Thank you, sir. Was there anything else on agenda item? 7.3. Just looking around?

47:47

Nothing seen.

47:53

Agenda Item 7.4. It didn't quite understand the the presence of the North Cumbria integrated care NHS Foundation Trust in the statutory undertakers. Could you explain why? Why they ended up briefly? Yes, sure. Thank you.

48:14

Heidi Slater for the applicant. The drafts DCO defines statutory Undertaker as meaning any statutory Undertaker for the purposes of section 127, subsection eight of the Planning Act 2008. That subsection then defines statutory undertakers as having the meaning given by Section Eight of the acquisition of

land act 1981. And it also includes Undertaker's or two limbs, those that are deemed to be sufficient to take us for the purposes of that act by virtue of another Act. But also, and this is the key bit, those, which are statutory undertakers for the purposes of section 16, one and 16(2), two of the acquisition of land act by reference to Section 16(3) of that act. So then, if you look at Section 16(3), it provides that for the purposes of section 16(1) and 16(2), which provisions contain

49:14

provisions equivalent to those in Section 127 of the Planning Act 2008. Statutory undertakers there are defined as including in Section 16(3) be a an NHS Foundation Trust, and section 16(3) be a little b and little a was added to Section 16 of the acquisition of land act 1981 by paragraph 48, of schedule 4 to the Health and Social Care Community Health and Standards Act 2003, which came into force on the first of April 2004, and currently remains in force. Right. Okay. So on that basis, we felt obliged to include them in that case. Thank you

50:02

inclusion. That's right. Yep. Okay, then. Thank you, sir. All right. So that was agenda item 7.4. Did anybody else have anything to raise on agenda item 7.4? Just looking around nothing. Thank you.

50:16

Agenda item 7.5. I didn't actually have any other matters relating to statutory undertakers.

50:31

I'm just thinking I'll just

50:34

try not to

50:37

recollect in terms of right. So I've I've taken your current positions in terms of the statutory undertakers overall.

50:46

You,

50:48

you would, of course, when you reach an agreement stage with any of the statutory undertakers then put that into the examination. And I'm just wondering now, where we would actually get an update of those all overall agreements, in respect of the two tables that we talked about table seven, one and seven to

51:11

zero in in terms of the ongoing examination,

51:15

we obviously have may, may have a set of further hearings in which we can be updated. I'm just wondering what might be the best way of just keeping us updated on these matters? Because they aren't something which the undertaker themselves will actually put into the examination often.

51:50

So Robbie, only for the applicant. I'm just looking at the current draft timetable that you've published. Yes. And, of course, included in that is a request for

52:06

I'm assuming an updated statement of reasons at some stage. And that is

52:17

something that was certainly you, you asked for, on three occasions, the final status of negotiations and compulsory acquisition, but that's different, isn't it? It may be so that in

52:31

coming to review, I think you said early next week on the examination timetable, you might want to reflect on whether there should be some updated, stated reasons produces a number of maybe one maybe one or two deadlines, it may be appropriate.

52:49

At the same time as asking for

52:53

an updated status of negotiations slash compulsory acquisition shedule, which is currently deadline to Deadline I've got 1055 and deadline. Yeah. Eight, it might those same deadlines. Yeah. Last updated. So

53:08

yeah, if that sounds because you're at the sharp end of these things, and you have a better idea of when things may or may not happen.

53:15

So if your suggestion is that they're added on to

53:20

that status of negotiations, CH shedule. And it might be served just I'm just thinking that certainly with regard to deadlines, five and

53:29

eight, that would be absolutely fine. I'm wondering what it may be, we were not able to say much more

53:38

in this respect, at deadline to in January. Yeah.

53:44

That therefore, it might be that your conclude that little purpose will be served in

53:52

the reasons then but right, I think for the sake of consistency in terms of the documentation, if indeed it is ever gone back through to have a status of negotiations, compulsory acquisition schedule and statutory undertakers deadlines to five and eight, it is a document then that existing would have had to have been prepared anyway. And simply it's just the updating of that document, which will be quite an easy exercise to do. I recognise that a deadline to it may well be a repeat of what has been said today. But it will get the process the updating process started. And it'll key it in at a point of time at a point of time. So if it could be a deadlines two, five and eight, then Understood sir and obviously subject to any changes that may happen to the draft timetable, which is the one we're looking at now. Yes, of course.

54:42

And indeed if a deadline to there's not much more we can tell you about session Undertaker's then we will work to tell you much more but well, but it's just your current situation. Yes. And so you will you will have a term then that describes where you are with that particular status. That's the undertaker. And I see it being it may not be like this, but it was

55:00

simply be a table with a statute and to take us down one side and where you are on the other side. Yes. And that may be a repeat of what you've said today, but it keeps it in in time in terms of the process.

55:10

Thank you.

55:12

Right. I didn't have any other matters relating to statute gender takers. Was there anything else just looking around the room? And I can see, there's Nicholson's hand raised. There's Nicholson.

55:29

Nicholson, I think your camera's off and you're on mute. Sorry, isn't. That's alright.

55:34

disappoint. I mean up any other business just headed slightly quickly.

55:39

Right. Right. Okay, then. So you didn't have anything and

55:47

agenda item 7.5?

55:57

Well, I'll just look around just to just to see if there is any other business then I don't have any other business to raise. I've got Miss Nicholson's hand raised. Just looking around the room. See if there's any other hands raised? No. And I can't see any more on the screen either. Right. Okay. We're Agenda Item eight now.

56:14

I've been at the point that your agenda, right. At this spoof at this moment in time, I can't actually hear what you're saying. It's, it's breaking up a lot.

56:26

Can we try again?

56:29

Can you hear me now? Yes, that's a bit better carry on. It's in respect of 10.5. I wasn't able to respond at the time that that was addressed. I was struggling, which is back on to to the planning.

56:48

Where's

56:51

which really?

56:54

is in the public? Right? I can't actually follow this, I'm afraid because it is almost as if almost 50% of the words that you're saying are cutting out. And I'm not even getting the gist of what you're saying. Can we have one more go with this, please?

57:12

Yes, I'll try.

57:15

Right. Could you try again, then please? Yes. Can you hear? I can hear you now. Yes, yes. Okay.

57:24

Section one to two. Public Benefit compelling.

57:30

In the public interest? Yes. Yeah. No, I have the BCR for the route.

57:37

Given a lot of variation is economic. We now know, the route

57:44

of minus one, which is that the costs outweigh the benefit.

57:51

I'm aware that this project is on her best descriptions, the Department for Transport her watch list it was assessed. Right. Just just on this point, Miss Nicholson, this is this is relating to compulsory acquisition matters, not general matters relating to the cost of the project. And so really the reference and I don't know whether you're going to come to compulsory acquisition matters now or not, but the references that you're giving a more general than were considering at this particular hearing.

58:27

Were there any compulsory acquisition related matters relating to this? Well, it ties back into the section, which is the public interest.

58:36

public benefit outweighs private loss, the BCR would seem to suggest that there is there isn't. And we still await the BCR for the various different sections. This section is 400 million, which is a third of the cost. We've been asking for the VCR since the 16th notes in April 2021. Okay, can I just because you're coming through a little bit broken on the audio, can I so your concern is over the the VCR and the fact that the April 2021 date that you've just given and the fact that when that is fed into the compelling case, in terms of public benefits, etc, then your concern is that basically that doesn't stack up if I could just put it like that. Yes, the test isn't met, test isn't met. That's much better wording than I had. Thank you very much. Right. Okay. If I could just take that from you and just say, at this point in time, Mr. Owen, is there anything that you can give in response?

59:46

Robbie and for the applicant? I don't think so. So thank you. Right. Okay. What I've got them as Nicole said, I've got the reference. I've got the point that you've made. And I've got a note of it just so that if it's difficult on the audio to actually hear then

1:00:00

I actually have it. But I would be grateful. If I know that within the reference even within the representations that we've had from the least, and how farm area, if I can just call it that, that has been referenced to the VCR previously, if there's anything that you wish to put in, you've got written representations, one to that deadline want to actually do that.

1:00:22

So the fact that we haven't had a discussion about it this afternoon, doesn't mean that your point hasn't been registered, and will be taken into account in terms of our consideration during the examination. So that's what I can give you at the moment on that. I do have difficulty with the line that you've got at the moment, but I believe that you've been able to get your point through. And so is there anything else that you wish to say?

1:00:47

No, I'm happy with that. We would be assisted, though by having the BCR for the rig sections. Okay, I've just made a note of that, as well. Okay, thank you very much. Right. Just just looking around the

room, then was there any other businesses anybody wishes, wishes to raise? Mr. Rowan, thank you. So Robin, for the applicant? Would it assist if we as yesterday went through a list of actions? We weren't we are about to do that. But just Yes. We'll we'll do that. Now. I just like a few words at the end.

1:01:20

Yes, if you wouldn't mind.

1:01:24

And given the time, if you could

1:01:29

make these as speedy as you can, I think. Thank you. Yes, I certainly, I have I think 22 of them.

1:01:40

Just as a preliminary I think we agreed with the compulsory acquisition schedule that you have been asking for would be an update of a pp 301. And currently that as we've just been discussing, as in the timetable for deadlines, two, five and eight.

1:01:57

The first item was to as per agenda item 2.4.

1:02:03

addressed the issue of out the areas of land, shown as white or empty space on environmental mitigation maps and what they're required for.

1:02:15

And that's the reference to all of the plots covered in item 2.4 of the agenda.

1:02:22

The next was to an explanation of the

1:02:28

position in relation to plot

1:02:32

0102 A one Oh 35 skirt skill depo in relation to miss sparks submission on behalf of the County Council. I think that's all part and parcel in fact of the previous item

1:02:48

in relation to item 3.3 of the agenda shedule of unknown owners to be rearranged as per the three categories discussed in the hearing, unregistered land, unknown mines and minerals, interests and unknown persons

1:03:02

in a summary form to be included in the post hearing note.

1:03:07

Agenda Item 3.6.

1:03:10

A posterior note on departures from the standard limits of deviation based on the tables in chapter two of the marital statement

1:03:20

expanding on on on the necessity for the expanded limits of deviation and also sort of grouping them in a way that Mr. Roscoe you were discussing. Okay.

1:03:33

next agenda item 2.6. To deal with the error in the numbering in section two of the statement of reasons.

1:03:42

Number six, agenda item 3.7.

1:03:49

Add an explanation to the explanatory memorandum to explain the reason for the modification of the minerals code through the exclusion of that paragraph eight three.

1:04:00

And indeed, same item, agenda item to a dress. Whether the incorporation of the minerals code would enable us to remove the unknown mines and mineral owners from the book of reference.

1:04:15

Equally on that subject,

1:04:18

a note on the distinction in the book of reference in relation to unknown owners of mines and minerals interests were in relation to some there is a note relation to a caution yet in relation to other similar interest interest there is no such note.

1:04:31

Then, in relation to agenda items, three, eight and three nine, we're going to update the expansion memorandum to reflect the explanation I gave in relation to Article 22 Three

1:04:46

Yep.

1:04:48

Agenda Item 3.9. Again, update the explanatory memorandum in relation to Article 24.

1:04:57

Ditto in relation to agenda item three.

1:05:00

311 and October 26.

1:05:04

We're going to consider the notice period for temporary possession, and whether we can give a commitment to give greater notice. And indeed, other details that were discussed about the purpose for injury.

1:05:18

And what will be done on the land and what equipment etc will be taken onto the land. Yep, that was that was the NFU point. That was indeed, yeah.

1:05:28

Article 26. Article 26.

1:05:31

We're going to update the explanatory memorandum.

1:05:34

In relation to with with pointers for accessibility, I'm not entirely sure what that means now, but perhaps that will be clear to others. I can't remember the point now. But anyway, we're updating the EM in relation to Article 26.

1:05:50

We're going to consider the position relation to Article 34. And whether the whole issue of the approval of the scheme for the replacement land.

1:06:01

And

1:06:03

we're we're sort of wrap that up with the

1:06:08

later issue that also came up on this on this point about precedents for drafting of replacement land provisions.

1:06:16

We're going to consider whether the plots in article 34 Or five, that's the plots for the replacement land would be better presented as a table to improve presentation.

1:06:29

We're going to do a number of things in relation to Article 15.

1:06:35

In relation to round precedents, precedents, also commenting on the NF use comments about providing certainty on geographical distance from the order limits? And also whether

1:06:51

Yes, the point I made earlier about

1:06:54

the nature of the use of the Ledger was mistakenly, it was in relation to this article, not article, not not the timber possession article. Yes.

1:07:04

Okay.

1:07:06

We're going to look at the book of reference entry in relation to SLIS. And how far comparing it with the number of written relevant representations. You've had

1:07:15

to see if there are any interests admitted.

1:07:20

We're going to do a note in relation to the mid playing field. And the whole Crown land issue that we discussed, and whether in fact, the whether we feel the same reasons is still correct in in referring to this special category land Yep.

1:07:45

We are going to provide an update on the public trust the crown consent act added was also a note in respect of agenda item 5.3. This wizzley?

1:07:57

Article 34. Yes. Sorry. I meant to I think I just referred to that earlier. Yeah. Very clearly. In terms of wrapping that up with the previous item. Yes. Oh, yes. Yes. Yes, it is wrapped up the previous item. Right. Okay.

1:08:13

And, sorry, the awesome the item about the playing field, we're also going to include what correspondence we could with the MO D and

1:08:22

yes. And summarise the nature of the current use of the facility.

1:08:29

In relation to Brookfield fair, we were going to add to yesterday's action, more commentary about the transfer the rights mechanism and precedents for similar such things. Yeah.

1:08:42

We are going to

1:08:44

submit at deadline one, a status of negotiations with Sasha Undertaker's motion to the protective provisions. Yeah. And then you're well, I imagine you'll be in relation to regular updates of the statement of reasons reflecting on that when it comes to reassuring the timetable, and that was scheduled, two, five and eight. Sorry, deadlines, deadlines, deadlines, two to five announcements. So can I also just raise one basic query, which we've obviously been discussing in a number of different respects the need to update the explanatory memorandum

1:09:22

that is currently provided for?

1:09:25

Well, so I start again, the current draft timetable provides at deadline to for the next draft of the DCO to be submitted. And I'd like to suggest that that would be the right time also to submit the next update of the expansion memorandum rather than a deadline one on the basis that it makes sense to do the two together.

1:09:51

Thank you. Yes, that's fine. Yeah, we'll do that. So in the post hearing note where there are issues relating to updating the EM we will note those in

1:10:00

The Post hearing though, you will get the updated em a deadline to write. Okay. Okay. This is the last time you'll hear from me this afternoon. And it did for this for this week. And I just thank you all for your contributions during the week. And also, can I thank you all for your courtesy shown during the week. And that extends to all parties, whether you're around this afternoon at the moment or not, and all set all those online. Thank you very much for your help over that week. Thank you.

1:10:27

And just to finish off, to say that

1:10:31

posted hearing documents and other documents are to be submitted a deadline one which is on the draft timetable of Wednesday the 14th of December, although that date may may change.

1:10:45

May may also remind you that the recording of this hearing will be placed on the inspectors website as soon as practicable after this meeting. Can I call Mr. Roscoe as comments and says thank you all for your participation today.

1:10:59

It's been very helpful very rewarding. We shall take all that information mine carefully consider it

1:11:08

as as this examination progresses.

1:11:12

It is now 241 and this compulsory acquisition hearing is now closed. Thank you