



Hearing Transcript

Project:	A46 Newark Bypass
Hearing:	Issue Specific Hearing 1 (ISH1) - Session 2
Date:	03 December 2024

Please note: This document is intended to assist Interested Parties.

It is not a verbatim text of what was said at the above hearing. The content was produced using artificial intelligence voice to text software. It may, therefore, include errors and should be assumed to be unedited.

The video recording published on the Planning Inspectorate project page is the primary record of the hearing.

AUDIO_A46_ISH1_SESSION2_2024-12-03

Tue, Dec 03, 2024 6:00PM • 1:07:47

Good afternoon. This is four o'clock, so the hearing is resumed. So if we can continue with the requirements,

I'm at point 4d in the

agenda. So that's requirement eight, which relates to unsuspected contamination or contamination not previously identified.

Yeah, have noted the updated wording in relation to cessation of works.

However, I just wanted to get a bit of clarity around this

decontamination. Identified in the ES, secured in the DCO as only unexpected contamination is addressed by requirement eight.

So is there? Can you just explain to me how expected contamination is dealt with and secured through that is there a necessity for a further requirement to actually say it will be undertaken in accordance with documents submitted and

the approach set out in things like the second iteration EMP or management plans and whether or not a verification report should be required, etc. So can we just pick that point up the applicant? First of all, Emma Holling Phillips on behalf of the applicant.

So as you say, requirement eight deals with

unknown contamination, and that's because known areas of contamination are dealt with by the process set out in the environmental statement, chapter nine, which is rep 3009,

the high level answer is that the approach To the mitigation which includes known contamination is set out in Section 9.2 of that es chapter,

and also in Appendix 9.2 which is the contaminated land risk assessment. And for your reference, those document numbers are app 164 to app 169

so the clra identifies any unacceptable contamination risks and then goes on and provides the appropriate mitigation measures. And those mitigation measures are also detailed within the REAC as part of the first iteration environmental management plan, and that is rec 3023,

and for your reference, those applicable react measures are GS four, which is the protection of controlled waters. Gs five, the protection of site soil and groundwater quality. GS six, the management of contamination risks in relation to reporting. Gs seven, the management of contamination risk in relation to workers.

RWE eight,

which is in relation to the spread of inns and contamination of surface waters. And RWE 12, which again, is around adverse effects on groundwater. So those are the mitigation measures to deal with known contamination. It will be acutely obvious to you that I am not a geology and soils expert, but in speaking to our expert witness who will be here at the environmental hearings, he did note that there is only one area of contamination that has been identified in Chapter Nine of the ES, which is at the location of exploratory whole ws 46

and

he will be available to answer any specific questions you may have In relation to that contaminated hot spot at the environmental hearing,

but essentially, those are the measures to deal with known contamination, and that is why requirement Nine, eight only deals with unknown contamination. Should something come up that has not been but are those sufficiently secured in the DCO, you're saying they're secured through the environmental management plan. That's correct through the React. So the way in which we would address any contamination matters which have previously been identified, and the methodology for dealing with

those are identified through the first iteration environmental management plan and then subsequent iterations. Emma Hollings, behalf of the applicant, yes, sir, that's correct, and therefore secured by way of requirement. But is there for then some verification that

I think there is only one hot spot, and I think the.

At EA have identified that as well in terms of their comments. But if works are required to do that, then is there not a requirement to provide a yes, we did the works that we said we would do. Report Emma Holly Phillips on behalf of the applicant. So if I can point you to react commitment GS six, which is in the first iteration Environmental Management Plan, which is rep 3023,

that provides that a very a verification report is required to be produced on completion of the earth works and landscaping in particular, to confirm no excavation works have taken place at the location of the contamination hotspot and to confirm the fate of contaminated material identified at the nether lock viaduct.

Okay, so that's secured through the React and through the EMP. Then it's where we're dealing with that. That's correct, sir. Okay. Thank you very much. That's helpful.

So could I just address the inquiry quickly? Just bootline on behalf of North English county council. Sorry to just reverse slightly, but in terms of

requirements six and landscaping, I'm informed that Nottingham, which county council may end up actually taking on some land that is landscaped, but it's a matter that the parties can do within statements of common ground. Okay? Thank you.

Can we just return to the point about the React, please, and the first iteration EMP looking at what would be in the second iteration emp, the requirement three.

I just can't see that right now.

Emma Harling Phillips on behalf of the applicant. So if we look at requirement three, some paragraph two requires the second iteration EMP to reflect the mitigate mitigation measures required by the react as set out in the environmental statement so which document would contain the contamination

it would be contained in the second iteration emp, because it is required to reflect the measures in the React, and the measures that I listed earlier are in the React,

right? So there wouldn't be, just for my purposes, there wouldn't be a separate document listed in terms of contamination plan or something similar. Emma Harley Phillips on behalf of the applicant, I'm not aware that there is anticipated and being a separate sort of contamination management plan. The measures are as I described in the in the React commitments. Thank you.

Okay. Thank you very much. So mine just very briefly on Yes, yeah, pour on it for new show it. I mean, I think I hear what the applicant is saying, but it's the fact that we've had to go to one requirement and another requirement and another. I mean, I think that the short point is that the requirements should be clear on their face. I think there is a way, if not a gap, then it's not particularly clear at the moment or what the position is relating to known contamination. So again, we would encourage the applicant in the next version of the draft DCO to think more carefully about that, and in particular, to look for it to be clear. Even if it's an additional element of this requirement, which potentially even signposts to other other requirements that it is, it's clear on its face that what relating to known contamination, that it's to be carried out in accordance with the relevant mitigation measures and the and there is a requirement as you as you say, where required for a verification report as well.

Thank you.

Emma harlingvitz, on behalf of the applicant.

I mean, so on that point, the DC requirements are just one way that the authorized development is controlled, and it does need to be read in line with a whole host of other documents. And we're not in a situation where we would be replicating the entirety of the EMP in DCO requirements. In fact, there have been schemes which have not had requirements at all. They've only had an EMP.

Yes,

we can go away and have a look to see whether or not it makes sense for it to say something like, you know, known contamination risks are to be dealt with, but by way of the mitigation measures in the React. But I think opposition is that that's simply not required, because the React is secured and that is where they are dealt with, and we are.

Replicating all matters dealt with in the React and DCA requirements. No, and I can get the argument for that with the EMP and the nature of that, but I suspect it's one of those matters where clarity and on the face of things, it just

when you're looking through something for a requirement to sort of go, where's the contamination dealt with? And it is one of the headlines. And you almost think I wouldn't necessarily seek to get it embedded with the unknown contamination, because I think that would create its own confusions. It would be almost a separate requirement that then dealt with that. It's just whether it adds clarity by identifying how that's dealt with.

Thank you, so we'll take that away.

Thank you.

Applause.

Uh, right. Let's see moving along then to requirement 10. And I

think there's some commentary back on this, on in terms of your response to other parties comments already. So it may be this is one of the areas where you point me back to what you've said previously, but it requires the preparation of a written scheme for protection and mitigation measures, but does not appear to have that submission or approval

by any external party,

not that there's a consultation, or that there's any third party agreement that's made, and

I do note that the response to the written questions, but the fact that you may have to consult any in terms of licensing, so would it not be appropriate to ensure that there's a mechanism to reflect any agreed position, or to ensure that there's no conflict between those positions. So it's it's almost the point of

you're marking your own homework, but the way in which you're saying that that will be dealt with is that if there's any issues that arise, I've got to go and get a license from any anyway, which isn't

necessarily what I would have thought was the appropriate response. I think it's more if you think that there's an issue there, are going to develop a plan. Surely it would be useful to go out and get some agreement or response from some other authority that what you're suggesting to do is appropriate.

Emma Harley clips on behalf of the

applicant, sir, thank you. We have responded to this point in our in our response to your first written questions at rep, 2037,

and I think it is important to note that other made development consent orders include those recently made by the Secretary of State has included this requirement in these terms, without any need for consultation or approval by another body, and we set out those relevant provisions in our response.

And it's notprecedented, as far as we are aware, to require the local planning authority or Natural England

to approve, consult or approve on these on these plans. It is important to note that the requirement only applies to any protected species or nesting birds not previously identified in the environmental statement, and it is not the purpose of this requirement to duplicate the licensing regime, but they would be subject to the licensing regime. And indeed, I note that in natural England's written representation, which is rep, 2045,

your reference, they do actually say that Natural England are unlikely to have capacity to review all avoidance, protection and mitigation measures proposed where a license is not required.

And so our understanding, sir, is that Natural England and the Environment Agency are content with the drafting requirement 12, and that's why we've not proposed to make any amendments in relation to it?

Okay,

yes,

all right now we can share it, yeah, just a couple of comments, or, I think the couple of gaps, we would say, in the requirement as is at the moment, I think in the first instance, we have seen examples where is there a provision for

a final pre construction survey work to be undertaken to establish whether there are European or protected species. But.

For carrying out any part of the authorized development. So that's not, not, not in the requirement, as is at the moment. So that's the sort of first point. The second one is we alluded to, is the reference to a written scheme. But it's not, not clear on the face of a requirement, if anyone that's submitted to who, if anyone consents or is consulted on that. It's just, it seems at the moment, on the wording to be one, that they prepare themselves and implement themselves, as you say, marking their own homework. So we would suggest that that would be in that scenario. And again, this is where protected species are,

are found that in those circumstances, that a scheme should require approval, and presumably in consultation, at least with with Natural England.

And then I think there's the other gap. So as we see it, is that there's provision for works to cease, but it's not entirely clear when, when works would resume.

And we have seen again, other examples where it's it's clear on its face of the the order that this circumstances in which the works may be able to resume, and that's typically,

for example, if, if any necessary licenses have been obtained from Natural England, so that that's there's no provision at the moment, or, yes, there's a requirement to cease works. But it's not entirely clear when, when works then can resume. And we would

encourage the applicant to make Express provision for that in the in the requirement.

Thank you.

Your number for Nottinghamshire County Council, the County Council's only real common would be, would prefer to be consulted on on any

proposed mitigation scheme given its competency in ecology matters. Thank you.

Okay, thank you. I just ask the applicant to you if any further final comments. Emma Holly Phillips, on behalf of the applicant, thank you, sir. There are requirements in other DCA that require pre construction service to be carried out. I mean, that is often in the case where the previous survey work that was done for the ES was not complete, and therefore there's deemed to be a potential for change, and therefore pre construction surveys are required. It may be that those questions are best posed to our ecologist who will be attending at the environmental issue specific hearing.

And in terms of the point about, you know, it would be the applicant preparing and implementing the plan, as I said, this is in relation to protected species and birds, who would, who would, in any event, be subject to the licensing regime. And therefore it would be Natural England marking the applicant's homework, not the applicant itself. In relation to the provision for the works ceasing, I direct NSDC to subparagraph two of that requirement that says that construction in the area specified in the written scheme must not recommence until any necessary licenses are obtained to enable mitigation measures to be implemented so that is dealt with in that Sub power golf. Thank you, sir.

Okay, thank you. Applause.

A note, not from the agenda, but requirement 12,

which is the detailed design. And the requirement sets out

what the detailed design must accord with an amended but there doesn't appear to be a trigger mechanism in that requirement in terms of the submission of the detailed

design to be submitted to and approved by the Secretary of State or something. Could there be

Emma Holling Phillips on behalf of the applicant? Sir, no, there is no trigger for the detailed design to be approved. The purpose of the requirement is so that parties can be satisfied that the detailed design is effectively known in advance by the requirement to comply with plans, master plans and principles that are already in place were the detail designed to be subject to approval in the way that sort of an outline planning application was subject to reserve matters, it would cause quite a great deal of delay for this scheme, and that's why the requirement is drafted in this way, which is precedented. But.

We can respond more on that in writing, if that would be helpful.

Yes, because, I mean, at the minute, it is

there, there are not detailed designs, and you have in a number of responses indicated that that will be the subject of detailed design. Or you would get to a point where you would deal with issues at a detailed design, one would expect that at some point there must be a submission of those detailed designs to somewhere.

I'm

unsure as to why you wouldn't be submitting some detailed designs to us or to the Secretary of State, I should say, and Mohali Phillips, on behalf of the applicant, I think the answer to that is that,

in essence, there isn't a certain element of reserve matters approval, if I can call it that, under a DCO, in terms of the requirement discharge. So when the applicant says it will be dealt with by detailed design and the submission of an approved scheme. It relates to, for example, the landscaping scheme that we were just discussing under requirement six,

the schemes that are referenced in the other requirements,

so those elements of the development are controlled, as opposed to the whole detailed design of the scheme, which instead Um Must accord with the scheme design as shown on the works plans, the utility plans, the engineering drawings and sections etc, are set out in that requirement.

I think I need further submissions on this, because I'm I'm not convinced that that's not an appropriate manner in terms of things like your your limits of deviation we were talking about before in terms of certain aspects of detailed elements of design, where certain aspects will be dealt with,

which are important to either the visual aspect of it or in terms of the height and scale of the bill of the structure, the deviation of it. Those are all matters which are matters which are put aside for the detailed design of the scheme, and which could have potentially have a significant impact. And I think it's important that there is some mechanism by which that is submitted to and agreed by an appropriate party, which would listen to be a secretary of state. And we heard the this morning, Mr. Sumptions representation, representations, about the design of

the entrance to his property.

I think he was under the impression that there would be further liaison with him about that. So the particular points where you've undertook to go back to somebody to to agree. I think we need an explanation of how that would work.

Thank you. Thank you, sir. Emma Harley Phillips, on behalf of the applicant, and we've heard those points, and we will respond in detail, in writing, but just to note, I mean, as you are well aware, the way that the GTO works is there are parameters that are consented by the Secretary of State. Now in relation to the limits of deviation, for example, and the detail that is shown on the works plans, that is, detail that is consented now, yes, if we were to want, if the applicant was to want to deviate from those authorized details, requirement 12 does provide that that would have to go back to the Secretary of State for his approval. What we don't have to do is go back for all of the very small details that sit within those overarching parameters that have been consented. Can we just go back to the point of a missed assumption that

what I took away this morning certainly was that he didn't see before him a satisfactory design solution.

So is it the case that the applicant would decide what's satisfactory, and that would be it.

Emma Olivitz, Mark, the applicant. Apologies, I wasn't in this morning's hearing, so I'm not aware of that point, but I think it's best if we come back to you on in writing or not, I'll just make a final point that in a number of these CEOs where I've been involved,

where national highways have been involved, although I recognize that your regional separation and things of that nature, I have had requirements where the detailed design will be submitted to and approved by so there is, I know you may well have be able to identify precedent where something of this nature has been provided. There is.

Is also precedent of other elements, particularly where you are talking about large structures. And it may well be that elements of the large structures are important, bridges,

overpasses, elements of that there are a number of those elements within this which are exposed engineered structures, where the detailed design of them will have an important and impact and

significant impact on either the visual or landscape structures in the area. Now, whether that's landscape design, whether that's the actual physical design of the structures themselves. They are important elements, and I can't see how we cannot have something whether or not because, at the minute, it's all engineered

plans. There is no detailed design of those elements in front of us.

Emma Holly Phillips, and part of the applicant. So I take those points. I think the only final point that I'd like to note is just that the design principles are also very relevant here. Yes, and those are principles with which the design must accord, and they relate to, for examples, the structures that you are talking about. So I think that is one very important document that we mustn't forget, and we'll make sure that that's highlighted in our response. No, I understand that. But to a certain extent, that almost sets up your your parameters within which the design is then constructed, so that, yes, you are working within that. But at some stage, national highways will have a design. They will have the documents that's there. It's not that there's asking for additional documentation or onerous matters. It's a question of then, at least, that's then put into the public domain, and that there is some opportunity for somebody to look at those further.

NSDC Paul on it. No, we can show it. Yeah, so we've heard, and would, I think, endorse what you've said. So the council would support a consideration for an express requirement, firstly, that the development is designed in detail, and then an appropriate mechanism for which those designs are submitted and approved in consultation with relevant bodies, and obviously, we'll await the response from from the applicant to the points that you've you've raised today. Yep, thank you. I

just make my final point, and it's just that I'm very conscious that we do have to go back on design in terms of how we provide a recommendation to the Secretary of State, and not having a design in front of us, but having parameters in front of us will make it more difficult for us to arrive at a conclusion if we haven't got A requirement, which then gives us the ability to come back with those design

details.

Thank you.

I move on then to the agenda item to return to that requirement 14 on the flood compensatory storage secures the production of flood compensation scheme and includes wording to ensure that the Environment Agency are consulted and any have welcomed that nonetheless, Natural England consider this wording could be strengthened further.

With a reference to a need for the scheme to include fish escape passages and refugees and or to require agreement with the Environment Agency and Natural England regarding the detail of the flood compensation scheme.

Do you have any response to their comments on that? And

that may well be addressed in some of your later deadline submissions. But I suppose it's also a matter we may pick up on in other is ages in terms of the actual detail of the impact of that, but just in terms of what we have in front of us on in terms of the DCO, whether or not that needs to be addressed in terms of

This requirement and the Express reference to matters.

Thank you, sir. Emma Holling Phillips on behalf of the applicant, I think this point goes back to the principle that we referenced earlier, which is effectively trying to avoid duplication of control by way of different documents. So the requirement 14 secure.

As the flood compensation scheme, but the fish escape passage and the refuse that refuge areas are secured by commitment b9

in the React, which is part of the first iteration. EMP, that's commitment b9 and that's document reference number, rep, 3023,

compliance with those measures is then secured, as we know, by rate, by way of requirement three. It's also important to note that the fish escape passages are shown on figure 2.3 which is the environmental master plan of the environmental statement. That's reference as zero to six, and as we've just seen, requirement 10 at 12, apologies, requires the scheme to be designed in accordance with that environmental Master Plan and the mitigation principles shown on it.

So sir, our position is those fish escape passages are secured. They're just secured in a different place by different documents, and that that is appropriate, and that no amendment to this requirement is needed.

Thank you, sir.

If a part of the flood compensation areas

is to address

the fish escape passages.

Would it not be appropriate to actually make some reference within that? I suppose what I'm worried about is you get a flood compensation area design, which doesn't do with that and is used to discharge condition

that that, sorry, that that requirement, but where

the other react, measures may not necessarily be taken on board, and you get a bit of

but marrying up the different elements as it were, and to ensure that they are they are picked up. It's how that's actually undertaken. If there's no specification or no Express reference to it within the requirement. Emma Holly Phillips, on behalf of the applicant, were that to happen and the scheme to be constructed in accordance with that assessment, the scheme would be in breach of the React commitments, and therefore the DCO, which would be a criminal offense. It's also highly unlikely to happen, given that the Environment Agency or a consultee on the flood compensation scheme,

and they would be raising that point to the Secretary of State when that compensation scheme was being approved.

It

may be that if you have further sort of questions around how the flood compensation scheme works with the design of the fish escape passages as required by react commitment b9 that that's dealt with in the water hearing tomorrow, but in terms of the legal principles, that's that's how it would work effectively. Okay, we'll defer that until then. I

the EA are still got some still got some issues with flood risk. So requirement 15,

they've picked up an issue in terms of the 10 millimeters, whether or not that's

baseline or above the threshold. So they've got some issues that I just didn't know whether or not you were anticipating any changes to the wording of requirement 15, or whether or not that's a matter that

needs to await conclusion of your discussions With the Environment Agency.

Emma Holling Phillips, on behalf of the applicant, in relation to that point regarding the 10 millimeter flood tolerance model, we did provide clarification at deadline three in document reference wrap, 3037,

that the agreed 10 millimeter flood model tolerance is in relation to the difference in levels between the baseline and post. Scheme. Hydraulic model, results, I understand that discussions with the EA are ongoing, whether or not that clarification requires

a further amendment to requirement 15. I'm not in a position to say or whether or not they're just satisfied the valid explanation.

Uh, but, but otherwise, we are under the understanding that the EA is broadly happy with the drafting of requirement 15, which we picked up in statement of common ground. Okay, well, if that's picked up in the statement of common ground then, and whether or not then, then that's a matter for for them as to whether or not we need an additional degree of clarity within the requirement, and please keep that under review.

Yes, so can I just just boot out on behalf of Notting the shoe? Sorry, two seconds, we'll come to you in a minute, maybe

preempting your query, actually. So

in terms of requirement 15, do the Ifa need to form part of this? Because they they're being part of the they've been part of the flood risk assessment all the way through, and it would have made sense to have, well to me, at least, to have continued their involvement at this point.

Do you think they ought to be or they ought to form part of this requirement?

Thank you, sir. Emma Harlene Phillips, on behalf of the applicant, we responded to that question in our previous responses, but essentially, my instructions are that the Environment Agency is the consultation body who is taking the lead in matters relating to fluvial flood risk, and that is why they are the consultee under requirement 15, whereas the Ifa is concerned with surface water, ie road drainage, which is covered by the drainage strategy to which they are a consultee, and that is why there is a division in their functions and they are not referenced in this requirement.

No, thank you. And yes, I recall a lot of documents submitted at deadline three. Can I go to Nottingham shown now part of your role as the as Ife, are you content with that approach?

So JASP, but not in which county council? No, that Ifa would want to be specifically referenced in requirement 15.

I mean, I don't, I don't want to get too deep into this, because it we can get into things when we've got hydrologists here tomorrow for the water environment,

as the applicant and NCC, are you both content to move this on for tomorrow? Brilliant. Thank you. I'll take a note and we can discuss it tomorrow in further detail. Thank you.

Okay. Thank you. Applause.

A couple of

final matters, not on requirements that are there, but

EA have requested that there would be benefit of an additional requirement in relation to piling risk assessment. Does the applicant have any comment on that?

Emma Holling Phillips on behalf of the applicant, so a piling risk assessment is already required under the register of environmental actions and commitments, the React, within the first iteration environmental management plan, the latest version of which is document, rep, 3022,

for your reference. React, commitment. GS five requires the protection of site, soil and groundwater quality with respect to plant and working methods, and includes a piling works Method Statement, which will be specific to the piling locations, and will include an appropriate risk assessment and RWE 12 to mitigate potential adverse effects upon groundwater, also requires a piling risk assessment to be undertaken,

given that compliance with the first iteration management plan is secured by requirement three in the DCO, it's the applicant's view that no further requirement is required to detail the piloting risk assessment that's been provided for by way of this react commitments given the EEAS comments, is that a matter that you can include within the statement of common ground with the applicant or with the EA such that they can agree that the documentation is satisfactory? Emma Holly Phillips, on behalf of the applicant, absolutely, so we'll pick those up in those discussions.

Thank you.

Natural England have noted that currently the ES document and DCO make no reference to a specific lighting strategy for construction. I think that was just a comment that was made earlier on as well, while its reference is made to a construction light spill mitigation measure in the React reference b9 Natural England requests the.

The text is amended within the first iteration EMP and duplicating the second iteration EMP. Would this be sufficient to secure matters, or would an additional requirement be more appropriate to provide for a construction lighting strategy? Or Should an additional management plan stroke method statement be included in requirement three for the second iteration, EMP to pick up

Emma Holly Phillips on behalf of the applicant, commitment commitments b1 and b9 because both are relevant in the React. Within the first iteration, environmental management plan were updated to include Natural England Suggested Wording that's reflected in deadline three, submission of the fi, MP, which for your references, rep, 3022,

the application. The applicant understands from natural England's representations that they are satisfied that with the addition of their Suggested Wording, it deals with their

issue, and that is being picked up in the statement of common ground with Natural England, and given that it is covered by the first iteration Environmental Management Plan commitments the applicants of the view that is that no separate requirement or strategy is needed on the face of the DCO.

Okay, thank you,

Paul on it from Newark and Sherwood. We hear what the applicants say, but nonetheless, would reiterate that the in the second iteration EMP and again, this reflects in our experience what is typically listed here as in scope of management plans and Method Statements for other road scheme DCOs, that there is an explicit reference to construction site artificial lighting in those lists of could be A new CC in requirement three re subsection two. So any comments? No no from Council. Thank you.

Anything? Emma Holly Phillips, on behalf of the applicant, I'm happy to take that point away, sir and see whether or not an amendment is needed to requirement three.

Thank you.

That takes me to the end of any matters that I have on requirements

anybody else have any other matters that they wish to raise with us on requirements? Paul,

I'm from Newark, and share just, just a few very, very brief terms of, sort of AOB on requirements. So

they've got sort of three, three points of the first one, I think, relates to requirement 13, two. And I think this, in turn, flows from the comments made by the applicant. So I think that again, would have thought they'd need to be expressed reference in 13 to to consultation with the Imfa as that relates to surface and water drainage on requirement 17, we again, we welcome the applicant's intention to submit a more detailed pre commencement plan, and we, I think, then reserve our position then on. I mean, our general comment would be, it's quite very sort of high level wording at the moment relating to but I suppose that will turn on what what further detail is included in the pre commencement plan and our submissions, in our sorry our response to EXQ one set out some detail on what we would like to see within that pre commencement plan, so I won't trouble everyone now by going through that

and then, thirdly, there didn't seem to be any

requirement at the moment for relating to any restoration and All landscaping of of land that may be used temporarily for construction purposes, and

again, in my experience, that that is often a subject of an express requirement.

Thank you. Have you any comment on any of those points?

Thank you, sir. Emma Holly verit, the applicant, we have made a note of these points, and I'll have to take them away and take instructions and respond in writing. Thank you.

Okay, thank you very much.

Okay, so that moves us on to protective provisions. And I just really want to get an update on latest positions in terms of these matters.

So in terms of Network Rail,

thank you. Levy Hendry, for the applicant Network Rail, the parties have been meeting regularly.

And my latest update I have is that there are a couple of points outstanding. As far as the agreed protected provisions and associated agreement are concerned. And there's no fear that this won't be resolved before the end of examination.

There are also associated

now I'm going to forget what the acronym Bappa agreements, which are basic asset protection agreements, which don't affect the drafting of the draft development consent order in any way, but would be covered under agenda point seven in any event. So I'm happy to sort of, while we're on Network Rail, cover them now, while we cover them. Yeah. So there are potentially two bapas being proposed with with Network Rail. One has been entered into in relation to the build over structures, and there is another

that is currently being discussed with Network Rail in relation to the overhead electric lines, and they are being progressed with Network Rail and again, we see no reason why these should cause any any concerns.

Okay, good

canal and river trust. I

think we covered most of that earlier on. But is there anything that you wish to add to that? Yeah, thank you. Thank you, sir. Simon Tucker, on behalf of COVID river trust working camera now,

yes, we've made we've made significant progress the last couple of weeks with the applicant, and our last meeting was last Thursday. We're seeking to agree just a few remaining points, and we expect these to be agreed shortly. We're hoping by deadline for but certainly before the end of the examination period.

Excellent. Thank you. Want to add anything to that? Larry Hendricks, the applicant, nothing further on the on canal and river trust. Thank you. Simon.

Okay. Cadent gas. Thank you. Lara Hendry, for the applicant, the latest position with in relation to Caden gas is that the protected provisions, as they appear in the draft development consent order are accepted between the parties. There are some discussions ongoing in the background in relation to the wording of sort of deeds of easement, which will only come into effect if consent is granted and compulsory protection powers are exercised. So it's sort of that's just an aside as to other discussions that are going on, but there's no indication that this would impact the drafting of their protective provisions, and therefore we don't anticipate any changes to the cadent PPS as they currently stand.

Thank you very much.

Are there any other protective provisions that

are coming forward. Thank you. We're all Thank you. Lorra Hendrie, for the applicant, the one final protective provisions, albeit we don't anticipate these going to appear on the face of the order is with National Grid, electricity, electricity distribution. I'm struggling to get my words out this afternoon, we

have are reviewing the set of protected provisions and associated agreement that have been provided to us, and taking instructions on those, again,

fairly standard documents between the two parties, and we see no reason why these can't be agreed by the close of examination,

these are running slightly behind the other the progress on the other protected provisions, but have our full attention.

Sorry, did I hear you that you said they wouldn't be on the face of the DCO, that's right. So there will be protective provisions, as agreed between the parties, but not included within the DC That's right. So they won't affect the drafting of the order, right?

And that's a position that the

electricity distribution are happy with as well. That's my current understanding, based on the drafting of the provision of the agreement that they have given us. Yeah, and how will we be informed of that? We were happy to give you an update as to when and when agreement is reached. Okay, if that's an assistant, Yep, thank you.

Okay, item six, if we can move through this other schedules of plans.

Small number of points I wish to raise,

National Rail have made reference in the statement of common ground to agreement being reached for a passing place to be created on quibbles lane, and the applicant explain how it is prepared.

Suppose this will be secured. I

think one way we were considering is that the description of works in the areas of 69 or 70 could be changed to include reference to a passing place or some agreed plan be submitted, or something of that nature. Thank you. Lara Hendry, for the applicant, the applicant is proposing to update the words the wording of work number 69 to make specific reference to the path in place on quibbles lane, but that it is clear that that's the intention. Yeah, excellent.

Secondly,

NCC have recommended that the scheme design principles contained within the scheme design report. A PP 194 should be a separate document and secured through the DCO,

given that the scheme design report is to be a certified document to the applicant, consider that it's necessary or beneficial to disaggregate those elements of it. Thank you. Lavender for the applicant.

I mean it

without wanting to sound like being difficult, there is obviously no real reason we couldn't separate them. However, I would point out that there is precedent for certifying documents that do fit within other documents, for example, on the a four to eight black cat scheme. So there is it is an accepted approach, without having to kind of duplicate documents that are already in front of the examination. Would it be necessary, when looking at the appendix, to refer back to the main document for context?

That is one reason why you might want to not separate them and something that we can absolutely check.

Want to, yeah, just kind of Council. I mean, fundamentally, this is just about clarity and drawing out the design principles clearly in the DCO itself, but we acknowledge that, you know, the principle of the control is there through the document as is, but it's more a case of making it clear that it's understood. And a lay person, for example, looking at the order itself, would be able to find that document relatively easily, so that's just that point.

Thank you.

Thank you. Just wanted to pick up a

couple of points that NCC have made. They've in their layer, they identified in tables, 2.62

2.9 and two point 18 through to two point 20, a number of matters related to plans on prohibitions and other matters. And I think that you picked up a number of those in terms of your

submissions at deadline three. But can we just ensure that you've picked up all of them in terms of that, and just me some satisfaction that you have done so. Thank you, lavender, for the applicant, as you will be able to see in our response to the to the NCC local impact report, which is our document, our EP two, slash 019,

we provided a point by point response to each of the issues raised by NCC in particular, and not to the exclusion of any others, the drafting points in relation to the the particularly the schedules within the DCO and with thanks for picking up some obvious areas in hindsight. So we have addressed all that we think are necessary in the draft development consent order that was submitted at deadline three however, if NCC disagrees without explanation, and we welcome any further comments.

Thank you. Jeff sweet. Lana more for Dr county council, yeah, I think this is best out within writing. I don't think we're a million miles apart. We've received the comments and we'll probably just respond, but I think most issues have been dealt with. Thank you.

Finally, on this section, I think, or the in this statement of common ground with lindam in relation to the root of the diverted

P, R, O, W, across Linden plan. And it may be that we've dealt with this earlier in the in the earlier hearing.

It may be that this is going to be secured by way of a side agreement, but obviously, if it's not, it will remain an issue to be secured and addressed elsewhere. What progress is being made on that side agreement and what are the contingency plans? I think we've covered most of that earlier today, but is there any other matters? I.

I

think we did cover most of it, but the just the point about whether there's any revisions to ample works plans, they be necessary.

Thank you. Lara Hendry, for the applicant, as my colleague John Bauer said earlier today, there is no anticipation from national highways the applicant to make any changes to its application in order to allow the sort of alternative route, as it was described this morning, to be brought forward. And the expectation is that that will be dealt with through the side agreement directly with with lindam,

but doesn't the application documentation illustrate the pedestrian and cycle route through the Lincoln site currently?

Thank you, Lorraine, for the applicant. So that that is the case, because when we originally designed the route, it was going along the outside of their proposed development it's that their development has evolved, and so now we're, we're, we're essentially trying to kind of react to their evolving development plans on that side. So are there any documents that you were planning to have certified that would need to be amended in light of that?

Larae Hendry, for the applicant, not at this stage. Thank you.

Okay, thank you. That brings me to a conclusion on that matter, does anybody have any other issues that they want to raise with us?

No, that case. I'll move on to item seven

other agreements, and we're just seeking a bit of clarity or update on the applicant's position or progress on other agreements. Can the applicant give us a brief update on the latest position on other agreements and confirm the progress and likely completion by the close of examination.

Thank you. Lara Hendry, for the applicant, if I would just deal with sub point A the kind of mitigation of securing mitigation works outside of the DCO boundary. And there are two elements to cover here. The first is in relation to Doddington Hall and the compensation scheme that we have or are proposing to secure on Doddington Hall. That agreement is a two section 253, agreement under the Highways Act, and has been drafted and shared with the solicitors acting for the owners of Doddington Hall, that agreement has been drafted off the back of a meeting where the principals were agreed. So again, we don't anticipate there being any difficulty with that agreement being completed by the close of examination, and it's expected that it will be more drafting points that are negotiated, as opposed to the principles behind the approach,

and is that agreement going to be put into the examination? Because I suppose the point is, if we don't know what the agreement is, how can we have regard to it? Thank you. Larae Hendry, for the applicant, I will have to take specific instructions on that, and I mean, without wanting to speak out of turn, probably subject to any specific commercial reasons. At the very least, a summary of the terms could be provided to the examination, I'm sure,

if not the agreement itself.

My only concern is that, if you're wishing to

how um, for us to have regard to that agreement or that mitigation, then the only way we can have regard to that is if there's something in front of us which

demonstrates that it can be secured, or which demonstrates that it is there in front of us. We need something to be able to have regard to as it were. Thank you. Lara Hendrie, for the applicant. That's completely understood, and I think that that will be the sort of flavor of our request for instructions. And in any event, it could be that the agreement is sent either directly to the secretary of state if confidentiality was a concern, so that it is able to be considered as part of that decision making process. I mean, I suppose that's a comment I would make about all side agreements that you're looking at at the minute is to when

you're looking at either agreements, whether that's going to be section 253, agreements, whether it's going to be side agreements, whether it's going to be land agreements, whether it's going to be any other form of agreement, if, if that that is securing some form of mitigation that you're relying upon to justify the scheme or to justify the the impact or the.

Mitigation of the impact, then we will need some way of having regard to that, and it's how we would do that, and how you expect us to do that, if we don't either have the agreement in front of us or some indication of what that agreement concludes with both parties who have

entered into the agreement telling us what it is. Thank you. Larae Hendry, for the applicant, completely agree and can understand your need to kind of have have visibility of this. And there's no standing objection to that approach. It's more just considering each agreement on a case by case basis between the parties.

So that was Darlington. You said there was two,

I think a pardon. So that we started, you said there was two. I did. Thank you. What was the other one?

Lorraine entered the applicant. I'll just pass to my colleague Emma Harling Phillips to talk about the other one. Thank you, sir. Emma Harley Phillips, on behalf of the applicant, the other mitigation works outside the DCA boundary relate to our boxes that are being provided.

The location of those boxes has been determined by reference to survey work that's been ongoing. And licenses are being agreed as we speak, so that those boxes can be installed by February of next year, as I understand it, so that they can be naturalized before construction work starts, so that the owls are actually going to use them

once those licenses are in place so that they can actually be provided on on the trees themselves, there will then be agreements with the relevant parties in relation to their ongoing management and maintenance. Do

I try again, my other comment about

relates, I suppose the other issues that

is, there an issue there about not wanting to identify where they are for security reasons or other matters for the protection of the species. But I think we need to understand from our perspective, even if it is information that's submitted to us confidentially, that we can have regard to that

in terms of your

various side agreements that you're talking about, the position statement and agreement statement.

Can that be updated with a list of those agreements that you're going to do? I think, within the position statement, or a position and agreement statement, it's sort of just, it's got a heading that says you will enter into various agreements. But it would be helpful for us to actually have a list of those that you either are progressing or are intending to

thank you, Lorraine, for the applicant. No objection to updating the consents and agreements position statement to reflect where we currently are.

Thank you very much. Applause.

I think that takes me to a conclusion on item seven, unless anybody has any other matters that they wish to raise on that. So I take us to any other matters

and an opportunity to mop up any outstanding matters. Does anybody else have any matters that they wish to raise with us today?

Nothing in the room,

nothing online.

I don't have any other matters that we need to pick up with my colleagues.

No, okay,

I would check in terms of

moving to the close. So, as I said earlier, the X A's written questions included questions in the provisions of the DCO. And if we need to cover other matters, there is the ability through further written questions and through the I shs for which there's a number set out and we are going to carry out a number during the rest of this week. Could I remind all parties who have contributed today that written summaries of their oral submissions should be submitted by deadline four, which is Friday the 13th of December.

I think I just need to understand whether or not we've got any action points. So Mr. Love, you were taking a note of action points. I think we tried to keep those two, those which we have identified to a minimum, other than just works that we know that you're going to be doing anyway. So yes, thank you. Mr.

Stone. I have seven action points in total. I'll just run through them.

I'm not precious. So if I've missed something or got something wrong or misunderstood, by all means, please don't hesitate to correct me. So the first one I have under article 10, which is this is for the applicant, is to update the explanatory memorandum to provide further justification for the limits of deviation,

deadline four.

Under requirement three, we have again for the applicant, ensure that the pre commencement plan occurs with the mitigation documents listed in requirement three, which includes the soil management plan and the outline transport management plan.

I don't have a deadline written for that.

I think by default, all responses are by deadline, 413, December, unless otherwise stated.

No. Thank you

again. Under requirement three, detailed sign posting document for pre commencement plan to capture relevant post commencement plans.

Finally, under requirement three again for the applicant, update statements of common ground to include reference to the pre commencement

plan the fifth action point, this is for the applicant and for newer consumer District Council under construction hours requirement, requirement five, both to undertake a review of the working hours and what activities could commence within the first 30 minutes.

Requirement 12, detailed design the applicant to provide further justification on the wording of this requirement, and finally, consents and position statement to the applicant to provide an update on the consents and positions statement document,

cute.

Thank you very much. Anybody could any comment on those?

Yep, okay, that's very good.

That case. All that's left to do is thank everybody for joining us and sticking with us and bearing with us through the end of the

this part of the examination and this part of the the issue specific hearing. Thank you very much. Issue specific hearing tomorrow morning is on traffic and transport and commences at 930

little bit earlier than normal, because we've got a lot to get through. And so thank you all very much. The time is now seven minutes past five, and this issue specific hearing is closed. Thank you. Applause.