

# TRANSCRIPT\_ISH2\_M5JUNCTION10\_SESSION2\_06062024

Thu, Jun 06, 2024 2:20PM • 1:15:56

00:05

Okay.

00:07

Okay, so it's now cost 12. If we can reconvene, please, I just checked that the live streams recommend standby. Connection to teams is still working. Thank you.

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Okay, so we're just coming up now to look at Part Five powers of acquisition. And

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I think the first

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question I have really is to do with article 24. And

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whether there is full justification

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for the extent of rights being sought.

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So just

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come to the applicant for a further explanation on that, please.

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Thanks, sir.

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I'm going to so just turning to your agenda item, so a sort of justification for the approach that would allow the undertaker to impose restrictive covenants, acquire existing rights and create new rights over all the land, rather than specific blocks described in the book of reference and whether parties have been notified on this basis. So just going to take everyone through article 24. So applicants position is that the draft DCO doesn't purport to omit the undertaker to impose restrictive covenants acquire

existing rights and create new rights over all the land, and that power is restricted to specific parts in the book of reference, and that parties have been notified on this basis. The interpretation of article 24 must be read within the context of the definition of order land, which means the land shown on the land plans which is within the limits of land to be acquired, or to be used permanently or temporarily and described in the book of reference. Therefore, there is not an immediate comparison between order land so defined and the general redline boundary.

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Under Article 24 One, we're not just turn

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the page

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article 24. One reads that the undertaker may acquire such rights over the order land or impose restrictive covenants affecting the order land, as may be required for any purpose for which that land may be required under 21. So, overall, article 24, one starts with a basic president position that rights can be imposed on any plot within the org land. However, article 24, two there needs to be read, which reads in case of the Ord land specified in column one of shedule five, which can be seen as the blue plots on the lamp hands, the Atkins power to acquire such rights are limited to the acquisition of whale leaves, easements, and new rights or imposition of restrictive covenants are set out in schedule five.

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And then also article 24. Three reads that the power to impose restrictive covenants under under paragraph 24 one is exercisable only in respect of the plots specified in column one of shedule five. So, for blue plots, only rights can be acquired, and only restrictive covenants can be imposed on blue parts.

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This doesn't affect the generality of 24 one.

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So reading just then, art for 20 412 and three, you have a general position for the ability to impose rights over red land and green plots and then that's why turning to article 31 Eight.

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reads the undertaker may not compulsorily acquire under this order the land referred to in paragraph 131 One ay ay, which is the land shown in column one of Chateau seven, which is the green land on the land plans. And what what that article essentially means is that there cannot be compulsory acquisition over the green land, and that that excludes the green land from the generality of 24 one. So, the starting point of run 24 one is then

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successively excluded on the basis of the blue land and the green land throughout the order.

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In terms of notification, so, the parties for the blue land have been notified on the basis of rights being acquired, and the parties for the red land will be notified to the extent of freehold acquisition. So a higher category of right

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now, let's help helpful clarification as to how the two articles through relate and

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provide a restriction. Thank you.

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I

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think then, turning next to article 30 rights under or over streets

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just again, linking I think, hopefully to national highways comments about the relationship to the strategic road network.

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I'll come to national highways in the first instance you can let me know what progress has been made on on this, if any.

05:45

Thank you sir safety strip for national highways. This forms part of the wider ongoing discussions around how strategic road network assets ought to be treated, generally. So discussions are ongoing at the moment.

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But our position remains our elephant representation.

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So this company applicant has any further point that you would wish to make them and

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No, sir, in regard to the ongoing engagement in terms of how we're interacting with the SRN, it will all be within agreements to be to be agreed upon. Just to confirm on the use of article 30 It doesn't grant a compulsory acquisition power, it confirms operational capacity and needs to be read also in line with article 29 which confirms that you can carve out airspace and land from the general position of compulsory acquisition and that needs to be then so then this article 30 is the operational power to help you go and then use those compulsory acquisition powers that you have used through article 29. But the position in terms of the relationship with the SRN is ought to be agreed.

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Thank you

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again, then, moving on to

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article 32. And

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just in terms of the 28 day period, that set out in subparagraph. Three, again,

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is that a sufficient time period

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to give notices.

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Thank you so much. Okay, got for the applicant.

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As far as I am aware, 28 day period is a standard period for DCS not not least highway CCOs

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in terms of providing a justification, I will need to go and look at how an undertaker might try and achieve that outside of a DCA. Perhaps that might be helpful as for a complication. Yes, thank you

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for I think we'll note that as an action point then just to give us further detail and with regard to that 28 day notice period under Article 32 cute

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I think the next point links to the point the joint counsels made with respect to article 36 and headrow removal

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Yes, Sir John Webster, joint counsels. It's the first bullet point in our relevant representation concerning the DCO compensation arrangements for tree works hedgerow removal, paragraphs 4.134 and 4.136 explanatory memorandum to the draft DCO do not specify who the compensation is payable to the tree works and if compensation is payable in relation to hetero moovel, pursuant to Article 36, a draft DCA and

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that was the question

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Are you able to assist with that? Thank you.

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Thanks, sir. Okay, good for the applicant. So, compensation provisions are set out in article 36 and 37.

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I'll just turn the DCO to those articles.

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I won't read them out.

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The explanatory memorandum does not attempt to categorise those persons as there's not a restriction of any type of cat

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degree of persons and the DCO. The DCO introduces a general compensation liability for loss or damage. It's not practice and DCO orders are indeed more widely and legislation to categorise persons.

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And so the method of the DCO is simply to establish a Principle of Compensation liability, and leave it to third parties to bring forward valid claims.

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Does that help the joint counsels in their understanding? And in that respect? John Webster joined as Yes, it does. And I assume it's going to come back and writing as well.

11:03

Okay, probably I'm gonna Yes, we will be responding to the joint counsels relevant rep. Thank you, thank you.

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I'm sorry, I've missed an element that I needed to just touch base with you on on Article 32.

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And it's point 12,

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where it talks about a maintenance period of five years.

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It's a broader issue as well, in terms of maintenance periods. And whether five years is an appropriate period, because there are several elements that

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potentially could do with a longer period than that. And within the ES under the woodland element, it actually specifically refers to a 15 year period. And then obviously, there are the

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maintenance of the highways and the ongoing elements linked to that. So if you helped me understand how that five year limitation applies, and whether it's appropriate to be limited to five years.

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Okay, go for the outcome. Thanks. So

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a couple of separate, three separate sort of ideas there in terms of maintenance, the first around the five year period set out for the replacement period for planting. And I think this is principally how this maintenance period would be applied. And it's applied over to LAN temporary land and other land

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in terms of those references to specific elements requiring a longer period, which are set out in the react so I think it's sort of 10 or 15 years for hedgerows and replacements, which are specifically for dorm ice mitigation.

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The applicants position is that we'll be acquiring necessary easement rights to maintain that accordingly, in terms of the highway.

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My understanding that it would be we wouldn't need to require a separate temporary power of maintenance in the DCO. The highway authorities would rely on their powers of maintenance in the in the Highways Act.

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And does that reliance on the powers within the Highway Act give sufficient

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certainty or of maintenance, both for national highways and

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in respect of the local road network.

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So I think we'd be talking about specific about land plots forming outside or falling outside of our highway boundary.

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That discussion is not being raised as we are not aware of any concerns on national highways in relation to that.

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I'm not suggesting they have it is more concerned that I have right in just trying to

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get clear in my mind the relevant maintenance periods that the DCO

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sets out and the relationship between the specific time periods as it sets out in in different places. And whether that five years

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15 year, or whatever period is the appropriate period for each element.

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So Gary, Gary Solomon, the applicant, I think we need to take away the temporary use issue, because that that is a

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period we need to think about in terms of landscaping. The five years is a standard provision, it's to ensure that landscaping across this scheme is established. And and then you would have replaced its replacement within

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that five year period, the 10 and 15 years that Mr. Haycock referred to relates to manage management. And there are specific requirements as mentioned in the Riak, which are which have to be delivered. So we our position is that the maintenance of the landscaping, and the management of the two extended periods in relation to the

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hedgerows and woodland are sufficient. We'll take away if we made the maintenance on the temporary. So in the temporary use of land to make sure that works.

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That's helpful. Also, I think that

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I would be interested to understand where if the React says one thing, and the DCO says something slightly different. What has precedence

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as far as we're aware, so there isn't any conflict between the two because the the article in relation to maintenance of landscaping is is a broad requirements across scheme. And the two specific requirements don't refer to maintenance actually referred to management of the woodland and the

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hedgerows, and they are bound by the reacts with don't think there is a, a, an inconsistency between the two. So not in terms of those elements.

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Okay, well, we're going to be coming on to requirements shortly. So

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I'll see where my note takes me. But thank you for the commitment have a look at the temporary element?

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Okay, so I think we're now on to requirements, which is shedule. Two. But before we just go on to that, I think it's an overall point which has been touched on already about the

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justification for the undertaker being the appropriate organisation responsible for the discharge of and determining body in respect of requirements. So I think this is something that you're having on the going discussions with national highways.

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But it seems to me potentially, it will go beyond national highways. I know that joint counsels made a point with regard to the role of the local planning authorities with regard to their functions. And there may well also be issues with regard to the Environment Agency and their functions. So just as a sort of umbrella element if I can seek your views on the approach you've taken and

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where this was going.

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So Gary Solomon, the applicant,

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so as you you say so the approach taken in the DCO proposes that Gloucester County Council as county planning authority is the discharge authority for the requirements. It's an approach which is is taken in non highway D ACOs, as well as highway D shows which are not promoted by the



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national highways. It's a standard approach. There's numerous examples that can be drawn upon which we can provide in terms of the principle question was raised as to whether because GCC is also promoter, and therefore, plumbing hardware, I thought it was appropriate to do that. And then the the two have very separate and distinct functions, and it's very common for that to happen. They have different obligations on them, so it's entirely appropriate for the GC

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See in its role as county planning authority to be the discharge authority,

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as they're currently drafted, the requirements involve consultation with a number of bodies. So for example, national highways are to be consulted in relation to works which affect the strategic road network.

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And there are other, there are other requirements in other obligations in the requirements to consult with the relevant planning authorities as well.

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So that's the approach we've taken. And we think it's appropriate approach. We are aware, however, as we've discussed, that there is a specific issue in relation to national highways, I don't think any other body is suggesting they be a discharging authority, but they do want consultation. And when there are as we go through the requirements, there are a number of requirements where we're happy to include, for example, the Environment Agency, in respect of consultation, but the actual requirements need to be signed off by someone, we say the county planning authority, but we need to investigate and are going to have discussions whether certainly for the strategic road network,

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the Secretary of State would be an appropriate body.

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There's a couple there's a few issues in relation to that we need to make sure that it's workable, that it doesn't cause more problems, and it's sold, that there's consistency, then, in terms of signing off. And importantly, we need to check that the Secretary of State is prepared to take that role on and we're, you know, conscious of the guidance to ensure the discharging authority is happy to take that role on so that's part of the investment the ongoing investigations as to whether if it's not the count, just the county, whether it's appropriate that it's also the Secretary of State.

21:57

Okay, so I can come to national house just to seek your position as it stands as of the moment thank you. Thank you, sir Sophie Stewart for national highways.

22:07

Discussion discussions are ongoing tripart discussions were trying to arrange a meeting prior to Deadline one between the joint counsels ourselves and the applicant to discuss these points.

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In relation to some issues raised by the applicant, it is correct that national highways promoted DCA OHS discharge requirements is undertaken by the Department for Transport. My understanding and I will look to my left in case I'm saying something slightly incorrect at the moment and invite them to jump in is that there is a team at DFT set up to deal with discharge of requirements for DTOs. It is a well used, I don't want to say seamless process entirely but but it is a it is a process that is properly resourced and works at the moment. So from that perspective, we see no issue

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with with that team being utilised on this scheme, where discharge of requirements or the requirements relate to the strategic road network and or any assets that will form part of national highways, either the SRN or national highways, land base post

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construction, because obviously there are things like some of the ecological mitigation measures that run out with the SRN, but along the side of it for its benefit and those assets are still under discussion.

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Our other concern at the moment is, whilst the applicant did point out, I think it's a requirement for

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a need for consultation in discharging some of the requirements for three particularly concerns us

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insofar as whilst we may be a comms console T in those applications

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the applicant is entitled to disregard our comments on the basis of engineering practicality, which okay, we're probably more relaxed with but also cost. And our view is, motorways are fast moving incredibly dangerous roads and simply having

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a very small increase in cost, for example, should not be a reason

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to discount our our comments and unless we have,

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in our view, a fully independent decision maker

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that remains an area of concern, significant concern for national highways

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and so from

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After my taking the independent decision makers should be the Secretary of State

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said that that's a discussion that's ongoing. Yes. position at the moment is that the case team that deals with national highways DTOs would be an appropriate body. But but they are, as I say, discussions ongoing three ways, and a meetings being arranged.

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Okay, so

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I take it from what the applicant said in the first instance that

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as your contact hasn't been made with the

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team at the Department of Transport, until you're awaiting

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where you need to contact them, in the first instance, to ascertain their view on

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how they would wish to be involved, if or if they would wish to be involved.

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Yes, that's right, Gary solid. Yes. So that's right. The discussions we're trying to arrange imminently are to map back the process, which will in part involve having to the ACE with Department for Transport, we're aware that there's an established team, it works well, we understand for national highways, whether if it can work well, and they'd be willing to

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act us discharging authority on a non national highway, dc, we just don't know, we don't know the cost. So there are things that we would need to explore with them, their willingness and ability to do to take that role. We're also conscious of the joint councils position, that they are no doubt and you'll you'll come to them in relation to the local road network. And being a discharge authority, we may end up with two discharge authorities, we need to work through how that would work.

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I'm assuming then, national highways have contacts at the Department of Transport from their various schemes. So as part of that

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tripartite discussion, no doubt, you'll be able to put people in touch with the right people. I think it would be helpful if you can deadline. One is to provide us an update as to hopefully by then you will have had a chance to speak to the appropriate people at the department transport so we can have if not a written response from them a an understanding of

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at least the conversation that's taking place.

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Okay, now, I think that's helpful. Thank you. So if I can then come to the joint counsels? Because I think there's,

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for my reading of the relevant representation, it goes slightly beyond what you've just said, because there's issues with regard to noise and other factors. So

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for African just joint counsels, yeah, certainly derives from joint councils. So yeah, relevant representation touches on consultation on the discharge of DCO requirements and responsibilities on the discharge of DC requirements of services. This is drafted back in March, and since was commenced discussions on a tripartite meeting, and there are elements of that that are going to be swept up in what we're going to talk about. So there will be a review of the requirements. There is one part of it is to get this firmer understanding of the split between the SRN and the Irn. what that would look like.

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We've also said that the is the local planning authority element of the joint councils requires greater involvement in the consultation process as well. So I see that being sort of wrapped up at the same time, together with the discharge requirements that Mr. Solomon said is sort of splitting down what that would look like. So I think our concerns will be wrapped up in these tripartite

29:00

discussions, because it all sits together, if you see what I mean, sir. The other point as well, which is made earlier by Mr. Solomon, which we may have moved on from but it's about the separation between the promoter team and the county planning authority. The only thing I'd add to what Mr. Solomon said is that as you can see, we are separated at the moment in this detail examination so it's to give you some reassurance so you can have this partition as it were.

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Thank you, thank you.

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And then that takes me to some specifics of the requirements themselves. And if we look at the invite

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Our mental management plan, which is requirements three,

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just trying to understand how

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to see, which is the

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second iteration, environmental management plan.

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And the measures referred

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to in it

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links through to

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F, and the list there of management plans. So, can you just explain to me how those two elements tie together?

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Perhaps I may help further because if you look, for example, at

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Roman fifth 15, under f, it makes reference to a nuisance management plan that's not in the draft environmental management plan. I know there's something changed anyway, with regard to I think a statement of statutory nuisance that's been referred to that's probably been updated. But it's just a question of trying to understand if you are listing the management plans under f.

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What What does two C do? Or do you know, how do they link together?

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So Gary Solomon,

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I can see why there is confusion in relation to this requirement. There are two ways of dealing with it, I actually think so that you can delete see is probably not needed, or it can be dealt with in a different way. So as things stand, the

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Environmental Management Plan, second internet iteration must, and he goes through a number of requirements, it needs to be substantially in accordance with the environmental management plan that's already been submitted, it needs to contain a record of all the sensitive environmental features that have the potential to be affected by the construction of vote environments. So that's a sort of general obligation. And then if you miss out, say, for the moment, and you get to D, it needs to incorporate the register of era environmental actions and commitments and see, I think, is designed to do that.

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If you looking at other D CEOs, they don't have the register environmental actions and commitments often as a requirement. In this section, I think that there isn't anything in the environmental statement that shouldn't translate through to the Riak. So you could delete that requirement. It shouldn't say second iteration anyway, at the end of it, because it becomes circular, if anything, it should say, first iteration, I think, but I think opposition, so it's not needed, and then all the management plans are incorporated, because there they are specified in terms of the nuisance management plan on it. Is that is being governed by the statement of statutory nuisance. Yeah, so as you said, so it's been a statement statutory nuisance.

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Okay, so then,

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if we're then going to have that list of plans,

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the the titles of them need to be consistent with what is actually in the s and

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the landscape and ecology management plan, I think is titled landscape and ecological management plan. So it's just a question of making sure there's consistency of language

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through each plan and then reference within the DCO itself.

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So we'll go through them all and pick that up.

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Thank you, and then come to the

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working hours.

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Again, I think national highways made reference to this in their relevant representation and deserve

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clarity as to what Sunday working

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but if you can just explain to me how you see the working hours working in practice, I think that would be helpful.

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So, sir, the working hours in requirement three

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at the moment do say Mondays to Saturdays seven till seven which is standard and are the working hours proposed in our in our documents?

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We are not proposing to work on Sundays. Ordinarily so we are happy to add in a clarification to say not not working Sundays, except there are a number of exceptions which look at working outside of those hours in a

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appropriate circumstances so that would potentially include night working. And and Sunday's and the all of those exceptions

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are are there to either

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avoid greater disruption to us as as off the network or for safety reasons. So there may be appropriate for nighttime or Sunday working to occur to minimise disruption. So we would we are keen to ensure that they are kept in as exceptions.

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Okay, come to national highways next then.

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Thank you, sir Sophie Stewart for national highways. Yes, if the applicant is willing to make that slight amendment to the DCA to make it clear that no Sunday working other than those exceptions listed that satisfies us thank you

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think you?

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In terms of the list of exceptions, then

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you got specific criteria, which is sort of one through to seven, and then eight is a cover all as if you have agreement with

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parties who may be affected.

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So yes, so how does that work in practice? So

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how would you be

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assessing the people who might be affected? Is that directly linked to what the environmental statement has done in terms of assessment of effects? Or is it? How does that? How does it work through?

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The I think the

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I will ask my colleague,

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to

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see whether there's any issue in relation to environmental statement, the position is that it would be so if it's a strategic road network party effective would be national highways, there may be there may be businesses or others affected, depending on the nature of what the what the working requires and where it is. That's why it's in general terms.

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I don't think it's possible to say who that might be.

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And I think that's my confusion to a certain extent, because

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if I'm an interested party who live nearby,

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are you going to be coming to ask me for my agreement? For works outside of ours? Is that not? Am I completely miss reading that element?

38:05

No, you're not you're not sir. Any works for which different working hours have been agreed with parties who all may be affected by those works. I understand the practical, the practicalities of of of that.

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We'll take we'll take that away. Thank you. I think you've you've might create a rod for your own back. And I

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yeah, just in terms of the practicalities of it?

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Again, I think we've touched on this already, but I think at the bottom of

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requirement three, and it's

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point four in brackets. It's the whether national highway should be involved as a an approval or thorty. And again, whether that would be

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is your national house or is it the Secretary of State that we'd be looking for on that element?

39:19

Thank you. So Sophie straight for national highways. I think there's there's two points. There's the there's the approving body which will form subject of the ongoing discussions and there is also a request from national highways that they are a consultation in preparing the third iteration of the EMP EMP simply because it will contain requirements for operational maintenance that national highways will then have to take responsibility for

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if you're only a console T

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is that strong enough but

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bearing in mind

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yeah. Is that is that strong enough? Is that the correct position to end up at?

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So, I think in relation to and they are slightly circular points because I think where we end up with as to who the decision maker is will answer the question whether we are consultees is strong enough or not, but notwithstanding where we end up with decision maker for discharge, national highways would want to be consulted anyway and have an opportunity to input into the design and the detail of of the mp3.

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So Gary Solomon entirely agree that there is an issue with a separate issue in who is the discharge authority, but in terms of being a consultation? We have no objection to that, and we will add that in.

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Okay, thank you.

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And I we've already had the point covered on on on details of concerns consultations requirement for and the concerns that national highways have identified about

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limited to cost and engineering practicality.

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I mean, I had a similar question.

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Because it does seem

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that the undertake could set aside responses, if either the cost or engineering practicality was an issue. And I

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I think clearly safety has got to be the first priority when we're dealing with with these, these things. So

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is that something you're revisiting in any event?

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But also, should it be the Undertaker, in making those decisions

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seemed to me to be fairly fundamental as to quite how this element would work.

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at Salomon.

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If I explained our approach and then and then come to the point, the point you've made, so

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this is a standard a requirement, we think it's is it is adequate, is simply ensures that a proportionate approach is taken and the details submitted to the county planning authority as currently drafted when considering whether to approve the details need to include measures which are inappropriate, unreasonable, or unfeasible, but which have been suggested by consulte. Part of deciding whether they are inappropriate, unreasonable or feasible is only a part of it is looking at the costs of them, and the engineering practicalities of delivering them. And if measures are suggested, and they're not included, then the undertaker needs to give reasons why under requirement for for in a report that accompanies the application for approval of the details. So the consultants will then get a copy of the report. So they'll be able to make representations if they they have an issue.

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Of course, we're not seeking to avoid any sort of safety issues. And it may be and so again, we can take it away, that there is some finessing to this that could include that clarification. So it's to it's literally to avoid inappropriate, unreasonable and feasible

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suggestions.

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Now it's understood I think

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we welcome that the next steps in your negotiations and discussions in understanding their

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positions of how it would work in practice. Who's going to be the

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authority that decides it and who's going to be consulted and so on. It's going to be a common theme I think as we go through the requirements but yeah, thank you

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okay, then I think that takes us to requirement five landscaping and

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just clarification

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the environmental master plan is obviously a certified certified document.

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It's in two parts. So

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does when it

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is listed in the certified Documents section need to reference part one and part two. So that's just a

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semantic points, I suppose but I'm just not certain whether it goes because it just says environmental masterplan. So

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just clarity on that. But then secondly,

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the language around where it says must be based on the environmental master plan on whether that is

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precise enough?

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Or if it was to say, a chord with, does that cause a problem?

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So, just clarity as to why you've used that phraseology.

45:47

Thank you.

45:49

Sir, Gary, Solomon will check the issue in relation to the certification, and whether we need to add in some wording to be clear, the on the wording of based on or in or accord with?

46:05

I'm told that either would be be, neither should cause a problem. We consider that based on his sufficiently precise, but if you felt that it needed to say a chord with you wouldn't cause an issue from our perspective.

46:21

Okay, I don't have a particular view at the moment. I'm just aware that as we go through it, there's slightly different wording in different requirements. And I was just interested to understand whether there was a particular reason why you'd used in this requirement based upon and I think on

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others,

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here requirement three, substantially in accordance with. So it was it was more about that understanding the

46:51

subtlety of the difference.

46:55

Sir, Gary, Solomon, the the various phrases in the articles do change is also reflective of I think that where there's a degree of flexibility required.

47:08

We've that is, and there, I think there when we come to some of the other requirements later on, there is a slight degree of flexibility that needs to be built in here. It needs to accord with the plan. So accord with it, or COVID, or based on I'm not sure there is a difference. Okay, thank you, it would be helpful

47:28

as part of your written response to us following today's hearing, if you can give an explanation as to those different phrases as you've gone through the DCR, and why they've been chosen in the specific circumstances so that we can understand that reasoning more clearly. And I think that'd be very helpful.

47:51

Sir.

48:01

And then just the sub point, again, again, we've already touched on are

48:06

the period of five years of maintenance. I think we've already touched on that and

48:14

just seeking clarification, whether that period should be longer or whether it is appropriate to be limited to five years.

48:25

So Garrison, we consider it's appropriate the five year period of standard period we consider appropriate and then the two additional periods of management that relate to

48:41

a dormouse and

48:44

the woodland are delivered through the Riak.

48:51

Okay, thank you

49:07

so in terms of requirements, eight then the land and groundwater contamination.

49:14

Eight four.

49:17

Again, it's a similar point where the undertaker determines that is that appropriate.

49:26

Gary Solomon said

49:29

that there are two schools of thought for this. One is that

49:35

it is appropriate because there's a risk assessment that needs to be submitted aware that risk assessment in consultation with the county planning authority and the EAA is the and the relevant planning authority.

49:48

And therefore, it should be the decision following that off the undertakers as to whether remediation is required.

49:56

And there are environmental protection lead you

50:00

inflation, that would mean that if the undertaker took a decision that wasn't appropriate, then those powers could be used. But I am conscious that more recent D CEOs use use a phrase where the risk assessment determines that remediation is necessary. And I think that would be an appropriate change. So it's not the Undertaker, it's where the risk assessment that submitted and, and in consultation with the relevant authorities, where that requires or shows that a remediation is necessary. That then takes it away from just being the Undertaker's decision.

50:37

A Thank you. I just checked with the joint counsels if that adjustment is something you would be content with.

50:48

At Jama strike as we can take it back and check with our technical and planning team.

50:53

Thank you. Okay, thank you very much.

51:12

Okay, then we move on to requirement nine on archaeology. And it's really just understanding how this would work in practice, particularly

51:22

the elements in brackets at number six.

51:27

prior to completion, suitable resources and provisions for long term storage will be agreed with the count your colic archaeologists are really struggling to understand how that would work in practice.

51:41

So Gary Solomon, so requirement nine ensures that archaeological investigation and mitigation is taken properly. That's the

51:49

the purpose behind article nine, and nine, six ensures that prior to the completion of the development, as you said, suitable resources and provisions for long term storage of the archaeological archive will be agreed with the county archaeologist. And the reason that it's in that way is drafted that way is because in practice, it's something that will need to be decided between the Undertaker and the county archaeologists at the time. And at this stage, it's just not possible to say what would be found, what needs to be archived, there may be commitments in relation to payment for storage, it depends on what's found, how big the item is, how many items there are, what needs to be done. So it's trying to

build in the flexibility needed to in relation to that. And it is a provision that's found in other DCO such as the A 417. Missing missing link, if it helps

52:47

to provide some comfort, Historic England have asked to be consultative in relation to to this, outside of this part of our statement of common ground discussions. And we're happy to add them as a consultation generally.

53:01

And so that might give some comfort in terms of

53:08

I think it might, but what I'm

53:13

what I'm just thinking about is

53:16

you've done archaeological work, the road has progressed,

53:23

getting close to or maybe ready for adoption and used by the public.

53:29

But this hasn't been agreed.

53:32

So

53:34

how it how would it be enforced?

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That's the bit that sort of troubling me because, you know, you're

53:47

it may not have an agreed financial package or

53:54

but

53:56



highly unlikely you'd then be in a position where you wouldn't actually be carrying on with using the road if you if you, you know, so that's the bit that sort of just niggling away at me, and I just can't quite understand how it is hold together.

54:24

We did that there are there are, of course, the general provisions in the Planning Act that we'd be committing an offence if we were in breach of that requirement that I think your point is, but what it's not certain enough in terms of what the requirement is potentially and we're wrestling with that because it needs a degree of flexibility. I can well understand that but I'm when nobody wants to be in a situation where there's potentially inadvertently an offence Yes, created but

54:57

I'm wondering so we can tell

55:00

Whether there's a method of putting in a there's some sort of

55:05

scheme or something that is proposal put forward.

55:10

That then he is approved. I mean, that's the only other way to be able to provide certainty, I think.

55:17

Yeah, I think if you can

55:20

consider how it might be redrafted to give greater certainty and

55:27

I suppose ultimately potentially enforceability

55:31

so that, you know, if in the unfortunate circumstance, there is a problem, somebody could actually act upon it if they needed.

56:12

Okay, if we just requirements 11, then I think we've already touched on this, you're going to address the materially worse adverse elements I understand.

56:22

We've already touched on the is compatible with. So those are my two points on requirements 11. But just over the page, as we go into point two, it says

56:40

details are deemed to be substituted for the corresponding works plans, general arrangement plans, environment plus

56:48

environmental master plan, or engineering section drawing. So

56:54

it that's giving you the flexibility where you could potentially substitute to choose something

57:00

that's shown on any of those plans. Is that Is that right?

57:10

So Gary, so on, and yet yes, subject to one, which requires that the the authorised developer must be

57:18

compatible with the preliminaries scheme designed, etc.

57:25

That's helpful that that was my understanding. I just wanted to make sure I was on the right wavelength.

57:31

And 12. Again, we've got, as you mentioned, before, reflecting the mitigation, so

57:38

again, just understanding that

57:41

slightly different terminology. And

57:45

I wonder whether there should be

57:48

an extra element on this regarding maintenance,

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as per

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article 13, which says it will be subsequently maintained, I would have thought the surface and far water drainage ought to also have a maintenance clause.

58:10

Gary Solomon,

58:13

the I mean, the there's no, I don't think there's any foul water drainage, surface water drainage will become the responsibility of the relevant Highway Authority.

58:26

So I don't think there is a need for adding that wording, but

58:31

I don't see any issue either.

58:34

Okay, so effectively, foul water needs to come out because there isn't any there Right. And then

58:47

it's then just really

58:51

at the moment, you wouldn't you don't think it's necessary to have a maintenance clause because it will be going to the relevant Highway Authority to maintain under the powers of Highways Act. Yes.

59:04

National Highways content with that.

59:08

Thank you. So Sophie Stewart for national highways? I think so subject to agreeing where the responsibility for drainage lies between the two highway authorities.

59:21

Okay, thank you. And I think the only other point on that in terms of the bodies that you've got listed under

59:27

Articles 12 to the consultation with the relevant planning authority, strategic harm authority and environmental agency.

59:38

Should there be consultation with the lead local flood authority?

59:52

Gary Solomon, we are in discussions with or we we are in discussions with with them in terms of consenting

1:00:00

So, we can re we can raise with them, whether it whether it is something that they would that they would seek to have an input in. Okay. And

1:00:11

that sort of a position of joint counsel you want to consider?

1:00:16

Yes, it is. So, as I say, we are trying to exploit things internally.

1:00:22

Thank you. Okay. Thank you. So look forward to an update at deadline one in respect of from both of you, thank you.

1:00:31

And then in terms of

1:00:33

understanding the relationship between requirement 12 and requirements 13 Because they're both dealing with surface water and then flood compensatory storage, the flood compensatory storage within work numbers is work numbers three, five and six D. So, does that requirement only relate to those three work numbers or is it broader than that?

1:01:07

So, Gary Solomon,

1:01:11

so the there are a couple of points here. So the so that this requirement prohibits any part of the development commencing until detailed prod compensatory storage scheme has been submitted and approved. And so this requirement is designed to ensure that before any development takes place in the floodplain, a scheme for flood compensatory storage for that part is submitted to and approved.

1:01:41

The work numbers I think that you've referred to, which will check to see whether it everything is included in those do recognise a whole lot of other works that don't affect though those

1:01:57

flood storage schemes. So, we are going to propose an amendment

1:02:05

because we need to ensure that

1:02:10

it only relates to compensation measures that are needed when when development occurs in a floodplain.

1:02:18

Also, sir, it doesn't refer to there are definitions you would have noted in the order as for compensation area, and flood storage area. And it should refer to both of those in there, and it doesn't, it just says detailed flood compensatory storage scheme. So we think we can provide more clarity around that. So my suggestion is we provide some alternative wording. And then if you're still have concerns, then then that can be reviewed.

1:02:50

And

1:02:51

I was I was concerned insofar as trying to understand how it related to the work numbers and costs related to surface and water drainage. But

1:03:02

ultimately, you're going to propose a redrafting it and we'll we'll need to hear what the joint counsels, say and potentially the environmental agency as well in due course.

1:03:13

And potentially also national highways because

1:03:18

there isn't yet clarity as to whose responsibility this might be, ultimately. So again, it'll be a watching brief, I think for all parties in in ensuring we get clarity as to position as we go.

1:04:06

Just bear with me, I'm just checked.

1:04:19

From what you said, in considering the redrafting of it, would that cover the work number seven, which is currently the construction of a flood storage area.

1:04:32

Because one of my sort of supplementary questions is that is obviously something that's been identified as as required to

1:04:44

help deal with any flood issues but what makes it happen?

1:04:51

What what is it that ensures it's delivered

1:05:17

So Gary, Gary Solomon?

1:05:20

The the answer to the first part is yes, work seven is something that

1:05:26

we are going to pick up as part of that because you're right.

1:05:30

In terms of the mechanism for delivery, I think it would be picked up in 13. But

1:05:39

your concern is clearly that there's no separate requirement, there may well be disabled comments, that's gonna pick that up. Yeah, I mean, it's, I don't know whether it needs to be a separate requirement, or it's just that it's not cold flood, compensatory storage is good, called flood storage area. And it's just making sure that we're not inadvertently causing causing a problem. Yes, the the intention, sir, is to include that within 13.

1:06:11

Thank you.

1:06:24

Now, the noise mitigation one

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this the several elements to this, which were we've been grappling with trying to understand how noise mitigation would actually be delivered.

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Because some of the noise mitigation would appear to be outside of the

1:06:45

red edge for the DCO land.

1:06:48

And

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so, just

1:06:54

hoping that you can explain to us in more detail how you envisage the noise mitigation as a whole being dealt with to deal with the concerns that the US has identified.

1:07:11

Areas Solomon, we're not aware

1:07:14

that there's flood, there's noise mitigation measures proposed outside the red line

1:07:28

in terms of the general approach, so makers effectively Add Noise barriers and they're shown in in the environmental master plan with locations and

1:07:40

there's low noise surfacing on the slip roads. And there's that dealt within the

1:07:47

environmental statement and that this requirement requires that noise mitigation be submitted and approved and maintained. So if if measures are inside the red line, then this requirement would work appropriately.

1:08:05

Measures outside then

1:08:08

my recollection is there is a noise issue identified outside of the DCO red line and it says if I can just

1:08:20

now okay myself

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what it needs is catching up so.

1:08:36

I think it's so gross if memory serves but just

1:08:45

there's an operational noise issue.

1:08:52

I think it comes down to the operational phase where properties are subject to significant effects and specific properties are listed in Table six to seven and six to eight of ES chapter six, which is aso 14 And I think they're subject to significant adverse or beneficial effects.

1:09:13

So

1:09:16

yeah, is last stoke road through stoke orchard?

1:09:26

Arizona, so we'll we'll come back on that.

1:09:30

Okay, thank you.

1:09:33

There's a supplementary point really, it's not directly

1:09:38

it is whether

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it's not directly a point as to how the DCO is written, but it's a broader point about noise and

1:09:50

understanding how mitigation is going to be delivered through construction and operation.

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But also then

1:10:00

In terms of subsequent maintenance of any environmental barriers, for example that you've designed and are saying unnecessary. So

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if you're going to go away and relook at that, I think you'll be helpful if you can also give us a more detailed explanation as to how you understand your mitigation will be delivered to

1:10:31

address the concerns that the US has identified. Thank you, Gary, Samia, so we'll include that.

1:10:57

And I suppose just for greater clarity, I think it links into the

1:11:03

broader understanding of how any insulation of individual properties might be delivered.



1:11:14

going on through any rehousing or compensation for those individuals. So it's trying to get a real clarity on how that programme of mitigation measures is secured within the DCO and delivered for those individuals or properties that you've potentially might be affected.

1:11:48

So I think then, that takes us on to the requirement 15, which is highway lighting, and it was just really

1:11:55

understanding what controls if any, would be in place for the construction period because it doesn't seem to have any controls at all, it just seems to deal with the operational lighting rather than any construction lighting. So

1:12:12

I wonder if you can clarify that for us.

1:12:15

So Gary Solomon, requirement 15 You're right, it deals with highway lighting is permanent lighting, construction lighting is expressly removed from 15 for construction lighting is controlled through the Riak. So G 13

1:12:34

which is on page 13 of the React requires the impacts are minimised construction lighting is to be located and maintained to cause minimal effect and management is second iteration EMP. There's also reference to construction lighting in item b 23 of the Riak

1:12:54

that says wear works during migratory periods is unavoidable no nighttime and then it defines that vibration work will be undertaken if night working is essential, minimal and directional lighting is to be used and then p h h seven of the React page 59 also covers construction, lighting,

1:13:16

and minimising pollution and glare. And those measures obviously are commitments secured through the EMP second iteration and the development has to be built and delivered in accordance with those. Okay, thank you

1:13:38

just see if national highways have any further points I think again, it was a

1:13:45

an issue that you that had been raised

1:13:58

Thank you. So yeah, National Safety straight for national highways, national highways. primary concern was were temporary lighting situated to ensure that light spill

1:14:11

doesn't fall onto the carriageway, three, three temporary lighting but it's something we envisage being dealt with through either protective provisions or through the side agreement to ensure those controls are in place.

1:14:24

Thank you.

1:14:34

And then I think just wrapping up on the requirements element, it really just comes down to the broader point in terms of what happens under Part Two for the procedure for discharge, which obviously we've all discussed already and how that's going to be

1:14:52

encapsulate the different approaches that are being put forward. And what's going to be a pro

1:15:00

Over to resolve that.

1:15:03

Garrison has

1:15:05

agreed and and that has a need to be worked through in terms of that process and how it impacts on the various requirements we've just looked at.

1:15:15

Thank you

1:15:21

think that's very neatly timed because I think we now concluded requirements was which pops an appropriate time to take a break. And we'll recommence with discussion on protective provision that

1:15:35

two o'clock. So if we can adjourn the hearing now, just remind anyone on the live stream that you'll need to refresh your browser page when you return. So thank you very much, everyone. In the meantime, and we'll recommend that too.