0
00:00:00.120 --> 00:00:04.090
Well, good morning everybody. Um, it is now 10 o'clock. Um,

1
00:00:04.230 --> 00:00:07.970
so the, the hearing is, is going to commence. Um,

2
00:00:08.110 --> 00:00:11.410
can I confirm that everybody in the hear in the room can hear me?

3
00:00:13.030 --> 00:00:13.863
Yep.

4
00:00:13.990 --> 00:00:16.250
Um, and as I understand it at the moment,

5
00:00:16.260 --> 00:00:21.050
there are no online participants in the hearing. Is, is that
correct? Yeah.

6
00:00:28.780 --> 00:00:33.080
Um, can I also confirm that the live streaming and recording has
commenced?

7
00:00:37.980 --> 00:00:39.780
I, I'd like to welcome everyone, uh,

8
00:00:39.840 --> 00:00:44.580
to what is now issue specific hearing three concerning the
application by

9
00:00:44.580 --> 00:00:48.460
associated British ports for an order granting development consent
for the

10
00:00:48.660 --> 00:00:50.780
proposed Immingham Eastern RO terminal.

11
00:00:53.890 --> 00:00:55.190
Uh, my name is Graham Gould.

12
00:00:55.190 --> 00:00:59.390
I'm a charter town planner and an examining inspector With the planning I

13
00:00:59.390 --> 00:01:00.223
spectra,

14
00:01:00.260 --> 00:01:03.870
I've been appointed by the Secretary of State to be the lead member of the panel

15
00:01:04.500 --> 00:01:09.310
that comprises the examining authority. Um, I've now asked my colleagues,

16
00:01:09.410 --> 00:01:10.990
uh, to introduce themselves, Mr. Bradley.

17
00:01:12.060 --> 00:01:12.350
Good

18
00:01:12.350 --> 00:01:13.630
Morning. My name is Steven Bradley.

19
00:01:14.010 --> 00:01:18.470
I'm a retired chartered architect and an examining inspector and member of this,

20
00:01:18.570 --> 00:01:19.403
uh, panel.

21
00:01:22.420 --> 00:01:24.470
Good morning. My name is Mark Harrison.

22
00:01:24.970 --> 00:01:28.990
I'm a chartered town planner and an examining inspector. Um,

23
00:01:29.060 --> 00:01:32.230
I've been appointed as a panel member to the xa, uh,

24
00:01:32.230 --> 00:01:35.470

and will be leading on agenda items for and five later.

25
00:01:37.640 --> 00:01:39.310
Thank you Mr. Harrison. Um,

26
00:01:39.830 --> 00:01:44.830
I will generally be leading on agenda item two and other bits and
pieces as

27
00:01:44.830 --> 00:01:48.310
they arise through the day. Mr. Bradley will deal with agenda item
three.

28
00:01:48.330 --> 00:01:49.163
For the most part,

29
00:01:52.840 --> 00:01:56.020
our role is to examine the application and to report to the
Secretary of State

30
00:01:56.020 --> 00:02:00.060
for transport and ultimately then re make with a recommendation, uh,

31
00:02:00.080 --> 00:02:03.900
as to whether or not we consider a development consent order should
be made.

32
00:02:05.920 --> 00:02:06.860
Um, at this point,

33
00:02:07.140 --> 00:02:11.260
I would also introduce the inspectors case team who are supporting
us here

34
00:02:11.340 --> 00:02:16.140
today. Uh, you may already have seen and or spoken, uh, with Ms.

35
00:02:16.250 --> 00:02:20.500
Lily Robbins, who's the case manager, and, uh, Jessica Weatherby,

36
00:02:20.500 --> 00:02:24.660
who's the case officer. Also present are some, um,

37
00:02:24.660 --> 00:02:28.420
technicians from the audio visual company Spark, uh,

38
00:02:28.440 --> 00:02:32.780
and they are facilitating, um, live streaming recording, et cetera.

39
00:02:33.440 --> 00:02:36.900
If for, uh, at any point today, uh,

40
00:02:36.900 --> 00:02:41.620
particularly you see any member of the examining authority talking
to, um,

41
00:02:42.730 --> 00:02:44.100
members of the Spark team,

42
00:02:44.100 --> 00:02:47.420
that will be because we've had some sort of technical issue and we
are simply

43
00:02:47.420 --> 00:02:49.580
trying to resolve whatever that issue might be.

44
00:02:55.440 --> 00:02:58.740
Now gonna deal with some just general, um, housekeeping matters.

45
00:02:58.750 --> 00:03:03.120
Could I ask everybody who to ensure that you've got devices like
mobile phones,

46
00:03:04.150 --> 00:03:07.360
laptops, et cetera, on, on silent mode? Uh,

47
00:03:07.360 --> 00:03:10.240
there are toilets available through the door to my right.

48
00:03:12.940 --> 00:03:15.840
As far as I'm aware, we're not expecting any fire alarm tests,

49
00:03:16.780 --> 00:03:18.640

so if the alarm does sound,

50
00:03:18.820 --> 00:03:23.600
we need to evacuate the building out to our left into the car park
and await

51
00:03:23.600 --> 00:03:27.600
instructions from the hotel staff as to when it's safe to, uh,

52
00:03:27.630 --> 00:03:28.600
come back into the building.

53
00:03:35.240 --> 00:03:37.220
Uh, in terms of the hearing,

54
00:03:37.960 --> 00:03:42.100
it seems that we are predominantly going to be in person in the
room,

55
00:03:42.420 --> 00:03:46.420
although I believe the applicant has at least one witness who may be

56
00:03:46.740 --> 00:03:48.700
participating later in the day online.

57
00:03:49.560 --> 00:03:50.393
Is that,

58
00:03:54.620 --> 00:03:58.120
Uh, good morning, sir James TRO for the applicant? Uh,

59
00:03:58.520 --> 00:04:01.160
I don't believe that's the case, but I'll check,

60
00:04:05.290 --> 00:04:08.760
We'll, we'll cross that particular bridge as and when it arises.

61
00:04:10.240 --> 00:04:11.073
I,

62
00:04:18.190 --> 00:04:22.810

Uh, as I indicated earlier, the hearing is being streamed and recorded,

63
00:04:23.910 --> 00:04:28.210
um, for the purposes of those particularly who might be observing, um,

64
00:04:28.210 --> 00:04:31.290
either in real time or at a later date. Um,

65
00:04:34.960 --> 00:04:38.410
well, I, I would ask that at each and every time. Um,

66
00:04:38.810 --> 00:04:42.570
somebody who is participating in the hearing speaks you give your, uh,

67
00:04:42.720 --> 00:04:46.130
name who you're representing, um, and I,

68
00:04:46.310 --> 00:04:49.290
I'm afraid it does become a bit laborious. Um, but it's,

69
00:04:49.290 --> 00:04:51.250
it's for purposes of those who,

70
00:04:51.270 --> 00:04:54.450
as they may be viewing a recording at a later stage,

71
00:05:02.030 --> 00:05:03.390
a recording of the hearing, uh,

72
00:05:03.420 --> 00:05:08.150
will be made available on the project website for this national infrastructure

73
00:05:08.150 --> 00:05:12.190
application that the inspector hosts at the earliest opportunity.

74
00:05:17.330 --> 00:05:19.590
Um, certainly at the table,

75
00:05:19.620 --> 00:05:23.190
hopefully most participants will have access to a microphone.

76
00:05:23.970 --> 00:05:28.030
If you don't, there is a mic, a roving microphone available, uh,

77
00:05:28.030 --> 00:05:29.790
and that will be brought to you. Um,

78
00:05:29.810 --> 00:05:34.670
if you have to remain in your seat that isn't at one of the desks,

79
00:05:34.670 --> 00:05:36.390
that's got a microphone easily available.

80
00:05:42.290 --> 00:05:45.070
If anyone wishes to use social media report,

81
00:05:45.070 --> 00:05:48.750
film or record during today's hearing, then they are free to do so.

82
00:05:48.850 --> 00:05:53.430
But we would ask that you ensure that, uh, that activity does not
interrupt, um,

83
00:05:53.570 --> 00:05:54.403
the proceedings.

84
00:05:55.770 --> 00:05:59.760
We aim to keep the hearing focus so that it can be conducted
efficiently.

85
00:06:02.500 --> 00:06:06.640
And as a general reminder, all information about, uh,

86
00:06:06.640 --> 00:06:11.400
this application and the examination can be found on the project web
page,

87
00:06:11.780 --> 00:06:13.560
um, hosted by the inspector,

88
00:06:15.100 --> 00:06:19.080
and that is where outside of the hearing, we will keep all parties,

89
00:06:20.140 --> 00:06:23.320
um, up to date in terms of any communications we need to have with you.

90
00:06:26.780 --> 00:06:31.040
I'm gonna turn very briefly, uh, to the General Data Protection Regulations. Um,

91
00:06:33.110 --> 00:06:36.320
this would normally apply when we've got lots of members of the public, um,

92
00:06:37.470 --> 00:06:40.240
perhaps as residents, but, uh, this,

93
00:06:40.270 --> 00:06:43.600
this examination is slightly different in that context. Um,

94
00:06:44.780 --> 00:06:48.320
but the general writer, as I indicated before, we are recording, um,

95
00:06:49.030 --> 00:06:51.520
this session. The inspector will, uh,

96
00:06:51.550 --> 00:06:55.240
publish that recording and hold that recording, um,

97
00:06:55.820 --> 00:06:57.680
for a number of years before it's deleted.

98
00:06:58.480 --> 00:07:00.280
I think it's five years that we keep them for,

99
00:07:02.700 --> 00:07:04.400
so it's a general rider, um,

100
00:07:05.140 --> 00:07:09.240

try to avoid saying anything in public that you would not wish to be, um,

101
00:07:09.430 --> 00:07:12.720
said in public. Um,

102
00:07:12.860 --> 00:07:16.600
and as we indicated previously at issue specific hearing two,

103
00:07:16.600 --> 00:07:20.080
particularly in respect of I o OT operators,

104
00:07:20.740 --> 00:07:25.640
if there is anything that touches on, um, safe security,

105
00:07:25.650 --> 00:07:28.600
sorry, uh, and there's any caution, uh,

106
00:07:29.390 --> 00:07:34.000
just please think about what you are saying in public versus, uh,

107
00:07:34.000 --> 00:07:38.120
those security concerns. Um, if we get into territory where you are concerned,

108
00:07:38.120 --> 00:07:42.320
please indicate and we'll then address how best to, to handle that.

109
00:07:59.990 --> 00:08:03.480
Okay. I'll now hand over to Mr. Bradley for some further housekeeping matters.

110
00:08:05.260 --> 00:08:05.940
Uh,

111
00:08:05.940 --> 00:08:10.920
I'm going to now ask those of you who are expecting to speak at

112
00:08:10.920 --> 00:08:15.000
today's hearing to introduce yourselves. Could you please, uh,

113

00:08:15.000 --> 00:08:19.560
first state your name and who you represent along with the agenda or item

114
00:08:19.940 --> 00:08:23.640
or items that you expect to be speaking on? Um,

115
00:08:24.760 --> 00:08:28.840
I don't think it's applicable, but if you are not representing an organization,

116
00:08:29.180 --> 00:08:33.720
um, confirm your name and summarize your particular, uh,

117
00:08:33.750 --> 00:08:36.280
role in this hearing. Um,

118
00:08:38.560 --> 00:08:41.960
I think we start moving around the room from the left.

119
00:08:41.980 --> 00:08:46.640
If we could start with the applicant, uh, first from, I think probably Mr.

120
00:08:46.900 --> 00:08:49.160
Str, um, to, uh, uh,

121
00:08:49.350 --> 00:08:52.880
introduce the team who you expect to be speaking today.

122
00:08:55.610 --> 00:08:58.200
Thank you very much, sir. Good morning. Um,

123
00:08:58.660 --> 00:09:01.560
my name is James Tro of King's Council.

124
00:09:01.860 --> 00:09:05.000
I'm representing the applicant today,

125
00:09:06.260 --> 00:09:10.360
and in no particular order other than the agenda item orders, uh,

126
00:09:10.660 --> 00:09:14.640
sir Mr. Philip Row Rao, uh,

127
00:09:15.020 --> 00:09:19.040
who is sitting here will be speaking in relation to

128
00:09:19.980 --> 00:09:24.880
policy matters and questions that arise under the

129
00:09:24.880 --> 00:09:29.160
first agenda item. Okay. And so, can I just check, I,

130
00:09:29.240 --> 00:09:34.080
I have got some details of qualifications and experience of

131
00:09:34.080 --> 00:09:36.680
each of my attendees. Um,

132
00:09:37.140 --> 00:09:41.040
I'm conscious that if I read out everything and if everyone follows
suit,

133
00:09:41.100 --> 00:09:44.920
we might be here for quite a while. We'll certainly provide full
details,

134
00:09:45.060 --> 00:09:49.600
but can I just give you a brief outline of Ms of each witness, um,

135
00:09:49.600 --> 00:09:54.000
rather than go through the full entirely up to you, sir.

136
00:09:54.880 --> 00:09:57.280
I don't think we need even to go to that level.

137
00:09:57.440 --> 00:09:59.840
I think just their topic area will be sufficient.

138
00:10:00.450 --> 00:10:04.800
We'll, that's fine. So we'll, we'll, I'll, I'll adopt that and I'm
sure, sure.

139
00:10:04.960 --> 00:10:09.560
Everyone else will, we'll give you the full details, um, in writing.
Uh, but Mr.

140
00:10:09.740 --> 00:10:11.480
Row is a, um,

141
00:10:11.480 --> 00:10:15.280
member of the Royal Town Planning Institute and member of High Risk
in

142
00:10:15.280 --> 00:10:19.400
Transportation. Beyond that, he'll be dealing with policy and, um,

143
00:10:19.720 --> 00:10:24.600
alternatives and agenda item one in relation to

144
00:10:26.460 --> 00:10:31.120
agenda item number two, if you want me to deal with that now, sir,
that, um,

145
00:10:31.460 --> 00:10:35.840
uh, principally will be me, myself addressing that. And also,

146
00:10:36.620 --> 00:10:37.880
um, Mr.

147
00:10:37.970 --> 00:10:42.680
James Hannon of a B p and a b P Mer.

148
00:10:43.950 --> 00:10:46.480
He's a maritime consultant. And, sorry,

149
00:10:46.700 --> 00:10:50.280
Can we just check agenda items? Sorry, have you got a navigation,

150
00:10:50.280 --> 00:10:51.113
which is three?

151
00:10:51.740 --> 00:10:55.080

Uh, I'm so sorry. Yes, I've missed out. Um, I,

152
00:10:55.240 --> 00:10:58.280
I took one as an agenda item, but I apologize. It is indeed.

153
00:10:58.280 --> 00:11:02.560
So agenda item three, navigation and shipping effects. Mr.

154
00:11:02.770 --> 00:11:07.360
James Hannon, who's sitting just to the left, uh, Mr. Rao,

155
00:11:07.980 --> 00:11:12.080
and, uh, he will be principally dealing with navigational risk assessments.

156
00:11:12.080 --> 00:11:14.440
We do have others here to speak as well.

157
00:11:16.620 --> 00:11:19.880
And in relation to transportation,

158
00:11:22.460 --> 00:11:24.760
uh, sir, um, Mr.

159
00:11:26.770 --> 00:11:31.640
Lemme get his details. Mr. Simon Tucker, who you've heard from from before,

160
00:11:32.860 --> 00:11:36.560
who is of D t A Transportation Limited,

161
00:11:36.660 --> 00:11:38.960
you heard from him on the last occasion, uh,

162
00:11:38.960 --> 00:11:41.440
will be dealing principally with the transportation matters,

163
00:11:41.450 --> 00:11:43.520
which is agenda item four.

164
00:11:43.540 --> 00:11:48.040

Agenda item five is the SS p A

165
00:11:48.340 --> 00:11:49.840
and ecology issues.

166
00:11:50.860 --> 00:11:55.560
And you'll be hearing from Dr. Jamie Oton,

167
00:11:55.890 --> 00:12:00.200
who's a Senior Marine Environmental consultant at A B P

168
00:12:01.060 --> 00:12:04.560
Mer. You'll also be hearing, uh,

169
00:12:04.750 --> 00:12:08.800
from Andy Pearson, another principal marine ecologist,

170
00:12:08.870 --> 00:12:13.320
principally dealing with Ornithological matters, and Dr.

171
00:12:13.770 --> 00:12:14.960
Elena St. Martin,

172
00:12:15.470 --> 00:12:19.920
another principal marine environmental consultant dealing
principally with

173
00:12:19.920 --> 00:12:23.200
underwater noise matters insofar as they're still at large

174
00:12:24.860 --> 00:12:29.640
and just checking agenda item six,

175
00:12:29.700 --> 00:12:33.560
any other business would be miscellaneous, but there are others
here, um,

176
00:12:33.580 --> 00:12:36.640
who may assist. I've also got, just so you are aware,

177
00:12:36.830 --> 00:12:39.360

present Captain Mark Collier,

178
00:12:39.740 --> 00:12:44.640
who is the Dock Master of the Port of Ingham. He, well,

179
00:12:44.640 --> 00:12:47.400
he'll make up there. He's putting up his hand for you, sir,

180
00:12:48.060 --> 00:12:51.920
so he can move to the, when we get to that agenda item, I'll, uh,

181
00:12:51.980 --> 00:12:53.880
get him to move to, to the front table.

182
00:12:54.950 --> 00:12:58.640
Just while we're, we're touching on, on Captain Collier, um,

183
00:12:59.020 --> 00:13:01.400
in terms of his role at the hearing,

184
00:13:02.620 --> 00:13:06.240
is he here in effect as part of the applicant's team,

185
00:13:07.780 --> 00:13:11.840
or is he in effect here as the Statuary Harbor authority

186
00:13:12.620 --> 00:13:17.320
and therefore going to be addressing us at perhaps at a bit of an arm's length

187
00:13:17.430 --> 00:13:18.680
from the rest of the team?

188
00:13:20.580 --> 00:13:23.560
So he is addressing you at a bit of an arm's length,

189
00:13:23.620 --> 00:13:26.520
if I can put it in that way, because, uh, as I understand it,

190
00:13:26.820 --> 00:13:29.840
you had some questions of him as doc master,

191
00:13:30.420 --> 00:13:34.400
and he will answer those questions as doc master, uh,

192
00:13:34.740 --> 00:13:36.040
rather than, um,

193
00:13:37.350 --> 00:13:40.800
appearing as part of the applicant's team. I think we, he,

194
00:13:40.860 --> 00:13:43.400
we wouldn't have otherwise brought him along,

195
00:13:43.580 --> 00:13:46.920
but for the fact you would like to speak to ask him some questions.

196
00:13:47.700 --> 00:13:51.480
And the only other, um, person who, oh, sorry. So sorry, before you

197
00:13:51.480 --> 00:13:55.000
Move on, has any consideration amongst the applicant's team,

198
00:13:55.320 --> 00:13:59.000
particularly in terms of Captain Coley's involvement, been given to,

199
00:13:59.020 --> 00:14:03.680
in effect taking the approach that the Harbor Master Humber has taken to in

200
00:14:03.680 --> 00:14:07.960
effect step aside and formally go down the route of becoming another person?

201
00:14:09.670 --> 00:14:11.650
Uh, I suspect consideration has been given.

202
00:14:11.730 --> 00:14:14.210
I can't give you the details of that. We didn't, um,

203
00:14:15.270 --> 00:14:19.970
my understanding is we didn't think that was necessary. Um, as

things stand,

204
00:14:21.030 --> 00:14:24.930
um, if, if, if you take a different view, then we could, we can
address

205
00:14:24.930 --> 00:14:28.210
That we only you, so that Captain Collier can be, I suppose,

206
00:14:28.210 --> 00:14:33.050
clear in his own mind what his role is and also to

207
00:14:33.060 --> 00:14:37.330
avoid any difficulties and or conflicts of interest. Um,

208
00:14:38.380 --> 00:14:43.090
given, um, the way this, this case in particular has,

209
00:14:43.350 --> 00:14:47.450
is panning out in terms of consideration of who does what and the
decision

210
00:14:47.450 --> 00:14:50.850
making type issues. I mean,

211
00:14:51.180 --> 00:14:56.080
it isn't necessarily a decision that has to be made now. Um, but
it's,

212
00:14:56.080 --> 00:14:56.600
it's really,

213
00:14:56.600 --> 00:15:01.440
I think for Captain Collier perhaps to decide how he feels he

214
00:15:01.440 --> 00:15:05.680
best wishes to engage, um, with the examination and the hearing,

215
00:15:05.680 --> 00:15:06.560
particularly today

216

00:15:07.660 --> 00:15:10.160
And tomorrow. Thank you. Thank you, sir. We'll, we'll reflect on
that.

217
00:15:11.350 --> 00:15:12.140
There's only,

218
00:15:12.140 --> 00:15:15.600
can I just raise one other person who is sitting at the end of the
table,

219
00:15:16.140 --> 00:15:20.320
end of this table, um, who also is, I,

220
00:15:20.440 --> 00:15:23.640
I understand proposing to speak today,

221
00:15:23.980 --> 00:15:25.680
and that's Anders Peterson,

222
00:15:26.130 --> 00:15:29.800
who's head of port development at Stenner.

223
00:15:31.260 --> 00:15:33.640
And he, um,

224
00:15:33.880 --> 00:15:38.600
I know that the examining authorities already asked some written
questions

225
00:15:39.420 --> 00:15:41.200
of Stenner specifically,

226
00:15:41.820 --> 00:15:46.360
but bearing in mind agenda item two and the first,

227
00:15:47.100 --> 00:15:51.480
uh, topic, um, Mr. Pea would like to speak, uh, briefly,

228
00:15:52.020 --> 00:15:55.640
but in summary as to what's going to be, uh,

229
00:15:55.670 --> 00:15:57.720
addressed in more detail in writing.

230
00:15:59.020 --> 00:16:00.920
And this is the gentleman right at the end of the table.

231
00:16:01.260 --> 00:16:02.320
Indeed. Good morning.

232
00:16:03.490 --> 00:16:04.323
Thank you.

233
00:16:04.840 --> 00:16:06.440
I think, unless I'm corrected,

234
00:16:07.780 --> 00:16:10.360
That's right. Oh,

235
00:16:10.900 --> 00:16:14.000
Yes, sorry. Yes. Um, I did,

236
00:16:15.300 --> 00:16:19.480
I'm gonna give you his, so I left out one very important person,

237
00:16:20.100 --> 00:16:24.640
um, Mr. Mike McCarton, O B B S C,

238
00:16:25.020 --> 00:16:27.640
uh, of the applicant.

239
00:16:28.070 --> 00:16:32.280
He's the ABPs Group Director of Safety, engineering and Marine,

240
00:16:33.580 --> 00:16:37.520
and he will be speaking later on, um,

241
00:16:37.860 --> 00:16:39.640
in relation to agenda item three,

242
00:16:39.790 --> 00:16:43.760

both in respect of some questions asked about the has board,

243
00:16:44.780 --> 00:16:46.800
but also, um, Mr.

244
00:16:47.600 --> 00:16:52.480
McCartan is the temporary designated person as things stand

245
00:16:52.480 --> 00:16:57.000
at the moment simply because the previous appointee has been
appointed

246
00:16:58.570 --> 00:16:59.403
elsewhere.

247
00:17:02.960 --> 00:17:04.100
And so he,

248
00:17:04.240 --> 00:17:07.980
he is pending the more permanent appointment,

249
00:17:08.360 --> 00:17:12.020
the current designated person. This, I'm sorry,

250
00:17:12.020 --> 00:17:14.580
this is just McCarton to your right and apologies,

251
00:17:14.780 --> 00:17:19.620
I didn't mean to under my sheath of papers for his details there.

252
00:17:19.680 --> 00:17:21.980
And I think now, unless I'm corrected again,

253
00:17:22.250 --> 00:17:25.980
that that is everyone who's currently intending to speak,

254
00:17:27.300 --> 00:17:28.260
I mean, I, I think it,

255
00:17:29.440 --> 00:17:32.980
it goes without saying if there are other members of the applicant's

team here

256
00:17:33.360 --> 00:17:36.860
and there are issues that are arise that are in their bailiwick,

257
00:17:36.930 --> 00:17:39.380
then of course just introduce him at the appropriate time.

258
00:17:39.380 --> 00:17:40.340
Thank you very much, sir.

259
00:17:42.770 --> 00:17:45.860
Fine. Very good. Let's keep moving around the table next.

260
00:17:46.290 --> 00:17:50.480
Good morning, sir. My name is Victoria Hutton of Council, uh,

261
00:17:50.480 --> 00:17:53.200
that's Uz Hutton. I'm in instructed by Mrs.

262
00:17:53.200 --> 00:17:56.200
Jane Wakeham to my left of Winkworth Sherwood.

263
00:17:56.620 --> 00:17:59.240
And so I have with me Captain Andrew Furman,

264
00:17:59.500 --> 00:18:01.120
who is the Harbor master for the Hum.

265
00:18:02.810 --> 00:18:05.080
Thank you. And further around the table.

266
00:18:09.150 --> 00:18:12.400
Good morning, sir. Um, I'm David Alvin kc.

267
00:18:12.620 --> 00:18:17.320
I'm instructed by Alex Man Henick and, uh, Molo James of Burgess Salmon.

268
00:18:17.460 --> 00:18:21.040
To my left, uh, I have sitting to my right, uh, Dr.

269
00:18:21.440 --> 00:18:26.360
Ed Rogers of Nash and Captain Nigel, uh, Bassett of Nash, uh,

270
00:18:26.460 --> 00:18:30.400
who are my primary witnesses. There are also available, uh,

271
00:18:31.130 --> 00:18:36.000
other I o t, uh, representatives should the need arise, including, uh,

272
00:18:36.070 --> 00:18:39.480
Matt, Matt Durley, the, the, um, terminal manager and others.

273
00:18:41.130 --> 00:18:42.160
Thank you. Thank

274
00:18:42.160 --> 00:18:44.440
You, Mr. Relevant, continue.

275
00:18:45.030 --> 00:18:49.560
Good morning, Sarah. I'm Rose Grogan of council instructed by, uh, Robbie Owen.

276
00:18:49.740 --> 00:18:53.760
And Alex Tristan to my left of Pinton Masons. Uh,

277
00:18:53.780 --> 00:18:57.280
and with me speaking on agenda item two, uh,

278
00:18:57.300 --> 00:19:01.760
is Ellie Evans on my right hand side, who is a senior partner at Volterra,

279
00:19:01.760 --> 00:19:03.040
the Economic consultancy,

280
00:19:03.040 --> 00:19:07.120
and you'll have seen written material from them submitted by C L D N.

281

00:19:08.000 --> 00:19:09.400
I forgot to mention who I'm representing.

282
00:19:09.700 --> 00:19:14.120
I'm representing C L D N ports killing him limited. Sorry about
that.

283
00:19:14.700 --> 00:19:15.680
No problem. Um,

284
00:19:16.040 --> 00:19:19.760
I would just ask you to repeat your colleague's name from Volterra.

285
00:19:20.050 --> 00:19:21.440
Ellie Evans. Oh,

286
00:19:21.610 --> 00:19:22.443
Evans, thank you.

287
00:19:26.810 --> 00:19:31.400
Thank you. And next, the Snail Dion team.

288
00:19:32.390 --> 00:19:33.240
Good morning, sir.

289
00:19:33.340 --> 00:19:37.880
My name is Isabella Tfor and I'm a barrister instructed by B D B

290
00:19:37.880 --> 00:19:42.880
Pitman's, uh, representing D F D S Seaways. Up at the table with me
on my left,

291
00:19:43.000 --> 00:19:47.000
I have Andrew Byrne, who's the managing director at D F D S, seaways
uk.

292
00:19:48.380 --> 00:19:53.160
To my right is Yesper Nielsen, who's the head of Fleet Management at
D F D S,

293
00:19:53.780 --> 00:19:58.520
uh, and a trained Master Mariner to his right is Captain mla,

294
00:19:58.820 --> 00:20:00.440
Tim Mafi, um,

295
00:20:00.660 --> 00:20:05.320
who is a captain at D F D S with considerable experience in the dock
and outer

296
00:20:05.320 --> 00:20:05.520
harbor,

297
00:20:05.520 --> 00:20:09.160
including this morning where he brought the Kandia Seaways into the
outer dock

298
00:20:09.160 --> 00:20:11.840
from Rotter Rotterdam. Um,

299
00:20:11.840 --> 00:20:15.360
there are various others in the seats behind me that I'm will
participate in

300
00:20:15.360 --> 00:20:19.320
later agenda items, particularly Mr. Brock Priest, um,

301
00:20:19.510 --> 00:20:24.080
from Nash Maritime, who's been involved in the production of the N R
A, uh,

302
00:20:24.080 --> 00:20:28.800
for D F D S. And there are others, um, Matt East and Gavin Wickens,

303
00:20:28.820 --> 00:20:33.240
who will deal with the agenda item for on shore transportation.

304
00:20:33.920 --> 00:20:37.040
I think that's everyone, but if others do need to participate,

305
00:20:37.110 --> 00:20:38.400
I'll introduce them in due course.

306

00:20:38.930 --> 00:20:41.000
Thank you. That'd be most helpful. Very good,

307
00:20:41.410 --> 00:20:45.680
Thank you. Just before we go on, um, Mr. Or Captain Nielsen,

308
00:20:45.720 --> 00:20:49.680
I think we had this last time, and you, you don't really express a preference,

309
00:20:49.740 --> 00:20:54.320
but how would you prefer us to address you? I can be good with both sets,

310
00:20:55.180 --> 00:20:58.520
uh, and as a general, if for any, particularly with the captains,

311
00:20:58.540 --> 00:21:03.280
if we slip into mr, it's no slight, it's probably we've just, uh,

312
00:21:03.470 --> 00:21:05.240
forgotten at the appropriate time

313
00:21:10.540 --> 00:21:15.120
Before we move on, just in case we are making the wrong assumptions.

314
00:21:15.380 --> 00:21:19.440
Is there anybody else not at the table who is expecting to speak?

315
00:21:21.180 --> 00:21:24.000
No. Good, thank you.

316
00:21:29.680 --> 00:21:33.720
I can now hand over to Mr. Harrison for continuation of opening remarks.

317
00:21:35.210 --> 00:21:38.080
Thank you, Mr. Bradley. Uh,

318
00:21:38.140 --> 00:21:42.960
the hearing will generally follow the agenda as issued on the Planning

319
00:21:42.960 --> 00:21:46.840
inspector at Case website on the 19th of September.

320
00:21:47.860 --> 00:21:52.280
Um, it would be helpful if you have a copy of this in front of you.
Uh,

321
00:21:52.340 --> 00:21:55.160
and could the applicant please arrange, uh,

322
00:21:55.220 --> 00:21:57.560
for the agenda to be displayed on screen?

323
00:22:04.580 --> 00:22:08.080
Uh, while we're wasting waiting for that to appear, I will continue.
Oh,

324
00:22:08.080 --> 00:22:09.240
there it is. Um,

325
00:22:10.060 --> 00:22:14.880
you will see the hearing guidance noted in that agenda document

326
00:22:15.700 --> 00:22:16.920
for expediency.

327
00:22:17.420 --> 00:22:22.160
I'm assuming that everybody has read this and therefore I don't propose

328
00:22:22.260 --> 00:22:25.080
to spend time reading it out now. Um,

329
00:22:25.100 --> 00:22:29.520
but I will make some elaborating remarks. Um,

330
00:22:29.780 --> 00:22:34.600
the examination of this nsip application is primarily conducted

331
00:22:34.660 --> 00:22:35.720

in written form,

332
00:22:36.300 --> 00:22:40.960
as explained in detail by us at the preliminary meeting

333
00:22:41.590 --> 00:22:43.560
held on 25th of July.

334
00:22:45.140 --> 00:22:47.600
The purpose of today's hearing, um,

335
00:22:47.780 --> 00:22:52.440
is for the XA to raise questions concerning policy and

336
00:22:52.440 --> 00:22:54.920
legislation, navigation and shipping,

337
00:22:56.030 --> 00:23:00.920
onshore transportation and marine ecology that

338
00:23:00.920 --> 00:23:05.400
will help the XA establish to what extent the application

339
00:23:05.520 --> 00:23:10.200
complies with policy receive clarification that can be

340
00:23:10.200 --> 00:23:13.640
better conveyed orally or visually than in writing,

341
00:23:14.820 --> 00:23:19.560
and to discuss what will be required following this hearing in order

342
00:23:19.660 --> 00:23:24.040
to assist the XA in its understanding of the cases

343
00:23:24.330 --> 00:23:28.920
being made by the applicant, the other ips and,

344
00:23:29.340 --> 00:23:33.880
uh, Harbor Master Humber in his capacity as an other person.

345
00:23:34.460 --> 00:23:36.560
For the purposes of this examination,

346
00:23:38.140 --> 00:23:42.240
our questions will be directed either to the applicant,

347
00:23:42.770 --> 00:23:47.600
other ips or the Harbor Master, uh, with, um,

348
00:23:47.740 --> 00:23:52.440
any opposing party or parties being given the opportunity to comment

349
00:23:52.780 --> 00:23:57.400
on the answers given to those questions. For that reason,

350
00:23:57.940 --> 00:24:02.880
we may wish to inquire in greater or lesser detail than

351
00:24:03.150 --> 00:24:07.560
indicated in the agenda or inquire into new matters.

352
00:24:08.660 --> 00:24:10.120
As stated in the agenda,

353
00:24:11.300 --> 00:24:16.080
any lack of discussion of a particular issue does not preclude
further

354
00:24:16.480 --> 00:24:19.480
examination including further written questions.

355
00:24:21.460 --> 00:24:21.740
Um,

356
00:24:21.740 --> 00:24:26.640
it should be noted that there will be some overlap between the
questions

357
00:24:26.780 --> 00:24:31.360
we ask during this hearing and our second written

358
00:24:31.840 --> 00:24:35.840
questions, uh, which were issued on the 15th of September.

359
00:24:36.780 --> 00:24:37.760
Um, that's, uh,

360
00:24:38.160 --> 00:24:43.000
reference e v five slash 0 0 1, uh,

361
00:24:43.030 --> 00:24:47.960
that is deliberate and is intended to provide some focus

362
00:24:48.660 --> 00:24:53.400
for the parties in responding to the written questions directed to
them,

363
00:24:54.140 --> 00:24:58.840
as well as highlighting the sorts of matters that could

364
00:24:59.000 --> 00:25:02.560
usefully be incorporated into statements of common ground,

365
00:25:03.260 --> 00:25:07.840
if not already covered in the statements to be submitted by

366
00:25:08.160 --> 00:25:11.440
deadline five, the 23rd of October

367
00:25:13.270 --> 00:25:18.080
when the applicant and or other ips are answering the X

368
00:25:18.080 --> 00:25:18.960
essay's questions,

369
00:25:19.820 --> 00:25:24.680
you should ensure that you try and provide succinct answers where

370
00:25:24.920 --> 00:25:29.800
a questioning is deserving of a yes no type answer. Uh,

371

00:25:29.830 --> 00:25:32.720
then please do respond accordingly. Um,

372
00:25:33.160 --> 00:25:36.320
followed by an any amplification as necessary.

373
00:25:37.390 --> 00:25:41.840
Failing to answer a question is likely to result in it being put

374
00:25:42.290 --> 00:25:43.123
again.

375
00:25:43.820 --> 00:25:48.720
Please also ensure that you only answer the question that has been
put to you

376
00:25:49.140 --> 00:25:52.760
rather than trying to anticipate what a subsequent question might
be.

377
00:25:53.940 --> 00:25:54.180
Um,

378
00:25:54.180 --> 00:25:58.960
it will assist the XA and no doubt other attendees if the

379
00:25:58.960 --> 00:26:03.840
answers to our questions are delivered at a pace that enables a note

380
00:26:04.020 --> 00:26:05.840
to be made of them, uh,

381
00:26:05.840 --> 00:26:10.400
particularly when the subject matter is of a more technical nature.

382
00:26:12.300 --> 00:26:13.133
Um,

383
00:26:13.260 --> 00:26:17.600
it is likely no doubt that there will be action points for various

384

00:26:17.910 --> 00:26:22.720
attendees arising from the answers given during the course of

385
00:26:22.720 --> 00:26:25.560
this hearing. Um, could I just check,

386
00:26:25.700 --> 00:26:29.280
is there someone amongst the applicant's team, um,

387
00:26:29.340 --> 00:26:34.200
who will be able to record any action points that arise during

388
00:26:34.220 --> 00:26:35.240
the hearing, um,

389
00:26:35.240 --> 00:26:40.160
which can be discussed and agreed prior to the close of this
hearing, uh,

390
00:26:40.180 --> 00:26:44.040
Mr. Raum, James Stroum of the applicant? Yes, sir. Thank you.

391
00:26:46.740 --> 00:26:47.460
Um,

392
00:26:47.460 --> 00:26:52.440
we will aim to have a short break mid-morning at a convenient point,

393
00:26:53.140 --> 00:26:57.600
um, and we will look to break for lunch, uh, no later than 1:00 PM.

394
00:26:58.340 --> 00:27:01.840
Um, we will also have a break mid-afternoon, uh,

395
00:27:01.980 --> 00:27:05.520
and we will continue until we are content, uh,

396
00:27:05.520 --> 00:27:09.680
that we have addressed the agenda items. Uh, and obviously as you're
aware,

397

00:27:09.680 --> 00:27:14.520
there's a continuation of this, uh, I s h into tomorrow morning.

398
00:27:15.700 --> 00:27:19.160
Um, before we move on to, uh, the next agenda item,

399
00:27:19.670 --> 00:27:22.480
I'll hand back to my colleague, Mr. Gould, uh,

400
00:27:22.480 --> 00:27:24.600
to pick up a couple of additional matters.

401
00:27:27.410 --> 00:27:31.000
Thank you, Mr. Harrison. Um, The,

402
00:27:31.000 --> 00:27:34.560
the first of those matters is we are aware as the examining
authority of the

403
00:27:34.560 --> 00:27:38.800
submission of the I immingham Green Energy Terminal.

404
00:27:39.900 --> 00:27:43.240
Um, we'd like to deal with that as an, um,

405
00:27:43.900 --> 00:27:47.600
an item under agenda item six. In fact, an other matter,

406
00:27:48.740 --> 00:27:49.530
um,

407
00:27:49.530 --> 00:27:53.800
there will principally be an action for the applicant to deal with
in that

408
00:27:53.800 --> 00:27:58.600
respect. Um, so I would ask that we,

409
00:27:58.700 --> 00:27:59.720
we don't, uh,

410

00:27:59.720 --> 00:28:04.520
potentially stray into that territory when we are dealing with other aspects

411
00:28:04.860 --> 00:28:07.440
of the agenda. Um, uh,

412
00:28:07.540 --> 00:28:12.240
we we think that we have a way of dealing with how that potentially

413
00:28:12.580 --> 00:28:14.800
new application, uh, um,

414
00:28:15.210 --> 00:28:19.760
cumulative stroke in combination effect, uh, needs to be handled.

415
00:28:20.100 --> 00:28:22.480
Uh, but we'll discuss that as I say, under

416
00:28:24.240 --> 00:28:27.640
a general item six, um, which probably will be sometime tomorrow.

417
00:28:30.980 --> 00:28:35.640
And then further to the accompanied site inspection that was held yesterday,

418
00:28:36.410 --> 00:28:40.480
where, um, in some guys or other,

419
00:28:40.480 --> 00:28:43.960
everybody I think round the table applicant, um,

420
00:28:44.500 --> 00:28:47.680
the various ips. And for that ma matter, um,

421
00:28:48.620 --> 00:28:53.240
the Harbor master for Humber had attendees present. Um,

422
00:28:53.290 --> 00:28:57.640
there are, there are a couple of actions, uh, for, um,

423

00:28:58.500 --> 00:29:01.760
the, the Humber Harbor Master through Harbor Esry services,

424
00:29:01.860 --> 00:29:05.640
and I think your colleagues are aware of, of the actions. Um,

425
00:29:07.050 --> 00:29:09.520
We've asked for a note, um, again,

426
00:29:09.700 --> 00:29:13.520
in effect outlining what vessels were in the,

427
00:29:14.020 --> 00:29:16.120
the port at the time that we, uh,

428
00:29:16.340 --> 00:29:20.520
in particular arrived at the control center for Ingham, um,

429
00:29:21.740 --> 00:29:25.840
and, uh, details of, of, of meteorological or weather conditions,

430
00:29:26.060 --> 00:29:31.000
stated tide, uh, current speed, et cetera, wind speed. Um,

431
00:29:36.300 --> 00:29:39.360
and, um, the

432
00:29:41.010 --> 00:29:44.800
Pilot operations manager was also present, um,

433
00:29:45.340 --> 00:29:49.080
and he was asked to prepare a plan, um,

434
00:29:49.170 --> 00:29:52.400
which clearly shows the maneuvering areas, uh,

435
00:29:52.400 --> 00:29:55.920
that are currently used for vessels, um,

436
00:29:58.510 --> 00:30:03.480
that are maneuvering in effect to birth at Immingham. Um,

437
00:30:03.980 --> 00:30:05.880
and also how it's envisaged.

438
00:30:05.930 --> 00:30:10.000
Those maneuvering areas might be adapted to deal with the post
development.

439
00:30:10.900 --> 00:30:15.280
Um, but he, he actually, while we were, um, in,

440
00:30:15.500 --> 00:30:20.320
in the control center had a chart out and, and penciled on it. So
he,

441
00:30:20.380 --> 00:30:24.280
he knows what he's expected to prepare, but, uh, we,

442
00:30:24.340 --> 00:30:27.320
we needed to formally introduce that this morning, uh,

443
00:30:27.320 --> 00:30:32.160
so that everybody knows what it is. Um, The,

444
00:30:32.180 --> 00:30:35.480
um, Harbor master, sorry, uh, yeah,

445
00:30:35.480 --> 00:30:40.200
the Harbor Harbormaster will be submitting and then turning to C L D
N.

446
00:30:41.980 --> 00:30:46.880
Um, the, the site visit route yesterday was quite complex,

447
00:30:48.380 --> 00:30:51.000
um, and, um,

448
00:30:51.580 --> 00:30:55.480
the representative who was attending undertook to produce a plan,

449
00:30:56.420 --> 00:30:59.640

um, showing the route. Uh, and it would also, I think,

450
00:30:59.640 --> 00:31:03.520
be useful to have a little bit of commentary explaining, um,

451
00:31:03.520 --> 00:31:08.440
perhaps some of the differences between how the port of killing home

452
00:31:08.440 --> 00:31:12.200
is operated in comparison to the way, um,

453
00:31:13.240 --> 00:31:14.720
Ingham operates, for instance,

454
00:31:15.000 --> 00:31:18.480
reference was made to the cassette system that you use quite widely,

455
00:31:18.900 --> 00:31:23.320
the double stacking of, of containers and how they're conveyed to and fro,

456
00:31:24.100 --> 00:31:28.520
um, vessels, which is a bit different to what we understand is the position.

457
00:31:28.780 --> 00:31:29.240
So again,

458
00:31:29.240 --> 00:31:33.680
that is information I think that would be usefully put into the examination

459
00:31:34.100 --> 00:31:39.080
so that everybody is clear what, uh, perhaps differentiates, um,

460
00:31:39.080 --> 00:31:43.880
killing home from Immingham. Um, and also I think in that note,

461
00:31:43.880 --> 00:31:48.280
it would also be helpful to explain a little bit about the expansion proposals,

462
00:31:48.280 --> 00:31:49.960
which are being implemented at the moment,

463
00:31:50.740 --> 00:31:54.840
and also deal with perhaps some of your more flexible operating,

464
00:31:55.580 --> 00:31:55.970
uh,

465
00:31:55.970 --> 00:32:00.880
which perhaps drives at some of the difference there is in terms of what Kenny

466
00:32:00.880 --> 00:32:02.640
Holmes's capacity is at the moment,

467
00:32:02.860 --> 00:32:07.800
how it might expand in the future versus how the applicant's assessed it

468
00:32:08.380 --> 00:32:12.400
in the, um, I've forgotten the name of the document, it's gone,

469
00:32:13.260 --> 00:32:14.320
uh, the market assessment.

470
00:32:22.580 --> 00:32:25.280
So, um, for

471
00:32:27.500 --> 00:32:31.960
sealed in, are you clear in terms of what that action is arising outta the,

472
00:32:32.180 --> 00:32:34.080
the inspection yesterday, rose

473
00:32:34.280 --> 00:32:35.960
Grogan for C L D N? Yes, we are.

474
00:32:36.980 --> 00:32:40.040
And, and similarly for the Harbor Master, um,

475
00:32:40.300 --> 00:32:45.120
are you content that you basically have had a, a recounting of,

476
00:32:45.140 --> 00:32:48.640
of what we discussed yesterday in terms of the actions of the
various members of

477
00:32:48.640 --> 00:32:49.840
staff that were present yesterday?

478
00:32:50.480 --> 00:32:53.200
Victoria Hutten for the Harbor Master? Yes. Uh, we are good.

479
00:33:01.340 --> 00:33:02.120
Um,

480
00:33:02.120 --> 00:33:05.920
I presume those actions will be on the list that the applicant's
team is Yes.

481
00:33:06.460 --> 00:33:07.400
Pardon? Thank you.

482
00:33:13.820 --> 00:33:16.850
Right. In, in terms of sort of general procedural type matters,

483
00:33:16.910 --> 00:33:18.970
before we actually get to a agenda item,

484
00:33:19.310 --> 00:33:21.810
is there anything that anybody wants to raise looking the applicant
first?

485
00:33:23.780 --> 00:33:24.613
Thank you.

486
00:33:24.850 --> 00:33:28.810
Anything from any of the other IP sitting around the table and or
the other

487

00:33:28.810 --> 00:33:31.810
person? No. Okay. Thank you.

488
00:33:40.520 --> 00:33:43.610
That then brings us to the opening of agenda item two,

489
00:33:43.900 --> 00:33:48.170
which primarily is gonna focus on policy type matters,

490
00:33:49.230 --> 00:33:54.010
uh, but also some legislative type matters as well. Um,

491
00:33:55.100 --> 00:33:56.970
ordinarily through questions, we,

492
00:33:57.030 --> 00:34:00.730
we would probably tend to start with the applicant and then go to
various ips

493
00:34:00.910 --> 00:34:05.290
for this section, it's probably gonna be in reverse. Uh,

494
00:34:05.420 --> 00:34:08.170
we'll look at the interested parties first,

495
00:34:08.390 --> 00:34:12.770
and then the applicant will get a response opportunity once the
interested

496
00:34:12.770 --> 00:34:15.170
parties have have made their oral submissions.

497
00:34:19.350 --> 00:34:23.370
Um, so the, the first question is really directed at C L D N.

498
00:34:24.870 --> 00:34:28.890
Uh, we'd like you to comment on the extent to which you consider,
consider any,

499
00:34:29.190 --> 00:34:30.023
um,

500
00:34:30.180 --> 00:34:34.730
unutilized cap cap capacity at the port of killing hole,

501
00:34:35.790 --> 00:34:36.623
um,

502
00:34:36.860 --> 00:34:41.570
might be capable of being considered as a potential alternative to
the proposed

503
00:34:41.570 --> 00:34:42.403
development

504
00:34:45.450 --> 00:34:48.900
Rose Grogan for C L D N. Thank you, sir. Um,

505
00:34:49.980 --> 00:34:54.860
I propose as in answering this question to take

506
00:34:55.020 --> 00:34:58.500
a little bit of time, first of all, um, to make a,

507
00:34:58.660 --> 00:35:03.500
a couple of brief introductory points about the nature of CLD N'S
case in this

508
00:35:03.700 --> 00:35:06.340
examination because I think there has been, um,

509
00:35:06.970 --> 00:35:10.460
some mischaracterization of it on the part of the applicant in their
written

510
00:35:10.460 --> 00:35:15.340
submissions. And it's important to understand why it is that C L D N
are here.

511
00:35:16.250 --> 00:35:20.940
I'll then move on to questions of law and policy and again, uh,

512
00:35:21.360 --> 00:35:25.940

set out the parameters of how alternatives can,

513
00:35:26.400 --> 00:35:30.780
or in some cases must be relevant to, um,

514
00:35:30.840 --> 00:35:35.220
the assessment of the justification for the scheme. Uh,

515
00:35:35.280 --> 00:35:36.900
and then I will go on, uh,

516
00:35:37.340 --> 00:35:42.120
to look at the N P S and what it says about how where

517
00:35:42.120 --> 00:35:44.280
alternatives are required to be considered.

518
00:35:44.340 --> 00:35:47.000
You should go about weighing them and set out CLD N'S case.

519
00:35:47.300 --> 00:35:51.600
So I will take a little bit of time in doing that and I hope that's acceptable

520
00:35:51.740 --> 00:35:52.920
to you, uh,

521
00:35:52.920 --> 00:35:57.360
because I think it is important to set the scene so that you know what it is

522
00:35:57.360 --> 00:36:01.160
that C L D N is saying both in terms of the law policy. Um,

523
00:36:03.140 --> 00:36:07.200
so starting first of all with the two introductory points, um,

524
00:36:07.380 --> 00:36:09.920
as set out at issue specific hearing too,

525
00:36:10.160 --> 00:36:13.800

C L D N is here to assist you in carrying out, uh,

526
00:36:13.910 --> 00:36:16.720
your assessment of the case for the proposed development.

527
00:36:17.820 --> 00:36:19.640
We are said to be by a b p,

528
00:36:20.340 --> 00:36:24.080
an anti-competitive commercial objection that can be dismissed.

529
00:36:24.460 --> 00:36:28.440
And along with that comes dismissal of the points we want to make or
need and

530
00:36:28.440 --> 00:36:32.840
also on alternatives, but that fundamentally misunderstands CLD CDNs
case.

531
00:36:33.140 --> 00:36:35.440
That's not why we're here. Um,

532
00:36:35.780 --> 00:36:38.240
we are not in the least behaving anti competitively,

533
00:36:38.860 --> 00:36:43.080
and we take that mischaracterization of our motives very seriously
and we

534
00:36:43.200 --> 00:36:44.080
thoroughly dispute it.

535
00:36:44.780 --> 00:36:49.360
The central tenet of ABPs justification for the scheme is that
there's no

536
00:36:49.720 --> 00:36:53.440
capacity for forecast growth in rural freight at killing him.

537
00:36:54.300 --> 00:36:59.240
That's very concerning statement to C L D N as a business. Um,

538
00:36:59.500 --> 00:37:03.760
and it's very concerning that ABPs case advanced on that basis
because it is

539
00:37:03.760 --> 00:37:05.280
factually completely untrue.

540
00:37:06.400 --> 00:37:10.840
C L D N has explained to you in our written representations that
capacity is not

541
00:37:10.840 --> 00:37:11.673
constrained.

542
00:37:12.460 --> 00:37:16.520
Its case is based on objective and empirical operational data and
knowledge of

543
00:37:16.540 --> 00:37:20.760
its own operations. And as I said to you at issue specific hearing
too,

544
00:37:20.960 --> 00:37:24.680
C L D N is best placed to provide you with an assessment of capacity
at killing

545
00:37:24.680 --> 00:37:28.360
them because it runs the terminal and its own shipping line.

546
00:37:28.560 --> 00:37:32.960
A B P is not a shipping line and does not operate similar terminals
anywhere

547
00:37:33.420 --> 00:37:37.720
in the uk. And instead of engaging with CLD N'S case,

548
00:37:38.520 --> 00:37:42.360
A B P has in response made a series of peripheral points but doesn't
engage with

549
00:37:42.360 --> 00:37:46.520
the substance of CLD N'S position a B P challenges,

550
00:37:46.990 --> 00:37:49.920
CDNs attendance here in an aggressive manner in their written
material,

551
00:37:49.920 --> 00:37:52.600
particularly in response to CDNs written rep,

552
00:37:53.580 --> 00:37:57.240
but they could have actually engaged with c LDNs submissions to
understand what

553
00:37:57.240 --> 00:37:59.960
the true position is with regard to capacity at killing home.

554
00:38:00.060 --> 00:38:02.040
And you saw some of that on the site visit yesterday.

555
00:38:02.520 --> 00:38:06.560
I will address you about it. Um, along with ter, uh,

556
00:38:07.050 --> 00:38:08.360
under this agenda item,

557
00:38:09.390 --> 00:38:13.480
that whole approach shows a lack of rigor and understanding. It's
not enough.

558
00:38:14.260 --> 00:38:17.600
We say to look at Google Maps and assert that there's insufficient
capacity.

559
00:38:18.200 --> 00:38:21.960
A B P is simply not demonstrated any understanding of how row row
freight

560
00:38:21.960 --> 00:38:22.793
operations work,

561
00:38:22.900 --> 00:38:27.360
how they can be adjusted to flex available storage and where the
opportunities

562
00:38:27.460 --> 00:38:28.480
for expansion are.

563
00:38:30.270 --> 00:38:35.160
That point is also illustrated by ABPs approach to dwell times C L D

564
00:38:35.160 --> 00:38:38.120
N has explained what the actual average dwell time is at killing him.

565
00:38:38.680 --> 00:38:42.400
D DSS have given an indication, but we've not heard anything from stainer,

566
00:38:43.060 --> 00:38:45.800
and we've not been, no one's explained why that is.

567
00:38:46.030 --> 00:38:51.000
It's just told that ABPs consultants have satisfied that an

568
00:38:51.000 --> 00:38:55.760
appropriate dwell time has been used and that whole exercise, uh,

569
00:38:55.950 --> 00:38:59.800
reveals a blustering lack of rigor in the approach to justifying the proposed

570
00:38:59.800 --> 00:39:00.520
development.

571
00:39:00.520 --> 00:39:05.320
C L D N is here to ensure that the justification for the scheme is considered on

572
00:39:05.320 --> 00:39:09.840
the correct factual basis. And second,

573
00:39:11.030 --> 00:39:12.960
once you start from the correct factual basis,

574

00:39:13.060 --> 00:39:14.760
the nature of the proposal becomes clear.

575
00:39:15.470 --> 00:39:17.760
This scheme is not providing anything new to the market.

576
00:39:18.630 --> 00:39:23.400
It's a significant amount of development in an already very busy
river to meet

577
00:39:23.400 --> 00:39:26.320
the preferences of one operator moving from killing 'em to Ingham.

578
00:39:27.300 --> 00:39:30.920
So it's taking provision from one location and moving it to another.

579
00:39:31.580 --> 00:39:34.160
And CLD N'S case is, that's not sustainable development.

580
00:39:34.210 --> 00:39:36.560
We'll talk about that later. Um,

581
00:39:37.140 --> 00:39:41.160
and once an accurate picture of what is being proposed is revealed,

582
00:39:41.300 --> 00:39:46.000
the justification for the scheme does not add up and against us.

583
00:39:46.000 --> 00:39:50.080
It said that none of this matters because there's no policy or legal
requirement

584
00:39:50.080 --> 00:39:54.760
to establish need for the development ABPs position is that
effectively

585
00:39:54.830 --> 00:39:59.160
it's decided to build this port, and as a result,

586
00:39:59.160 --> 00:40:01.320
we can't challenge the need case. Um,

587
00:40:02.340 --> 00:40:05.000
you are being told that we've disport distorted the M P s,

588
00:40:05.000 --> 00:40:06.720
but that's not the case at all.

589
00:40:07.510 --> 00:40:12.400
What the N P s tells you is that there's a general qualitative need that

590
00:40:12.400 --> 00:40:14.360
there is a presumption in favor of development,

591
00:40:14.380 --> 00:40:18.800
but it doesn't tell you what weight to give to the need identified in the N P s.

592
00:40:18.860 --> 00:40:21.600
And that's where alternatives and weight,

593
00:40:21.600 --> 00:40:25.480
generally the need case advanced by a B p come into play.

594
00:40:26.620 --> 00:40:29.760
That's all a matter of planning judgment for you, uh,

595
00:40:29.760 --> 00:40:31.240
and for the ultimate decision maker.

596
00:40:32.420 --> 00:40:37.320
So what is proposed and why is important because you still need to weigh

597
00:40:37.320 --> 00:40:38.600
that in the planning balance.

598
00:40:43.250 --> 00:40:47.190
And that principle is well established in the case law.

599
00:40:47.650 --> 00:40:50.310
It comes from scars brick versus, um,

600
00:40:50.370 --> 00:40:52.870
the Secretary of State for communities and local government.

601
00:40:52.870 --> 00:40:55.790
And we'll set this out in writing to help you in our submission.

602
00:40:55.790 --> 00:40:59.350
So I'll just deal with it briefly now. Um, but in that case,

603
00:40:59.450 --> 00:41:03.990
the N P s for hazardous waste established a general qualitative need for

604
00:41:03.990 --> 00:41:07.750
development. It didn't set any particular quantity of the development,

605
00:41:07.770 --> 00:41:11.350
and it was argued there, um, that

606
00:41:13.060 --> 00:41:15.710
essentially the greater the scheme, the greater the need,

607
00:41:15.710 --> 00:41:18.030
the greater the planning bal the greater the weight and the planning balance.

608
00:41:18.030 --> 00:41:22.990
And the court rejected that argument and set out the scaffolding for the

609
00:41:23.110 --> 00:41:26.070
decision that needs to be made when looking at need.

610
00:41:26.090 --> 00:41:30.510
In circumstances where an M P S sets a general qualitative need for development,

611
00:41:31.210 --> 00:41:34.800
and what the court said there was the need identified and established in the

612
00:41:34.800 --> 00:41:38.640
policy must be given appropriate weight in the making of a decision on an

613
00:41:38.640 --> 00:41:40.480
application for a development consent order,

614
00:41:41.060 --> 00:41:45.240
but it will not necessarily carry decisive or even significant weight when the

615
00:41:45.240 --> 00:41:46.280
polling balance is struck,

616
00:41:46.980 --> 00:41:50.920
the weight to be given to that need case by case is not prescribed either in

617
00:41:51.040 --> 00:41:54.720
policy or in section 3.1 or elsewhere in the N P Ss.

618
00:41:55.580 --> 00:41:59.000
It will not necessarily increase with the scale or capacity of a particular

619
00:41:59.240 --> 00:42:00.020
proposal.

620
00:42:00.020 --> 00:42:04.320
The policy does not place a Trump card or a blank check in the hands of a

621
00:42:04.320 --> 00:42:05.140
developer,

622
00:42:05.140 --> 00:42:08.640
nor does it provide the Secretary of State with car blanche to grant consent

623
00:42:08.640 --> 00:42:12.680
without carrying out a proper balancing exercise in which the need

identified

624
00:42:12.680 --> 00:42:17.080
and established in the policy is given the weight it's due in the decision on

625
00:42:17.080 --> 00:42:19.880
the project in hand, no more and no less.

626
00:42:21.820 --> 00:42:26.560
So here we have the proposal's alleged ability to meet an alleged urgent

627
00:42:26.590 --> 00:42:29.760
need advanced as one of the key benefits of the scheme.

628
00:42:29.780 --> 00:42:31.720
You see that in the planning statement.

629
00:42:35.180 --> 00:42:39.670
Part of the justification for the scheme is also that it is the only location

630
00:42:40.280 --> 00:42:44.510
where this need can be met. So

631
00:42:46.610 --> 00:42:50.470
In examination of this proposal CDNs cases,

632
00:42:50.650 --> 00:42:53.910
you do need to look at what is actually proposed and on what basis.

633
00:42:54.810 --> 00:42:58.230
That's why we say this factual accuracy point is important,

634
00:42:59.210 --> 00:43:02.750
and the reality is that there is not a compelling justification for the scheme.

635
00:43:02.770 --> 00:43:07.310
It is really just moving existing operations from one location to another.

636
00:43:07.850 --> 00:43:09.750
And all of that background,

637
00:43:10.750 --> 00:43:15.550
C L D N submits is relevant then to the question of whether

638
00:43:15.570 --> 00:43:20.430
or not alternatives are relevant and required to be considered as a

639
00:43:20.430 --> 00:43:23.910
matter of law. And that is the point that I will move on. Now,

640
00:43:25.660 --> 00:43:30.150
CDNs case is advanced on three bases. Um, first of all,

641
00:43:32.290 --> 00:43:36.870
the N P S itself says that the relevance of alternatives are a
matter of law.

642
00:43:36.870 --> 00:43:40.270
That's 4.9 0.1, uh, of the N P S

643
00:43:43.060 --> 00:43:46.470
CDNs cases, that alternatives are a mandatory material consideration
here,

644
00:43:47.450 --> 00:43:51.150
and that this development falls into the exceptional categories of
case where

645
00:43:51.150 --> 00:43:54.790
alternatives are so obvious that they require consideration. Uh,

646
00:43:54.810 --> 00:43:59.390
and as I have already outlined and will go on to explain in a little
more

647
00:43:59.390 --> 00:44:00.060
detail,

648

00:44:00.060 --> 00:44:04.670
that is because a compelling need and an absence of alternatives are advanced as

649
00:44:04.670 --> 00:44:07.390
one of the key justifications for this scheme.

650
00:44:09.060 --> 00:44:09.910
Alternatively,

651
00:44:12.330 --> 00:44:15.910
You as an examining authority and the Secretary of State as decision maker are

652
00:44:15.910 --> 00:44:20.030
not precluded from looking at alternatives in the exercise of your planning

653
00:44:20.350 --> 00:44:23.150
judgment if you consider them to be relevant. Um,

654
00:44:24.890 --> 00:44:29.390
It arises as a relevant material consideration as an important and relevant

655
00:44:29.390 --> 00:44:34.120
matter to the decision asset out in section 1 0 4 2 A of the planning Act

656
00:44:34.120 --> 00:44:34.953
2008.

657
00:44:35.540 --> 00:44:40.160
And also to the extent that you may consider that

658
00:44:40.470 --> 00:44:44.280
section 104 seven applies

659
00:44:45.330 --> 00:44:50.240
where you are satisfied that you do not need to decide the application in

660

00:44:50.240 --> 00:44:53.520
accordance with the M P Ss because you're satisfied that the adverse impact

661
00:44:53.770 --> 00:44:57.000
would outweigh the benefits. So in essence,

662
00:44:57.950 --> 00:45:02.240
even if it is not mandatory as a matter of law to consider alternatives,

663
00:45:02.780 --> 00:45:07.120
you have a broad discretion in the exercise of your planning judgment, uh,

664
00:45:07.120 --> 00:45:11.720
and the statutory scheme permits you as does the policy, uh,

665
00:45:11.740 --> 00:45:15.160
to consider alternatives. Thirdly,

666
00:45:16.020 --> 00:45:20.720
if and to the extent that on the advice of natural England you conclude

667
00:45:20.790 --> 00:45:24.600
that an adverse effect on integrity of any of the relevant protected sites

668
00:45:24.600 --> 00:45:26.480
cannot be ruled out,

669
00:45:26.830 --> 00:45:30.640
then there is obviously a legal need to consider whether or not there is an

670
00:45:30.640 --> 00:45:33.240
absence of alternatives before the applicant could arrive,

671
00:45:33.530 --> 00:45:37.280
could rely on imperative reasons of overriding public interest.

672

672
00:45:38.110 --> 00:45:41.680
That will obviously come up later in the agenda in terms of where we
are

673
00:45:42.980 --> 00:45:44.840
on that topic. Uh,

674
00:45:44.840 --> 00:45:49.240
but I pointed out now that we haven't had any assurance or we
haven't reached

675
00:45:49.300 --> 00:45:54.040
the point yet where it can be said that an adverse effect on

676
00:45:54.110 --> 00:45:56.920
integrity of any of these protected sites can be ruled out.

677
00:45:56.940 --> 00:46:01.400
So there's certainly the possibility that you may end up in the
territory of

678
00:46:01.400 --> 00:46:04.320
needing to advance a justification for a delegation.

679
00:46:09.100 --> 00:46:12.520
So moving on to the detail, uh,

680
00:46:12.540 --> 00:46:16.120
the starting point is obviously the policy, which is the N P s on
alternatives.

681
00:46:16.230 --> 00:46:18.280
I've referenced that as 4.9 0.1,

682
00:46:19.140 --> 00:46:21.760
and what it says there is that in any planning case,

683
00:46:21.760 --> 00:46:25.680
the relevance or otherwise to the decision making process of the
existence or

684
00:46:25.680 --> 00:46:29.360

alleged existence of alternatives to the proposed development is in the first

685
00:46:29.680 --> 00:46:30.240
instance,

686
00:46:30.240 --> 00:46:34.360
a matter of law detailed guidance on which falls outside the scope of this n p

687
00:46:34.520 --> 00:46:37.000
s. From a policy perspective,

688
00:46:37.000 --> 00:46:41.120
this n p s does not contain any general requirement to consider alternatives or

689
00:46:41.120 --> 00:46:44.080
to establish whether the proposed project represents the best option.

690
00:46:46.460 --> 00:46:48.760
So you are directed then to look at the law.

691
00:46:50.740 --> 00:46:55.120
The legal principles are well established on alternatives. Um,

692
00:46:55.120 --> 00:46:56.960
they may well already be familiar to you,

693
00:46:57.100 --> 00:47:01.360
but I hope you don't mind me setting them out in a little bit of detail. Again,

694
00:47:01.360 --> 00:47:05.240
as part of setting up the scaffolding for how to make your decision,

695
00:47:06.980 --> 00:47:10.040
the starting point is that alternatives are generally not relevant,

696
00:47:10.180 --> 00:47:14.120
but in exceptional circumstances, it may be necessary to consider

them.

697
00:47:14.140 --> 00:47:14.720
To that extent,

698
00:47:14.720 --> 00:47:19.560
there's no disagreement between C L D N and the applicant that

699
00:47:19.560 --> 00:47:23.800
we need to set up exceptional circumstances. In this case,

700
00:47:23.850 --> 00:47:27.160
we're not saying that the law says something different. Um,

701
00:47:27.660 --> 00:47:31.560
we are not misrepresenting the conclusion of the Stonehenge judgment on the law

702
00:47:31.580 --> 00:47:33.400
in that respect. Um,

703
00:47:33.750 --> 00:47:36.520
that is the principle and we say we fall inside that principle.

704
00:47:37.610 --> 00:47:42.200
There is distinction in the relevant case law between first where alternatives

705
00:47:42.200 --> 00:47:45.800
are so obviously important that they become a mandatory material consideration,

706
00:47:46.430 --> 00:47:50.400
meaning that it's an error of law not to consider them and

707
00:47:51.090 --> 00:47:52.840
where it's not mandatory,

708
00:47:52.940 --> 00:47:57.280
but the decision maker can lawfully take alternatives into account if it

709
00:47:57.520 --> 00:47:58.920
considers they are relevant.

710
00:48:01.390 --> 00:48:02.920
Turning to the first category,

711
00:48:02.980 --> 00:48:07.760
the cases give you some help on where exceptional circumstances may arise. Uh,

712
00:48:07.920 --> 00:48:11.360
I start with the case of Trust House 40 limited in Secretary of State.

713
00:48:11.420 --> 00:48:16.200
That's 19 86, 53 P N C R 2 93,

714
00:48:16.300 --> 00:48:20.120
and that was a case about development of a hotel in the Green Belt.

715
00:48:20.220 --> 00:48:25.000
The Secretary of State there concluded that there was a general need

716
00:48:25.060 --> 00:48:26.360
for hotel accommodation,

717
00:48:26.500 --> 00:48:30.600
but it could be accommodated elsewhere by the operation of normal market forces.

718
00:48:31.420 --> 00:48:35.080
The error alleged was that the inspector concluded that the general need for the

719
00:48:35.080 --> 00:48:37.200
hotel accommodation could be met elsewhere,

720
00:48:37.340 --> 00:48:38.840
and it was argued that that was unlawful.

721
00:48:39.860 --> 00:48:44.280

The court held that the Secretary of State was entitled to take that factor into

722
00:48:44.280 --> 00:48:47.320
account, and the court's reasoning sets out the key principles

723
00:48:50.780 --> 00:48:53.840
In reaching the decision. The court referred to an older case of roads,

724
00:48:53.840 --> 00:48:57.600
which set out the principle that where there are clear planning objections to

725
00:48:57.600 --> 00:48:59.440
development upon a particular site,

726
00:48:59.740 --> 00:49:04.040
it may be relevant and indeed necessary to consider whether there is a more

727
00:49:04.040 --> 00:49:05.440
appropriate alternative site,

728
00:49:05.440 --> 00:49:09.600
particularly where development is bound to have significant adverse effects.

729
00:49:09.740 --> 00:49:13.640
And where the major argument advanced in support of the application is that the

730
00:49:13.640 --> 00:49:16.800
need for the development outweighs the planning disadvantages inherent in it.

731
00:49:17.800 --> 00:49:22.240
Examples in the road case were given of nationally and regionally important

732
00:49:22.290 --> 00:49:24.840
sites. For example, airports, nuclear power stations,

733
00:49:25.120 --> 00:49:29.240
i e in modern times the category of development, um,

734
00:49:29.430 --> 00:49:33.200
that now falls within the definition of a nationally significant
infrastructure

735
00:49:33.200 --> 00:49:37.800
project set up in contrast to your ordinary run of the mill, um,

736
00:49:38.070 --> 00:49:43.000
residential development and matters like that to those principles in

737
00:49:43.000 --> 00:49:43.740
Trust House.

738
00:49:43.740 --> 00:49:48.480
The core added that where planning objections are sought to be
overcome by

739
00:49:48.680 --> 00:49:51.160
reference to need, the greater those objections,

740
00:49:51.300 --> 00:49:55.640
the more material will be the possibility of meeting that need
elsewhere.

741
00:49:57.460 --> 00:49:58.680
And generally speaking,

742
00:49:58.980 --> 00:50:03.480
it is desirable that the decision maker should identify and consider
that

743
00:50:03.480 --> 00:50:06.360
possibility by reference to specific alternative sites,

744
00:50:06.380 --> 00:50:10.440
but it's not always essential or indeed necessarily appropriate to
do so.

745

00:50:14.610 --> 00:50:16.120
Trust House was, um,

746
00:50:16.610 --> 00:50:20.440
cited with approval and followed in DRB should Dale's District
Council versus,

747
00:50:20.780 --> 00:50:23.800
um, SEC and Secretary of State for communities and local government.

748
00:50:24.380 --> 00:50:27.860
And in that case, the court confirmed that there are are two types
of cases,

749
00:50:28.020 --> 00:50:29.720
as I've said already, one,

750
00:50:29.720 --> 00:50:33.600
where alternatives are so relevant that they're mandatory, uh,

751
00:50:33.620 --> 00:50:36.360
and one where it's not an error to take them into account.

752
00:50:37.980 --> 00:50:40.040
In the former case, um,

753
00:50:40.960 --> 00:50:45.000
alternatives will be required to be considered if law or policy says
you have to

754
00:50:45.500 --> 00:50:50.400
and where it is so obvious that the existence of the alternative
becomes a

755
00:50:50.640 --> 00:50:52.360
mandatory material consideration.

756
00:50:52.740 --> 00:50:55.800
And the example given in that case was where development is bound to
have

757
00:50:55.800 --> 00:50:57.200

significant adverse effects,

758
00:50:57.220 --> 00:51:00.560
and where the major argument in support of the application is that
the need

759
00:51:00.560 --> 00:51:04.800
outweighs the planning objections. And in the second case, uh,

760
00:51:05.020 --> 00:51:08.440
the decision maker is not precluded from taking the existence of an
alternative

761
00:51:08.470 --> 00:51:11.400
into account if it considers it relevant.

762
00:51:11.420 --> 00:51:14.800
And the question of whether to do so and how to do it in turn,

763
00:51:14.800 --> 00:51:19.600
including the extent to which the alternative needs to be worked up.

764
00:51:19.600 --> 00:51:23.400
And the level of detail that needs to be considered is a matter of
planning

765
00:51:23.640 --> 00:51:24.960
judgment for the decision maker.

766
00:51:31.460 --> 00:51:35.200
And the cases following that, which we will refer to in writing, um,

767
00:51:35.700 --> 00:51:39.000
to develop this point, are all consistent on that theme.

768
00:51:39.500 --> 00:51:44.480
The question is what are the potential adverse effects of

769
00:51:44.480 --> 00:51:48.600
the development? How significant are they? What are the,

770

00:51:48.670 --> 00:51:52.240
what is the planning harm? And where all of that

771
00:51:54.260 --> 00:51:58.760
Is said to be outweighed by a compelling need and the absence of any alternative

772
00:51:59.440 --> 00:52:01.280
location in which to place this development.

773
00:52:01.790 --> 00:52:06.080
That is where you get into the territory of an alternative becoming a mandatory

774
00:52:06.440 --> 00:52:08.960
material consideration, the applicant.

775
00:52:09.980 --> 00:52:13.640
All those cases were also cited in the Stonehenge judgment, um,

776
00:52:14.050 --> 00:52:18.440
where the conclusion of the judge was that it was in that case the type of

777
00:52:18.440 --> 00:52:20.720
exceptional case where alternatives became mandatory.

778
00:52:21.750 --> 00:52:26.720
ABPs case has set out in its response to C L D N submissions is that C L N

779
00:52:26.720 --> 00:52:29.160
has misunderstood Stonehenge, but that is not right.

780
00:52:29.940 --> 00:52:33.400
All of these cases are fact sensitive. We accept that, um,

781
00:52:33.420 --> 00:52:36.480
you've got to look at what the harms are and how the justification for the

782
00:52:36.640 --> 00:52:40.840

scheme has been advanced. Yes, Stonehenge was very exceptional on the facts,

783
00:52:40.980 --> 00:52:41.360
but Mr.

784
00:52:41.360 --> 00:52:45.400
Justice Holgate endorsed all of those general principles that I have set out,

785
00:52:45.860 --> 00:52:49.320
um, and took a similar tour through the case law. Um,

786
00:52:50.580 --> 00:52:51.840
in reaching his conclusion,

787
00:52:51.990 --> 00:52:56.600
it's wrong for the applicant to say or to suggest as they do that

788
00:52:57.170 --> 00:53:01.760
Stonehenge was so exceptional that you have to get to a level law of building a

789
00:53:01.760 --> 00:53:05.480
tunnel through a world heritage site before alternatives are mandatory.

790
00:53:05.480 --> 00:53:07.160
That's not what the case law says.

791
00:53:08.180 --> 00:53:10.520
It is simply whether or not there are exceptional circumstances,

792
00:53:10.820 --> 00:53:13.480
and we say that applies here.

793
00:53:16.480 --> 00:53:21.440
A B P is asking you to grant the development consent order on the basis that

794
00:53:21.440 --> 00:53:25.560
the I R T will meet, and I quote a very clear and compelling need,

795
00:53:25.700 --> 00:53:28.760
the meeting of which is strongly in the public interest that comes
from the

796
00:53:28.840 --> 00:53:32.640
planning statement at 9.24. And in the next paragraph,

797
00:53:32.780 --> 00:53:37.280
the location of the proposed I R T development has been identified
as the only

798
00:53:37.560 --> 00:53:40.800
location available to meet that need. That is their case.

799
00:53:41.540 --> 00:53:43.680
And as I said at the outset, it's factually wrong.

800
00:53:44.620 --> 00:53:48.480
It is clearly highly material and important that the examining
authority

801
00:53:48.520 --> 00:53:50.520
proceeds on the correct factual basis.

802
00:53:51.300 --> 00:53:54.440
The fact that there is not such a compelling need and that there is
an

803
00:53:54.440 --> 00:53:57.920
alternative to meet the general need established by the N P SS and
sensible

804
00:53:57.920 --> 00:54:02.720
growth forecasts is so obvious that it is a mandatory material
consideration.

805
00:54:04.220 --> 00:54:09.080
The alternative advanced by C L D N is credible.

806
00:54:09.230 --> 00:54:11.000
It's not in Kuwait or speculative.

807
00:54:11.000 --> 00:54:15.280
It's simply continuing as the market currently operates,

808
00:54:15.280 --> 00:54:20.080
which is that the operator of railroad freight in the area is able to flex

809
00:54:20.140 --> 00:54:24.160
and expand its capacity to meet demand as it arises.

810
00:54:25.120 --> 00:54:29.200
C L D N has explained in written reps how you can use the land efficiently to

811
00:54:29.400 --> 00:54:30.440
increase storage capacity.

812
00:54:30.630 --> 00:54:33.920
It's something you saw yesterday and it's something you've asked us to give you

813
00:54:33.920 --> 00:54:35.080
more detail on, which we will do.

814
00:54:37.320 --> 00:54:41.440
I r t does give rise to conspicuous and substantial harms.

815
00:54:41.890 --> 00:54:46.480
We're going to discuss those in other agenda items today, but in particular,

816
00:54:47.180 --> 00:54:49.480
the navigational safety issues that arise,

817
00:54:49.740 --> 00:54:53.640
the impact on protected sites and transport effects all add up to such

818
00:54:53.670 --> 00:54:58.560
conspicuous planning harms that the fact that a compelling need is being

819
00:54:58.840 --> 00:55:03.000
advanced as the principle reason why this development should go
ahead

820
00:55:03.810 --> 00:55:07.760
means that you are required or at least entitled

821
00:55:08.700 --> 00:55:11.720
to investigate whether or not that need can be met elsewhere.

822
00:55:12.740 --> 00:55:17.040
We say it's so obvious that there is a less harmful way of doing
this, uh,

823
00:55:17.040 --> 00:55:20.920
that the decision maker is required to take it into account or as
I've said,

824
00:55:20.920 --> 00:55:25.160
you're perfectly entitled by policy and law to take it into account
and weigh it

825
00:55:25.160 --> 00:55:29.400
in the planning balance as a relevant consideration and through the
operation of

826
00:55:29.400 --> 00:55:33.400
section 1 0 4 7 of the Planning Act. And of course, as I said,

827
00:55:34.180 --> 00:55:36.880
if adverse effect on integrity cannot be ruled out,

828
00:55:36.940 --> 00:55:39.320
it becomes relevant as a matter of law. In any event,

829
00:55:43.850 --> 00:55:48.630
the M P SS then does provide some guidance as to how to weigh
alternatives,

830
00:55:49.410 --> 00:55:53.990
um, and to, and the assessment principles, uh,

831
00:55:54.100 --> 00:55:56.950
that the decision maker should follow at 4.93.

832
00:55:57.530 --> 00:56:01.070
And so that is said to apply where there is a legal requirement to consider

833
00:56:01.070 --> 00:56:05.910
alternatives and you are given some guidance to on how to weigh

834
00:56:05.910 --> 00:56:07.430
that alternative in the planning balance.

835
00:56:09.350 --> 00:56:14.070
I will just run you through the bullet points and set out in very short summary

836
00:56:14.100 --> 00:56:17.390
form CDNs case on that. Um,

837
00:56:19.440 --> 00:56:22.950
first consideration of alternatives in order to comply with policy.

838
00:56:22.950 --> 00:56:26.520
Policy requirements should be carried out in a proportionate manner. Uh,

839
00:56:26.520 --> 00:56:30.360
that goes to your question of to what extent can C L D N

840
00:56:31.550 --> 00:56:36.020
expansion ability be considered, um,

841
00:56:36.800 --> 00:56:39.940
an alternative in policy terms. Uh,

842
00:56:40.260 --> 00:56:42.060
C L D N doesn't need to come to you,

843
00:56:42.120 --> 00:56:45.620

and these are points that are taken against us, uh, in the written material,

844
00:56:45.620 --> 00:56:49.300
doesn't need to come to you with a specifically worked up detailed plan for

845
00:56:49.300 --> 00:56:53.460
exactly how it's going to meet the need. It's a very basic and simple point,

846
00:56:53.460 --> 00:56:57.580
which is that the way the market works at the moment on the Humber

847
00:56:58.840 --> 00:57:03.140
is that you can flex and sweat your asset in order to meet

848
00:57:03.500 --> 00:57:07.940
fluctuations in demand or the projected growth in demand, um,

849
00:57:08.330 --> 00:57:12.940
over the next 10, 20 years. Uh, CLD N'S point is in essence,

850
00:57:12.940 --> 00:57:13.860
that can continue.

851
00:57:14.890 --> 00:57:19.380
There's no barrier to that continuing and as Volterra have set out,

852
00:57:19.440 --> 00:57:22.980
and they will, um, address you a little bit later on, uh,

853
00:57:22.980 --> 00:57:26.420
under the next subheading of this agenda item,

854
00:57:28.160 --> 00:57:32.420
if you take sensible growth forecasts and you look at the capacity available on

855
00:57:32.500 --> 00:57:33.620
C L D N C site,

856
00:57:33.960 --> 00:57:38.820
you don't ever exceed capacity at C L D N and that was set out

857
00:57:38.820 --> 00:57:43.540
in RA's written report. Secondly,

858
00:57:43.630 --> 00:57:46.020
where there is a realistic prospect, sorry,

859
00:57:46.020 --> 00:57:48.980
whether there is a realistic prospect of the alternative delivering
the same

860
00:57:48.980 --> 00:57:50.100
infrastructure capacity,

861
00:57:50.610 --> 00:57:54.820
including energy security and climate change benefits in the same
ties scale as

862
00:57:54.820 --> 00:57:57.380
the proposed development. Uh, yes,

863
00:57:58.240 --> 00:58:00.340
as I've set out already cl DNS cases,

864
00:58:00.520 --> 00:58:04.340
it is effectively a continuation of what's happening now, um,

865
00:58:04.440 --> 00:58:08.740
and how the market already operates. Third,

866
00:58:08.760 --> 00:58:11.980
the decision maker should not reject an application for development
on one site

867
00:58:11.980 --> 00:58:15.660
simply because fewer adverse impacts would result from developing
similar

868
00:58:15.660 --> 00:58:20.140

infrastructure on another suitable site should have regard as appropriate to the

869
00:58:20.140 --> 00:58:23.620
possibility that other suitable sites report infrastructure of the type proposed

870
00:58:24.080 --> 00:58:26.060
may be needed for future proposals.

871
00:58:28.360 --> 00:58:33.260
The point here is that C L D N is saying that the

872
00:58:33.260 --> 00:58:37.900
type of infrastructure proposed doesn't need to happen with all of the

873
00:58:38.150 --> 00:58:40.860
associated disadvantages and harms that come with it.

874
00:58:42.200 --> 00:58:44.100
And so it's not a case of saying, well,

875
00:58:44.100 --> 00:58:46.180
we can put it somewhere else and have a little bit less harm.

876
00:58:46.180 --> 00:58:48.580
We're saying no harm at all can arise. Uh,

877
00:58:48.720 --> 00:58:51.540
if you can consider this alternative,

878
00:58:51.660 --> 00:58:55.100
which is the alternative of the need being met generally in the market

879
00:58:55.690 --> 00:58:57.900
elsewhere. Fourthly,

880
00:58:59.100 --> 00:59:02.980
alternatives not among the main alternatives studied by the applicant as

881
00:59:02.980 --> 00:59:05.940
reflected in the s should only be considered to the extent that the decision

882
00:59:06.100 --> 00:59:08.540
maker thinks they're both important and relevant to its decision.

883
00:59:09.250 --> 00:59:14.020
This is where the factual inaccuracies are important because alternatives

884
00:59:14.020 --> 00:59:18.580
were ruled out on the basis that killing him was at capacity.

885
00:59:20.280 --> 00:59:24.320
As we have explained, that's just not right. Um,

886
00:59:24.700 --> 00:59:29.360
and so it is both important and relevant to consider the actual

887
00:59:30.480 --> 00:59:33.880
situation, um, the actual facts, uh,

888
00:59:33.880 --> 00:59:38.160
and look at the relative advantages, uh, of proceeding

889
00:59:40.030 --> 00:59:43.360
with the development against the true picture

890
00:59:44.710 --> 00:59:48.040
Fifthly, if the examining authority,

891
00:59:48.040 --> 00:59:51.440
which must subject to the exception set out in the 2008 act aside,

892
00:59:51.440 --> 00:59:54.680
an application in accordance with the relevant M P s concludes that a decision

893
00:59:54.680 --> 00:59:58.400

to grant consent to a hypothetical alternative proposal would not be
in

894
00:59:58.400 --> 01:00:00.240
accordance with the policy set out in this n p s,

895
01:00:00.240 --> 01:00:03.520
the existence of that alternative is unlikely to be important and
relevant.

896
01:00:05.020 --> 01:00:09.480
We say that expansion capacity at killing them is consistent with
the principles

897
01:00:09.480 --> 01:00:11.200
in the N P s, uh,

898
01:00:11.200 --> 01:00:15.080
because it is expanding land site capacity in accordance with an
existing

899
01:00:15.080 --> 01:00:19.360
established use meets the requirement for competition. Um,

900
01:00:19.660 --> 01:00:23.200
and effective and economic use of port development.

901
01:00:25.350 --> 01:00:28.520
Sixthly suggested alternative proposals,

902
01:00:28.520 --> 01:00:31.040
which mean the primary objectives of the application could not be
achieved,

903
01:00:31.380 --> 01:00:31.800
for example,

904
01:00:31.800 --> 01:00:36.040
because the alternative proposals are not commercially viable or
alternative

905
01:00:36.240 --> 01:00:38.080

proposals for sites would not be physically suitable,

906
01:00:38.700 --> 01:00:41.560
can be excluded on the grounds that they're not important and relevant to the

907
01:00:41.720 --> 01:00:41.940
decision.

908
01:00:41.940 --> 01:00:45.240
We say that factor doesn't apply here for all the reasons I've been given.

909
01:00:45.660 --> 01:00:50.120
The primary objective of the I R T is to meet projected growth and that

910
01:00:50.120 --> 01:00:54.720
projected growth can be met in another way, seventhly.

911
01:00:55.180 --> 01:00:58.280
It is intended that potential alternatives to proposed development should

912
01:00:58.480 --> 01:01:02.640
wherever possible be identified before an application is made in respect of it,

913
01:01:03.500 --> 01:01:07.400
and then it goes on where an alternative is first put forward by a third party

914
01:01:07.570 --> 01:01:09.440
after an application has been made.

915
01:01:09.780 --> 01:01:12.920
The person considering that application may place the onus on the person

916
01:01:12.920 --> 01:01:17.280
proposing the alternative to provide the evidence for its suitability. As such,

917
01:01:17.850 --> 01:01:21.080
we've done that in our written reps and in the material that we've
provided to

918
01:01:21.080 --> 01:01:25.800
you, um, supported by, um, volt's independent assessment,

919
01:01:26.700 --> 01:01:28.520
uh, of capacity at killing them.

920
01:01:30.740 --> 01:01:35.360
So drawing all of that together, the answer to your question is yes,

921
01:01:38.530 --> 01:01:42.840
spare capacity AUM can be and in fact is,

922
01:01:43.900 --> 01:01:47.000
um, a relevant alternative, uh,

923
01:01:47.000 --> 01:01:49.760
that you should take into account. Uh,

924
01:01:49.980 --> 01:01:53.360
and that conclusion is supported by both policy and the law.

925
01:02:18.130 --> 01:02:18.740
Thank you, Ms.

926
01:02:18.740 --> 01:02:20.280
Graven. Um,

927
01:02:20.880 --> 01:02:25.040
I think it's probably opportune to ask the applicant, uh,

928
01:02:25.100 --> 01:02:29.760
to respond to those points. Um, is there, before we do that,

929
01:02:29.860 --> 01:02:33.320
is there anything that any of the other ipss No,

930

01:02:33.320 --> 01:02:37.440
nothing from D D D F D S I O T,

931
01:02:37.760 --> 01:02:39.560
anything from you that No. Okay.

932
01:02:39.640 --> 01:02:43.640
I think we will then turn to the applicant to respond, um,

933
01:02:44.090 --> 01:02:45.800
quite a lot there. Um,

934
01:02:46.220 --> 01:02:50.600
if you want take it at a fairly high level rather than responding to every

935
01:02:50.600 --> 01:02:55.560
point, and then, uh, we'll expect a written response, um, post hearing.

936
01:02:55.680 --> 01:02:59.280
I think that might be the most opportune way of doing it. Otherwise,

937
01:02:59.300 --> 01:03:01.240
we might spend quite a lot of time running through

938
01:03:03.810 --> 01:03:06.120
James, James Strong for the applicant. Sir,

939
01:03:06.240 --> 01:03:09.000
I was gonna make exactly that observation. Uh,

940
01:03:09.000 --> 01:03:13.560
you've just heard a very lengthy position from

941
01:03:14.190 --> 01:03:16.520
killing home. If I were to,

942
01:03:16.770 --> 01:03:20.480
which I'd be perfectly happy to do respond item by item,

943

01:03:20.980 --> 01:03:25.600
you are never going to get through your agenda, um, today. So,

944
01:03:25.780 --> 01:03:28.440
uh, if, if you are happy, I'll give you a, uh,

945
01:03:28.600 --> 01:03:33.560
a broad response and we'll respond in writing as necessary to,

946
01:03:33.900 --> 01:03:38.200
um, cover all of the points that have been raised. But just, um,

947
01:03:40.060 --> 01:03:42.000
can I just make a couple of points then Mr. Raul,

948
01:03:42.040 --> 01:03:46.120
I think will help you a bit on the policy and factual position.

949
01:03:47.220 --> 01:03:50.120
The, the question you asked,

950
01:03:50.460 --> 01:03:54.440
and apologies if we misunderstood it, is, uh,

951
01:03:54.660 --> 01:03:59.640
as to the extent to which any unutilized capacity is capable of

952
01:03:59.640 --> 01:04:01.600
being considered not, uh,

953
01:04:02.350 --> 01:04:05.520
exploring the question of whether there is actual capacity.

954
01:04:05.900 --> 01:04:09.840
But of course we have addressed some of that in, in our evidence. But

955
01:04:11.420 --> 01:04:11.740
so,

956
01:04:11.740 --> 01:04:16.680

so I'm not going to tackle right now the question of the extent of

957
01:04:16.960 --> 01:04:20.960
capacity and whether it actually meets the particular needs that we've

958
01:04:20.960 --> 01:04:24.160
addressed. But I'll pause there. I'm just going to tackle the question,

959
01:04:24.160 --> 01:04:28.400
which is really assuming that there might be unutilized capacity,

960
01:04:28.400 --> 01:04:33.360
to what extent is that relevant as a potential alternative

961
01:04:33.360 --> 01:04:34.720
to the proposed development?

962
01:04:34.720 --> 01:04:38.560
So just a couple of points in addition to the ones we've already made about

963
01:04:38.560 --> 01:04:40.880
that. First of all,

964
01:04:41.800 --> 01:04:46.520
although you are taken to some parts of the national policy statement for ports,

965
01:04:47.620 --> 01:04:50.320
uh, the the central parts of policy,

966
01:04:51.230 --> 01:04:55.760
this is the government's policy on ports and

967
01:04:56.310 --> 01:04:58.960
need. I've already addressed you on,

968
01:04:59.140 --> 01:05:02.720
but you weren't reminded of a moment ago. Um,

969
01:05:03.460 --> 01:05:06.560
I'm not gonna give you all the references again, you'll be very
familiar,

970
01:05:07.040 --> 01:05:11.200
familiar with it, but can I just flag up for you? I hope this is
helpful.

971
01:05:11.900 --> 01:05:13.680
In the national policy statement,

972
01:05:13.850 --> 01:05:18.040
which we're all seeking to apply in the first instance,

973
01:05:19.020 --> 01:05:23.960
the there is a very clear section on the establishment

974
01:05:24.140 --> 01:05:27.640
of need by the government by reference to growth.

975
01:05:29.780 --> 01:05:33.840
And you've got the various documents and figures there that relate
to

976
01:05:34.030 --> 01:05:35.080
anticipated growth.

977
01:05:35.660 --> 01:05:40.040
But of course the government is absolutely explicit in the policy

978
01:05:40.190 --> 01:05:45.000
statement that in addition to growth and the anticipated

979
01:05:45.000 --> 01:05:45.833
growth,

980
01:05:46.450 --> 01:05:50.240
there are two other elements to the established need.

981
01:05:51.530 --> 01:05:55.880
These at least two other elements, resilience and competition

982
01:05:58.030 --> 01:05:59.290
In relation to resilience.

983
01:06:00.910 --> 01:06:05.290
The central proposition is identified in the national policy

984
01:06:05.320 --> 01:06:08.730
statement that the principle is to have

985
01:06:10.770 --> 01:06:15.450
capacity than is strictly necessary to meet every

986
01:06:16.190 --> 01:06:19.810
aspect of growth to provide the necessary resilience.

987
01:06:20.190 --> 01:06:23.370
And I'm summarizing 'cause I don't wanna take you through all the
paragraphs

988
01:06:23.370 --> 01:06:27.530
again, but you'll see that repeated again and again and the, the,

989
01:06:27.550 --> 01:06:32.290
the fundamental notion that for

990
01:06:32.290 --> 01:06:36.290
example, if you could show technical capacity to meet all growth,

991
01:06:36.950 --> 01:06:40.370
job done is wrong. That's not what the policy's about.

992
01:06:40.640 --> 01:06:42.170
It's about providing resilience.

993
01:06:43.950 --> 01:06:45.690
And the second aspect,

994
01:06:45.690 --> 01:06:50.570
which has been emitted is competition emphasized in the national

995
01:06:50.570 --> 01:06:54.690
policy statement again and again and again,

996
01:06:55.800 --> 01:06:59.570
that the principle of established need

997
01:07:00.630 --> 01:07:04.370
for port development of this kind is to promote,

998
01:07:04.850 --> 01:07:09.290
stimulate and ensure comp competition in this sector.

999
01:07:11.350 --> 01:07:15.770
And so you can't do much better if you want to understand

1000
01:07:16.320 --> 01:07:20.690
this case, although there are many other aspects of it than 3.4
point 13

1001
01:07:22.100 --> 01:07:26.450
under the heading competition, welcoming that competition,

1002
01:07:27.130 --> 01:07:30.810
encouraging it, driving efficiency, reducing costs,

1003
01:07:31.990 --> 01:07:36.970
and just, I'll just give you one sentence, effective competition,
sorry,

1004
01:07:36.990 --> 01:07:37.610
two sentences.

1005
01:07:37.610 --> 01:07:42.410
It requires sufficient spare capacity to ensure real choices for

1006
01:07:42.640 --> 01:07:47.490
port users and requires ports to operate at efficient levels rather
than

1007
01:07:47.600 --> 01:07:49.930
fill full physical capacity.

1008
01:07:52.230 --> 01:07:54.370
The need case here,

1009
01:07:54.630 --> 01:07:59.130
in addition to what's stated in the policy is a specific need for

1010
01:07:59.330 --> 01:08:03.010
stenner that they've identified, evidenced

1011
01:08:04.870 --> 01:08:07.850
having been ejected from killing him

1012
01:08:10.160 --> 01:08:14.940
And you could not have a better paradigm of

1013
01:08:15.640 --> 01:08:20.600
a case of need as expressed by the national policy statement.

1014
01:08:21.820 --> 01:08:23.400
In those sorts of circumstances,

1015
01:08:24.700 --> 01:08:26.840
you don't even need to be projected.

1016
01:08:27.580 --> 01:08:32.360
The whole principle is to provide for additional capacity to
stimulate

1017
01:08:32.590 --> 01:08:34.960
competition. And of course,

1018
01:08:34.960 --> 01:08:39.880
killing home may not like that because it is an effect on
competition.

1019
01:08:40.300 --> 01:08:43.920
But that runs directly contrary to the national policy statement.

1020
01:08:45.220 --> 01:08:50.200
So if one expresses your question in the context of national

1021
01:08:50.200 --> 01:08:51.033
policy,

1022
01:08:51.890 --> 01:08:56.220
even if there is unutilized capacity as to which

1023
01:08:56.650 --> 01:09:01.060
there's some debate, even if there is unutilized capacity,

1024
01:09:01.400 --> 01:09:06.060
it is not an alternative to this proposed development,

1025
01:09:06.060 --> 01:09:10.780
which is to meet stenner needs which are not being served or

1026
01:09:10.780 --> 01:09:15.020
offered indeed on acceptable terms for their business.

1027
01:09:17.440 --> 01:09:20.340
And if, if one looks at it in that sense,

1028
01:09:21.160 --> 01:09:25.980
no matter how interesting extensive citation

1029
01:09:26.040 --> 01:09:30.900
of case case law relating to greenbelt policy,

1030
01:09:31.210 --> 01:09:35.420
exceptional circumstances, heritage site, world, heritage sites,

1031
01:09:35.750 --> 01:09:39.300
Stonehenge, and other national policy statements,

1032
01:09:39.480 --> 01:09:42.820
as in which is not the national policy statement here,

1033
01:09:43.050 --> 01:09:45.020
they're not going to assist you at all.

1034

01:09:46.080 --> 01:09:50.820
But I'm also very happy to respond to the legal cases that

1035
01:09:50.820 --> 01:09:54.500
you've been referred to in more detail rather than do it here, uh,

1036
01:09:54.500 --> 01:09:58.740
because I don't accept the characterization of them. And indeed,

1037
01:09:58.770 --> 01:10:01.460
when you think about trust House 40 type cases,

1038
01:10:01.970 --> 01:10:06.540
they're looking at the consideration of alternatives in a policy context

1039
01:10:06.950 --> 01:10:11.780
where development inappropriate development has to be justified by reason

1040
01:10:11.800 --> 01:10:15.900
of very special circumstances under greenbelt policy, for instance.

1041
01:10:16.440 --> 01:10:21.100
And you can see why questions of alternatives become material in that

1042
01:10:21.100 --> 01:10:24.300
context, where a million miles from that in,

1043
01:10:24.300 --> 01:10:26.300
in this national policy statement.

1044
01:10:26.760 --> 01:10:31.380
The same applies to Stonehenge in relation to heritage sites. But rather than,

1045
01:10:32.600 --> 01:10:36.060
I'm gonna resist a temptation to bore you with, um, an,

1046
01:10:36.160 --> 01:10:40.820
an analysis of those cases orally, but I'll just reserve that if I

may, for,

1047
01:10:40.840 --> 01:10:45.180
for, for the written submission. But the key point is you've got the
policy.

1048
01:10:45.920 --> 01:10:50.460
You don't have exceptional circumstances, as my Ms.

1049
01:10:50.580 --> 01:10:54.420
Grogan was suggesting for looking, uh, at this propo,

1050
01:10:54.490 --> 01:10:59.340
this suggested unutilized capacity at killing home to make this a

1051
01:11:00.340 --> 01:11:03.380
mandatory material consideration, another concept of law,

1052
01:11:03.380 --> 01:11:08.140
which will address you on. And more fundamentally, uh,

1053
01:11:08.510 --> 01:11:12.860
there has simply been no proper response to the basic point

1054
01:11:13.750 --> 01:11:18.640
that capacity at killing home, if it exists, is not on offer,

1055
01:11:18.980 --> 01:11:22.480
on acceptable commercial viable terms to Stenner.

1056
01:11:24.340 --> 01:11:28.200
And even if it were stenner are entitled to, uh,

1057
01:11:28.470 --> 01:11:33.320
seek alternative capacity as part of a competitive,

1058
01:11:33.800 --> 01:11:38.000
resilient environment for ports to meet government policy

1059
01:11:38.900 --> 01:11:40.240
to address growth.

1060
01:11:42.540 --> 01:11:47.520
And therefore the examination at this imitation of

1061
01:11:47.720 --> 01:11:49.400
C L D N will no doubt out,

1062
01:11:50.770 --> 01:11:53.360
spend a lot of time exploring, mate.

1063
01:11:53.390 --> 01:11:57.280
Well choose to spend a lot of time exploring the extent of
underutilized

1064
01:11:57.600 --> 01:12:00.920
capacity, precisely how it's gonna be made up. We still don't know,

1065
01:12:01.360 --> 01:12:06.280
I don't suppose you yet know from having looked at the site
precisely

1066
01:12:06.280 --> 01:12:10.560
where bits are going to be suggested to be moved under various
rights,

1067
01:12:10.560 --> 01:12:12.800
permitted development rights or whatever it may be,

1068
01:12:13.230 --> 01:12:15.800
none of which is currently there. Um,

1069
01:12:16.260 --> 01:12:19.880
but it's a red herring in relation to policy,

1070
01:12:20.910 --> 01:12:25.760
even if it could be achieved. It just doesn't address the basic
points. So, um,

1071
01:12:26.120 --> 01:12:26.380
I,

1072

01:12:26.380 --> 01:12:31.200
I'm trying to keep it high level and it's tempting to go into more detail on the

1073
01:12:31.410 --> 01:12:35.320
tests, but can I just one other point on policy,

1074
01:12:35.680 --> 01:12:38.440
'cause you have made reference to section 4.9,

1075
01:12:38.810 --> 01:12:43.760
which does bear the heading alternatives. Uh, you,

1076
01:12:43.920 --> 01:12:46.280
I think you've already had our points on this,

1077
01:12:46.380 --> 01:12:51.040
but can you just repeat that 4.9 of the national policy

1078
01:12:51.110 --> 01:12:55.560
statement? It's headed alternative, sir. Uh,

1079
01:12:55.620 --> 01:12:58.120
and it explains in any planning case,

1080
01:12:58.420 --> 01:13:02.200
the relevance of alternatives is in the first instance a matter of law.

1081
01:13:02.580 --> 01:13:05.360
And that brings in that exceptional circumstances. Tesla,

1082
01:13:05.430 --> 01:13:10.120
I'll address you more on, um, from a policy,

1083
01:13:10.780 --> 01:13:11.800
um, perspective.

1084
01:13:11.950 --> 01:13:16.920
This n p s does not contain any general requirement to consider alternatives

1085
01:13:17.060 --> 01:13:20.720
or to establish whether the proposed project represents the best
option.

1086
01:13:21.810 --> 01:13:26.630
So that's entirely consistent with everything else that the policy
has

1087
01:13:26.630 --> 01:13:30.270
said about alternatives and meeting need.

1088
01:13:30.890 --> 01:13:34.910
So there is no policy requirement to consider alternatives.

1089
01:13:34.980 --> 01:13:39.270
They can arise in law in those exceptional circumstances, case,

1090
01:13:39.270 --> 01:13:42.750
none of which are present here. Or yes,

1091
01:13:42.750 --> 01:13:47.630
they can arise in a legal context where there is

1092
01:13:48.470 --> 01:13:52.950
a development that results in adverse effect to the integrity of a

1093
01:13:53.310 --> 01:13:58.230
European protected site where there can be a legal requirement to

1094
01:13:58.430 --> 01:13:59.750
consider alternatives.

1095
01:14:00.860 --> 01:14:05.110
That really raises a different topic because we're at odds on,

1096
01:14:05.170 --> 01:14:08.030
on whether we, we certainly say there are no such adverse effects,

1097
01:14:08.410 --> 01:14:11.560
but I'm not gonna go down that, except in principle,

1098
01:14:11.560 --> 01:14:15.360
you can have to consider alternatives in those situations, but we,

1099
01:14:15.420 --> 01:14:19.640
we say we're not in that territory. But even if you get to that situation,

1100
01:14:19.820 --> 01:14:24.520
the alternative has to be a true alternative and it's not a true

1101
01:14:24.520 --> 01:14:29.480
alternative for a commercial operator to say we've

1102
01:14:29.480 --> 01:14:31.800
got space in principle,

1103
01:14:32.140 --> 01:14:36.360
in circumstances is where it's not being offered on acceptable commercial terms

1104
01:14:36.740 --> 01:14:40.440
to the very person or operator that would like space.

1105
01:14:43.380 --> 01:14:45.400
So it wouldn't actually be a relevant alternative.

1106
01:14:45.400 --> 01:14:48.400
There is one further just factual problem.

1107
01:14:48.420 --> 01:14:51.560
You may need to think about how you want to deal with it,

1108
01:14:51.740 --> 01:14:54.720
but CDNs rep, uh,

1109
01:14:54.900 --> 01:14:59.560
two dash 0 34, which is their answer to your,

1110
01:15:00.380 --> 01:15:04.520
uh, I think questions in the second set of questions. Um,

1111
01:15:04.940 --> 01:15:07.200
it actually states in terms

1112
01:15:10.710 --> 01:15:11.720
give you the reference

1113
01:15:13.970 --> 01:15:18.010
B G C 1.6, BG C 1.6

1114
01:15:20.420 --> 01:15:23.610
0.2 of the C L D M response. In any case,

1115
01:15:24.730 --> 01:15:29.250
C L D N is not seeking to put forward the port of killing him as an

1116
01:15:29.250 --> 01:15:31.330
alternative to the proposed development.

1117
01:15:32.590 --> 01:15:35.290
Rather they saying it's a question of need. Uh,

1118
01:15:35.390 --> 01:15:40.250
and I for what my part find it very difficult to square that
statement with the

1119
01:15:40.250 --> 01:15:44.850
source of submissions you've just been hearing. But can I just, um,

1120
01:15:45.720 --> 01:15:49.010
then just briefly hang hand over to Mr. Raul who,

1121
01:15:49.230 --> 01:15:51.810
who will just help you, I think from a,

1122
01:15:52.590 --> 01:15:57.090
at least from a planning policy perspective as a charter of town
planner?

1123
01:16:00.800 --> 01:16:05.770
Good morning, sir. Um, Phillip Rael on behalf of the applicant's a b
P, um,

1124
01:16:07.190 --> 01:16:08.450
Mr. Mr as Mr.

1125
01:16:08.500 --> 01:16:12.610
Shawn was going through that all the points that I think I felt that
I could

1126
01:16:12.610 --> 01:16:15.610
help you with. There are certainly a number of points raised this
morning that,

1127
01:16:15.950 --> 01:16:19.450
um, we certainly could respond to. Um,

1128
01:16:19.810 --> 01:16:22.530
I think as Mr. Shawn set out,

1129
01:16:22.750 --> 01:16:24.930
we don't agree with the position that's set out.

1130
01:16:25.090 --> 01:16:28.930
I think it's wrong in a number of respects, but I actually, um,

1131
01:16:29.060 --> 01:16:32.770
don't think that I could add at high level, um, much to what Mr.

1132
01:16:32.800 --> 01:16:35.490
Shawn's already said. I think the point's there, I mean,

1133
01:16:35.760 --> 01:16:40.690
fundamentally you have to go back to the need as specified in the

1134
01:16:40.690 --> 01:16:42.730
port's policy. And again, as Mr. Sean says,

1135
01:16:42.730 --> 01:16:46.690
there are three elements to that need, and this runs throughout our
case.

1136
01:16:47.200 --> 01:16:50.050

This is not just about, oh,

1137
01:16:50.200 --> 01:16:53.850
have we got enough capacity to meet the growth that everybody thinks
we've got?

1138
01:16:54.150 --> 01:16:56.250
The need is not expressed in that way either.

1139
01:16:56.350 --> 01:17:00.050
In our case or more importantly in the port policy.

1140
01:17:00.550 --> 01:17:04.770
The port policy makes it very clear that the need for port
development

1141
01:17:05.690 --> 01:17:10.440
includes matters relating to growth, resilience, and competition,
sir.

1142
01:17:10.440 --> 01:17:15.040
And that is those threads run throughout what we say and to have our
need

1143
01:17:15.190 --> 01:17:19.840
effectively indicated that it's, oh, this is all just about meeting
capacity.

1144
01:17:20.740 --> 01:17:22.960
I'm, I'm sorry, sir, that's not the position that we take.

1145
01:17:24.940 --> 01:17:29.520
So can I, sorry, James, drawn for the applicant. Could I also,

1146
01:17:30.060 --> 01:17:31.680
uh, invite Mr.

1147
01:17:32.120 --> 01:17:36.920
Peterson Ner because I've referred to their position on a number of
occasions,

1148
01:17:37.300 --> 01:17:41.800

far better you hear it from them than my interpretation of it. I would,

1149
01:17:41.810 --> 01:17:46.560
could I, um, invite Mr. Peterson if you're happy to, to offer his,

1150
01:17:46.820 --> 01:17:49.920
uh, per views on, uh, killing him?

1151
01:17:50.900 --> 01:17:55.520
Uh, yes. Thank you Mr. Tro. Um, Mr. Peterson, in explaining your position,

1152
01:17:55.700 --> 01:17:56.680
it would assist,

1153
01:17:56.800 --> 01:18:01.800
I think if you can elaborate on what it is that

1154
01:18:01.860 --> 01:18:05.480
has in effect cause Denner to say, sorry. Yeah,

1155
01:18:05.500 --> 01:18:10.120
we are not gonna try and renew or extend the lease. Um,

1156
01:18:10.420 --> 01:18:15.160
we, we've seen, um, the, the, the, the answer to the question. Um,

1157
01:18:15.580 --> 01:18:19.760
but I I think it was still a little unclear as to why, uh,

1158
01:18:19.760 --> 01:18:22.680
discussions broke down. Um,

1159
01:18:22.790 --> 01:18:27.320
because certainly from the written response, we got it in amongst all of that.

1160
01:18:27.340 --> 01:18:31.880
It appeared that there were issues about how killing a home we're gonna approach

1161
01:18:31.880 --> 01:18:35.720
dealing with post Brexit type matters and,

1162
01:18:35.820 --> 01:18:37.840
and what implications that was having.

1163
01:18:38.260 --> 01:18:43.120
And we may also ask killing a home to help with what the Brexit
point

1164
01:18:43.380 --> 01:18:44.213
was,

1165
01:18:44.390 --> 01:18:48.640
whether that is still in play or whether that may have changed
because

1166
01:18:49.380 --> 01:18:53.840
of the way border force is, is or is not now operating, um,

1167
01:18:54.380 --> 01:18:57.440
the facility that Sarah and, and what, what the, the,

1168
01:18:57.580 --> 01:18:59.280
the rules of the game currently are,

1169
01:18:59.330 --> 01:19:04.080
which appear perhaps to have changed now that we are a year further

1170
01:19:04.260 --> 01:19:06.360
on post Brexit, um,

1171
01:19:07.040 --> 01:19:11.680
compared to where we were 12 months or 18 months ago when it was
still unclear

1172
01:19:11.820 --> 01:19:16.600
as to what the rules of the game might be in terms of how, um, ports
were,

1173
01:19:16.600 --> 01:19:21.200

again, to be expected to operate. I, I, is that something that you'll,

1174
01:19:21.200 --> 01:19:24.240
you'll be able to assist us with in responding, um,

1175
01:19:25.020 --> 01:19:26.440
to what you've heard so far this morning?

1176
01:19:27.440 --> 01:19:30.120
I will do my best here. Thank you. Good morning, sir. Uh,

1177
01:19:30.120 --> 01:19:34.280
Andress Peterson talking on behalf. Stan, I talking on behalf of the applicant.

1178
01:19:35.280 --> 01:19:40.040
I said my name is Andres Peterson. I'm the head of port development in Inline,

1179
01:19:40.260 --> 01:19:44.040
uh, Stan Align, operate 28th port around Europe,

1180
01:19:45.220 --> 01:19:50.080
uh, panning from France, Irish Sea, uh, north Sea, Scandinavia,

1181
01:19:50.180 --> 01:19:53.240
Baltic was including Finland. Uh,

1182
01:19:53.750 --> 01:19:56.720
when I was out running this morning, um, I,

1183
01:19:56.880 --> 01:20:01.720
I made a reflection why we are here today, and it's actually,

1184
01:20:01.720 --> 01:20:06.600
that is very difficult to be a customer of C L D M when you want to engage and

1185
01:20:06.710 --> 01:20:09.400
grow your business. Uh,

1186
01:20:09.550 --> 01:20:14.520
Standal Line has a relation with C L D and going back to year

1187
01:20:14.580 --> 01:20:17.600
2000, we operate,

1188
01:20:17.660 --> 01:20:21.760
we were operating two services out of, uh, out of, uh, killing home or two,

1189
01:20:21.760 --> 01:20:23.480
killing home, uh,

1190
01:20:24.460 --> 01:20:29.120
the one that is still there going from Hook. What we also had another one, uh,

1191
01:20:29.120 --> 01:20:33.800
that was operating from 2015 that was, uh, coming from Rotter,

1192
01:20:33.920 --> 01:20:36.720
a railroad service. Uh,

1193
01:20:38.420 --> 01:20:42.920
the railroad service had a a, a running period of only three months.

1194
01:20:43.700 --> 01:20:45.960
And in beginning of 2017,

1195
01:20:46.860 --> 01:20:51.240
myself and Mr sitting down there engaged

1196
01:20:51.670 --> 01:20:54.120
with C L D N over a period of two years

1197
01:20:55.820 --> 01:20:58.240
In order to get established a,

1198
01:20:58.920 --> 01:21:03.880
a longer term contract that would enable us to have a

1199
01:21:03.880 --> 01:21:07.240
sustainable growth in C L M. Uh,

1200
01:21:07.710 --> 01:21:11.040
what we were met with was basically, uh,

1201
01:21:12.230 --> 01:21:13.800
different kind of limitations,

1202
01:21:13.800 --> 01:21:16.840
particularly related to the growth unaccompanied trailers.

1203
01:21:18.860 --> 01:21:20.400
Uh, and

1204
01:21:22.420 --> 01:21:27.000
the only way we could interpret it that was either a,

1205
01:21:27.090 --> 01:21:31.400
there was no space available, or secondly,

1206
01:21:31.870 --> 01:21:33.440
they were trying to limit competition

1207
01:21:37.290 --> 01:21:41.920
going forward. And we should say also here that how this ended,

1208
01:21:42.410 --> 01:21:45.880
going back to your question on, on Brexit, the, the,

1209
01:21:45.940 --> 01:21:50.640
the whole negotiation was ended in 2019 due to Brexit matters.

1210
01:21:52.060 --> 01:21:56.560
Uh, in 2021, uh, in May,

1211
01:21:57.760 --> 01:22:02.320
C L D N canceled the contract for the railroad service. So we had to go,

1212

01:22:03.020 --> 01:22:03.470
uh,

1213
01:22:03.470 --> 01:22:08.440
corporate with a b P to set up an alternative where we started a very

1214
01:22:08.440 --> 01:22:12.360
successful operation together with A B P as from January of

1215
01:22:12.380 --> 01:22:13.760
2022.

1216
01:22:17.270 --> 01:22:21.960
Looking into this and the fact that we believe significant growth now going

1217
01:22:21.960 --> 01:22:26.120
forward, Standal Line wants to establish its own base

1218
01:22:28.010 --> 01:22:31.120
equal to what C L D N has and also what D F D S has,

1219
01:22:31.140 --> 01:22:35.520
so we freely can develop without limitation from a competitor,

1220
01:22:36.410 --> 01:22:39.480
which we have been. And the history shows that we have been limited.

1221
01:22:41.180 --> 01:22:45.600
So we want to establish a place where we can grow,

1222
01:22:46.660 --> 01:22:51.640
we can ensure that competition is in place and that there is resilience in the

1223
01:22:51.640 --> 01:22:53.320
market. Thank you.

1224
01:23:27.810 --> 01:23:32.630
Uh, thank, thank you Mr. Peterson. Um, C L D N, Ms. Grogan,

1225
01:23:32.770 --> 01:23:34.390
or anybody else from the team, uh,

1226
01:23:34.390 --> 01:23:38.230
do you want to respond specifically to the points that, uh, Mr.

1227
01:23:38.230 --> 01:23:39.390
Petterson has made

1228
01:23:42.020 --> 01:23:44.230
Rose Grogan for C L D N?

1229
01:23:47.070 --> 01:23:51.510
I will start by making just one overarching point and, um,

1230
01:23:51.610 --> 01:23:54.830
if you have specific questions for the team, then, um,

1231
01:23:55.660 --> 01:23:59.390
they could either feed their answers through me or we can hear, um,

1232
01:23:59.660 --> 01:24:03.070
from a member of the team who's best placed to answer your
questions.

1233
01:24:04.970 --> 01:24:09.790
As I said at the beginning, CLD N'S interest is ensuring that this,
um,

1234
01:24:10.510 --> 01:24:14.110
examination is conducted on the right basis. You've heard from Mr.

1235
01:24:14.270 --> 01:24:18.630
Straughn that the justification for the scheme is about providing
competition

1236
01:24:18.630 --> 01:24:21.070
and resilience and accommodating the needs of stainer.

1237
01:24:23.540 --> 01:24:26.750
That is all. Um, as far as C L D N is concerned,

1238
01:24:26.820 --> 01:24:31.270
helpful concession because it sets up what this

1239
01:24:31.670 --> 01:24:36.550
proposal is actually for. It was originally advanced on the basis of a large,

1240
01:24:36.640 --> 01:24:38.230
compelling and urgent need.

1241
01:24:38.930 --> 01:24:42.070
If that is not the basis on which it is now advanced,

1242
01:24:42.810 --> 01:24:47.510
and it is a more modest suggestion that STAINER

1243
01:24:47.510 --> 01:24:50.030
requires its own operation, uh,

1244
01:24:50.030 --> 01:24:53.830
then C L D N will have achieved a lot of what it has sought out to do in this

1245
01:24:53.990 --> 01:24:54.350
examination,

1246
01:24:54.350 --> 01:24:57.470
which is just to make sure that this is all carried out and the planning balance

1247
01:24:57.470 --> 01:24:59.750
is carried out on the proper factual basis,

1248
01:25:00.010 --> 01:25:02.150
the existence of spare capacity at killing him.

1249
01:25:02.150 --> 01:25:06.070
Still relevant because we say that Stainer weren't ejected.

1250
01:25:06.200 --> 01:25:09.870

There was an inability to agree commercial terms for a long-term

1251
01:25:10.510 --> 01:25:13.910
continuation of stander's operation at killing him. Um,

1252
01:25:14.330 --> 01:25:18.230
that's all a matter of sort of the ins and outs of commercial
negotiations,

1253
01:25:18.250 --> 01:25:23.070
and we can help you on the factual reasons that are given as to why
Stainer felt

1254
01:25:23.090 --> 01:25:25.830
it couldn't remain at killing him. Um,

1255
01:25:26.050 --> 01:25:29.430
but all of that then feeds into your planning balance and the
assessment that

1256
01:25:29.430 --> 01:25:32.510
you are going to carry out at the end. Um,

1257
01:25:33.850 --> 01:25:38.670
the growth assumptions that were underpinning the original case,

1258
01:25:39.770 --> 01:25:44.470
uh, of a throughput of 660,000, um,

1259
01:25:45.030 --> 01:25:49.590
movements in a year underpins all of the assessments of benefits and
the

1260
01:25:49.590 --> 01:25:53.310
advantages that are said to come from this new development. Um,

1261
01:25:53.310 --> 01:25:56.870
there's been an indication that that's coming down and there's going
to be a

1262
01:25:56.870 --> 01:26:00.310
change. We don't think we've got any details of that at the moment,

but that,

1263
01:26:00.310 --> 01:26:05.040
that assessment of throughput is going to be reduced. Um, and so it,

1264
01:26:05.060 --> 01:26:05.920
it would be helpful,

1265
01:26:06.620 --> 01:26:11.480
and we are still a little in the dark as to what the actual plan for growth of

1266
01:26:11.480 --> 01:26:15.920
state operations is at immingham, um,

1267
01:26:16.260 --> 01:26:19.800
and how that feeds into the benefits, uh,

1268
01:26:19.800 --> 01:26:23.800
that are said to be brought about from this development. Um,

1269
01:26:23.870 --> 01:26:27.200
because at the moment we're hearing two things.

1270
01:26:27.250 --> 01:26:30.000
We're hearing there's an urgent need that needs to be met straight away.

1271
01:26:30.580 --> 01:26:32.440
And we're also hearing that actually really this is,

1272
01:26:32.470 --> 01:26:35.600
this is about accommodating one operator to ensure competition and,

1273
01:26:35.860 --> 01:26:38.040
and resilience. And those are two quite different things.

1274
01:26:38.060 --> 01:26:41.320
So we would appreciate some clarity on that. Um,

1275
01:26:41.620 --> 01:26:44.520

and a better understanding of how it is that this proposal,

1276
01:26:44.700 --> 01:26:48.840
as it's now characterized, um, is going to

1277
01:26:50.760 --> 01:26:54.480
Actually respond to competition and resilience because they're quite new points

1278
01:26:54.480 --> 01:26:59.040
that are being made. And I think some more detail and that would be helpful. Uh,

1279
01:26:59.830 --> 01:27:02.120
there's also, just to respond to one final point, uh,

1280
01:27:02.120 --> 01:27:04.840
alleged inconsistency in our case, um,

1281
01:27:05.090 --> 01:27:09.800
we're not proposing that killing him is a location for the amount of growth

1282
01:27:10.300 --> 01:27:13.320
set out by, um, A B P,

1283
01:27:13.320 --> 01:27:15.840
because as you've heard from us in our written representations,

1284
01:27:15.840 --> 01:27:20.120
we don't think that amount of growth, um, is necessarily realistic.

1285
01:27:20.150 --> 01:27:22.080
It's quite bullish. Uh,

1286
01:27:22.150 --> 01:27:26.520
what we're saying is that the existence of spare capacity,

1287
01:27:26.760 --> 01:27:30.000
resilience and competition in the market at the moment is obviously a relevant

1288
01:27:30.200 --> 01:27:34.040
consideration for you, uh, when carrying out the, the planning
balance.

1289
01:27:37.400 --> 01:27:41.940
And so unless there's any specific questions to help you with, um,

1290
01:27:43.690 --> 01:27:44.523
I'll stop there.

1291
01:28:03.850 --> 01:28:04.683
Okay.

1292
01:28:15.750 --> 01:28:16.870
I think there is, there is a,

1293
01:28:17.110 --> 01:28:22.110
a question arising from both what C L D N and Sternal line have just

1294
01:28:22.220 --> 01:28:23.910
said. Um,

1295
01:28:24.100 --> 01:28:28.910
putting aside any commercial considerations, um,

1296
01:28:29.790 --> 01:28:31.670
starting with C L D N,

1297
01:28:33.090 --> 01:28:36.230
do you consider that at the port of killing home

1298
01:28:38.870 --> 01:28:40.190
a facility, uh,

1299
01:28:40.250 --> 01:28:45.110
or capacity could be provided to meet the needs of stenner as it

1300
01:28:45.130 --> 01:28:47.110
has been operating and how it,

1301

01:28:47.170 --> 01:28:50.550
how it might wish to expand its operation?

1302
01:28:53.300 --> 01:28:55.480
Uh, rose Grogan for C L D N? Yes.

1303
01:28:59.780 --> 01:29:02.240
And, uh, Mr. Peterson, as a,

1304
01:29:02.240 --> 01:29:06.000
putting aside commercial considerations, but in,

1305
01:29:06.140 --> 01:29:09.960
in terms of how you might want to run a facility,

1306
01:29:11.180 --> 01:29:12.013
um,

1307
01:29:12.390 --> 01:29:17.360
certainly would there be scope at killing home to accommodate a
facility that

1308
01:29:17.360 --> 01:29:18.320
would meet your needs

1309
01:29:21.480 --> 01:29:24.430
Under Peterson for, for a b p? Well,

1310
01:29:24.580 --> 01:29:26.910
they haven't managed since 2017,

1311
01:29:27.010 --> 01:29:29.950
and I think that replies the question.

1312
01:29:57.460 --> 01:30:01.600
And is that a matter in terms of identifying enough space

1313
01:30:02.540 --> 01:30:07.240
on site or is it, is it really touching on, uh,

1314
01:30:07.460 --> 01:30:09.560

the contractual terms and in effect the,

1315
01:30:09.580 --> 01:30:13.640
the cost of entering into a contract or a lease or whatever it might
be?

1316
01:30:15.670 --> 01:30:20.200
Well, there isn't a commercial proposal at the table, and, and, uh,

1317
01:30:20.200 --> 01:30:24.120
obviously we, we don't know what the proposal would look like. So
it's, it's a,

1318
01:30:24.120 --> 01:30:26.800
it's a question that which is impossible to answer at this stage.

1319
01:30:35.230 --> 01:30:35.790
Ms. Grogan?

1320
01:30:35.790 --> 01:30:37.650
Yes. Rose Grogan for C L D N,

1321
01:30:38.560 --> 01:30:42.210
just to be careful that we're not all aligning commercial matters
with, um,

1322
01:30:42.650 --> 01:30:43.810
physical constraints.

1323
01:30:44.340 --> 01:30:49.090
There is space on the site to accommodate Steiner's operations.

1324
01:30:49.980 --> 01:30:54.730
There was a particular issue around the time of Brexit and the

1325
01:30:54.730 --> 01:30:56.770
transition period, um,

1326
01:30:57.120 --> 01:31:01.210
that is no longer active that's been resolved.

1327

01:31:01.700 --> 01:31:06.090
There were different responses throughout the Humber as to how to
deal with

1328
01:31:06.150 --> 01:31:09.370
Brexit sum ports, and I'll be corrected if I'm wrong, um,

1329
01:31:10.190 --> 01:31:14.930
had to stop accepting, uh, freight coming in,

1330
01:31:14.930 --> 01:31:18.370
killing 'em. No, no, that's not right. Sorry.

1331
01:31:18.400 --> 01:31:22.810
I've had this explained to me some time ago and I probably reporting
it

1332
01:31:22.810 --> 01:31:24.530
inaccurately effectively,

1333
01:31:24.600 --> 01:31:27.970
different ports responded in different ways to Brexit and to the
transition

1334
01:31:27.970 --> 01:31:30.650
period killing them. Yes, I think you should.

1335
01:31:31.170 --> 01:31:32.810
'cause otherwise I'm just going to get it wrong. So I,

1336
01:31:32.990 --> 01:31:33.930
and that would be very helpful.

1337
01:31:35.670 --> 01:31:36.503
Thanks.

1338
01:31:42.650 --> 01:31:46.560
Nigel Castle. I'm the head of UK ports for C L D N. Um,

1339
01:31:46.700 --> 01:31:49.560
to explain the issue of Brexit,

1340
01:31:49.560 --> 01:31:54.200
there was a very brief period where the Port of Kon and

1341
01:31:54.250 --> 01:31:57.520
every port pretty much in the country was under such duress.

1342
01:31:58.620 --> 01:32:02.800
We were constrained for capacity. At that time,

1343
01:32:02.900 --> 01:32:05.160
we wrote to, sorry, to be clear,

1344
01:32:05.380 --> 01:32:10.240
we as the port operator wrote to both shipping lines explaining

1345
01:32:10.820 --> 01:32:14.760
the limitations on capacity and how we were going to limit both of them

1346
01:32:16.180 --> 01:32:19.120
for storage space until that could be resolved.

1347
01:32:20.300 --> 01:32:22.880
And we applied that letter

1348
01:32:24.740 --> 01:32:26.800
in proportion to both operators.

1349
01:32:30.300 --> 01:32:33.800
It was actually a letter that went to both operators at the time explained the

1350
01:32:34.000 --> 01:32:38.800
capacity of the port and how it would be split until the

1351
01:32:38.800 --> 01:32:41.560
Brexit issue resolved. That's been resolved now.

1352
01:32:41.970 --> 01:32:46.920
We've provided data since then to show you how the capacity's increased since

1353
01:32:46.980 --> 01:32:48.040
Brexit. Significantly,

1354
01:32:49.070 --> 01:32:53.320
what we couldn't do is turn on additional capacity from one day to
the next

1355
01:32:54.210 --> 01:32:55.240
ports. Just can't do that.

1356
01:33:11.390 --> 01:33:12.223
Can I,

1357
01:33:27.330 --> 01:33:30.270
so can I, um, come in at some point

1358
01:33:31.420 --> 01:33:32.060
Just

1359
01:33:32.060 --> 01:33:32.893
Sure.

1360
01:33:36.890 --> 01:33:41.790
Mr. Patterson, if you were, if like rein restarting a negotiation

1361
01:33:43.420 --> 01:33:46.430
sitting here today, uh,

1362
01:33:46.430 --> 01:33:49.470
presumably you would go to C L D N and say, um,

1363
01:33:49.810 --> 01:33:54.470
we need X number of hectares and we need one, two, three birth,

1364
01:33:54.830 --> 01:33:59.430
whatever. Um, so you, you in your mind,

1365
01:33:59.430 --> 01:34:04.310
or the company has got something scoped in terms of physically

1366
01:34:04.500 --> 01:34:05.430
what you require.

1367
01:34:07.770 --> 01:34:11.070
Do you consider that as far as killing a home is concerned,

1368
01:34:12.080 --> 01:34:16.190
there might be sufficient space to meet your physical requirements,

1369
01:34:16.470 --> 01:34:21.390
whatever that is in terms of dealing with your current operation and

1370
01:34:21.390 --> 01:34:22.630
future growth proposals?

1371
01:34:27.150 --> 01:34:29.230
I guess it's, uh,

1372
01:34:29.540 --> 01:34:34.510
distinguish here between sort of available space and what space that

1373
01:34:34.510 --> 01:34:38.190
staying align could have available for growth going forward. Right.

1374
01:34:39.450 --> 01:34:43.710
So I think that, uh, the question is, is, is impossible to, to,

1375
01:34:43.770 --> 01:34:46.870
to reply to as I see it. Uh,

1376
01:34:47.080 --> 01:34:51.750
going back to what we just said about Brexit, reminding ourself here
that in,

1377
01:34:51.770 --> 01:34:55.030
in 21 they actually asked, uh,

1378
01:34:55.290 --> 01:34:58.160
big portion of business to leave Kleon because lack of space.

1379

01:34:59.180 --> 01:35:03.560
So I think that also shows, uh, simply that we,

1380
01:35:03.620 --> 01:35:07.960
we don't feel confident in that we would have,

1381
01:35:08.500 --> 01:35:10.680
uh, space available.

1382
01:35:18.300 --> 01:35:22.410
Thank you. Ms. Pet, um, Mr. Castle may be sealed in.

1383
01:35:22.410 --> 01:35:26.330
Are you able to confirm whether or not in fact the letter that the
letters that

1384
01:35:26.330 --> 01:35:30.930
were written to the two operators in that immediate post Brexit
situation,

1385
01:35:31.120 --> 01:35:35.970
whether you have in effect written letters or at least a letter to

1386
01:35:35.970 --> 01:35:40.170
your, um, uh,

1387
01:35:40.570 --> 01:35:43.330
shipping arm to say right,

1388
01:35:43.400 --> 01:35:48.170
that hurdle has now in effect been got over because the immediate,

1389
01:35:48.430 --> 01:35:50.770
uh, Brexit point has been resolved?

1390
01:35:52.390 --> 01:35:56.410
Or in effect, is that still a bit in limber and is that why Stenner,
uh,

1391
01:35:56.440 --> 01:36:00.250
line are saying they're not sure, um,

1392
01:36:01.160 --> 01:36:03.290
whether you could find enough space for them?

1393
01:36:11.510 --> 01:36:16.250
So Ben of Seymour, director at Seal, Leon End Port Skinhead, I think
it's, uh,

1394
01:36:16.250 --> 01:36:19.810
important to distinguish the two. As Mr. Cast explained,

1395
01:36:19.810 --> 01:36:24.130
there were operational issues around Brexit. Um,

1396
01:36:24.350 --> 01:36:29.010
in terms of where we are now, I think in, uh, our written
representations,

1397
01:36:29.010 --> 01:36:30.730
thatwhere, we've explained, uh,

1398
01:36:30.760 --> 01:36:33.610
expansion and the flexibility of space at killing home,

1399
01:36:34.350 --> 01:36:38.970
we have made offers to Stayer and I suppose one might say

1400
01:36:39.830 --> 01:36:43.810
the offers are a recognition of the fact there is available space.

1401
01:36:44.530 --> 01:36:47.730
'cause we would not make an offer, uh, for, for,

1402
01:36:47.790 --> 01:36:51.570
for to serve a shipping line at the terminal if there wasn't
available space.

1403
01:36:54.190 --> 01:36:56.010
Uh, if, if that answers your question,

1404
01:37:13.500 --> 01:37:17.280
Um, may I just ask Mr. Duffey Moore, uh,

1405
01:37:17.280 --> 01:37:22.160
to clarify the offer that you've just referred to is that post

1406
01:37:22.190 --> 01:37:23.520
this BRE Brexit issue?

1407
01:37:25.180 --> 01:37:28.360
Uh, there are two offers both post Brexit. Yeah.

1408
01:37:44.420 --> 01:37:44.970
Thank you.

1409
01:37:44.970 --> 01:37:49.970
I I think we understand sufficiently in terms of what the position
of C

1410
01:37:50.030 --> 01:37:53.050
LD and what the position of Standal line is. But Mr. Str,

1411
01:37:53.070 --> 01:37:54.210
you wanted to raise a point?

1412
01:37:55.150 --> 01:37:59.800
Yeah, just a couple of points. Uh, the, the first, um, uh,

1413
01:38:00.050 --> 01:38:03.120
we're obviously gonna respond in, in writing, sir, but the,

1414
01:38:03.260 --> 01:38:06.800
the first was that Ms. Grogan, uh,

1415
01:38:06.800 --> 01:38:09.840
characterized my submissions as a concession.

1416
01:38:10.040 --> 01:38:14.960
I I was the first time I think anyone could have characterized
anything I

1417
01:38:14.960 --> 01:38:18.800
said as involving a concession. I think it was rather the opposite.

Um,

1418
01:38:18.940 --> 01:38:22.880
but to be clear, I've not conceded anything about our case. In fact,

1419
01:38:22.880 --> 01:38:27.760
what I emphasized to to you was your own question was about an

1420
01:38:27.760 --> 01:38:32.720
assumption of underutilized capacity with an underlying issue between

1421
01:38:32.740 --> 01:38:37.040
the parties as to whether there is in fact meaningful,

1422
01:38:37.590 --> 01:38:40.400
underutilized capacity. Uh,

1423
01:38:40.460 --> 01:38:45.120
as to which there's evidence before you, uh, and I wasn't going into
that.

1424
01:38:45.300 --> 01:38:47.720
So just to be clear, I certainly haven't conceded anything.

1425
01:38:47.760 --> 01:38:51.440
I was very surprised to hear that characterization of my
submissions.

1426
01:38:51.500 --> 01:38:56.440
But our case remains as set out based as to the compelling case for
a need.

1427
01:38:56.500 --> 01:38:57.480
But in any event,

1428
01:38:58.270 --> 01:39:02.880
need already being demonstrated and not being required to be, uh,
shown.

1429
01:39:04.300 --> 01:39:06.360
And the only observation I've made,

1430
01:39:06.360 --> 01:39:10.760
you've already heard from Stenner and about offers and that you've
got some

1431
01:39:10.760 --> 01:39:15.360
written material about that, a lack of commercial viability of those
you've,

1432
01:39:15.360 --> 01:39:19.440
you've asked some questions about physical capacity.

1433
01:39:19.570 --> 01:39:23.840
Leave aside commercial considerations we have not seen

1434
01:39:24.380 --> 01:39:26.720
within the terms of the policy statement,

1435
01:39:27.660 --> 01:39:32.600
an alternative that would meet s Deena's physical capacity

1436
01:39:32.640 --> 01:39:34.920
requirements from killing home,

1437
01:39:36.140 --> 01:39:40.920
let alone what it actually entails for the other operations

1438
01:39:40.980 --> 01:39:44.720
at killing home. In terms of displacement of other activities,

1439
01:39:44.890 --> 01:39:49.600
we've never seen such a plan or identification of

1440
01:39:49.820 --> 01:39:52.840
how that would be shown, uh,

1441
01:39:53.250 --> 01:39:57.600
which in itself is contrary to the guidance in the policy

1442
01:39:58.090 --> 01:40:02.040
about alternatives. But if, uh, if you've asked for such a plan,

1443
01:40:02.140 --> 01:40:03.440
so as a result of your site visit,

1444
01:40:03.440 --> 01:40:05.960
we'll look at it with interest to see what's actually shown.

1445
01:40:06.780 --> 01:40:11.680
But the second point about divorcing physical capacity from

1446
01:40:11.930 --> 01:40:16.240
commercial reality is that that is at odds

1447
01:40:16.670 --> 01:40:18.280
with the national policy statement.

1448
01:40:19.350 --> 01:40:24.120
Even if one is able to demonstrate theoretical physical capacity,

1449
01:40:25.020 --> 01:40:28.200
uh, that is not what the policy statement's about.

1450
01:40:28.940 --> 01:40:33.000
And somehow it would have to be not just physical capacity,

1451
01:40:33.060 --> 01:40:37.840
but commercial viable terms that on which that capacity is offered

1452
01:40:38.180 --> 01:40:42.360
and secured for the long term for someone to

1453
01:40:42.590 --> 01:40:46.920
effectively promote their growth and invest in the future

1454
01:40:47.860 --> 01:40:52.720
in the way that Sterner obviously want to do so rather than as

1455
01:40:52.780 --> 01:40:54.000
has already happened,

1456

01:40:55.280 --> 01:40:59.360
allowing an operator to operate at killing home,

1457
01:40:59.860 --> 01:41:04.760
but then squeezing them as soon as things get commercially

1458
01:41:04.760 --> 01:41:09.040
tough or events occur such as Brexit or the operator

1459
01:41:09.590 --> 01:41:13.800
decides to favor its own, um, transport line,

1460
01:41:14.790 --> 01:41:16.840
none of that is before you,

1461
01:41:17.150 --> 01:41:21.480
none of that would be secured and none of that would provide
competition

1462
01:41:21.980 --> 01:41:26.040
of the type that the national policy statement, not just supports,

1463
01:41:26.420 --> 01:41:27.560
but encourages.

1464
01:41:33.130 --> 01:41:37.000
Thank you, Mr. Strong arising out of what's just been said.

1465
01:41:37.120 --> 01:41:40.320
I think it would be helpful, and I suspect it's gonna fall on Mr.

1466
01:41:40.560 --> 01:41:44.720
Castle 'cause I think he's probably producing the, the, the note
yesterday.

1467
01:41:44.860 --> 01:41:48.840
But as part of a post-hearing submission,

1468
01:41:49.660 --> 01:41:50.130
um,

1469

01:41:50.130 --> 01:41:54.960
could we have a plan submitted indicating the

1470
01:41:55.010 --> 01:41:58.000
sorts of areas of land, uh,

1471
01:41:58.550 --> 01:42:01.880
that in effect was subject to whatever offer, uh,

1472
01:42:01.940 --> 01:42:06.600
was being put to Standal line when those negotiations were being
undertaken?

1473
01:42:14.070 --> 01:42:17.550
I am seeing a few grimaces, so perhaps there may not be a reason.
Well,

1474
01:42:17.550 --> 01:42:20.830
that's gonna be possible. W w would one of the

1475
01:42:27.490 --> 01:42:29.300
Rose Gro of for C L D N, um,

1476
01:42:30.270 --> 01:42:33.980
shall I discuss that with the team over a coffee break and come back
to you

1477
01:42:33.980 --> 01:42:38.980
after that, um, to just perhaps explain the situation a bit better.

1478
01:42:39.640 --> 01:42:41.100
Yep. And what we can provide.

1479
01:42:45.330 --> 01:42:49.830
And as we've actually just gone a little bit beyond, um, half 11,

1480
01:42:49.890 --> 01:42:54.430
in fact we're heading fast towards quarter to 12. Um,

1481
01:42:55.130 --> 01:42:59.110
and I think we've probably taken that question usefully as far as we
can at the

1482
01:42:59.110 --> 01:43:03.910
moment, subject to just a little bit of elaboration, post an
adjournment.

1483
01:43:04.070 --> 01:43:07.790
I think this would've been a suitable time to take an adjournment.
Um,

1484
01:43:09.890 --> 01:43:13.670
I'm gonna suggest a minimum of 15 minutes, which would bring us back
at noon,

1485
01:43:13.670 --> 01:43:18.350
but does anybody want a bit more than, um, what's around 16,

1486
01:43:18.590 --> 01:43:21.230
17 minutes at the moment? Applicant's team?

1487
01:43:25.640 --> 01:43:26.130
Sorry.

1488
01:43:26.130 --> 01:43:29.190
So sorry, you're looking at me, James, Sean, for the applicant? Yes,
I'm happy,

1489
01:43:29.250 --> 01:43:30.083
sir.

1490
01:43:30.210 --> 01:43:35.110
Are others generally happy resuming at, at noon? Yep. Okay. The,

1491
01:43:35.110 --> 01:43:38.670
the hearing is there for, uh, adjourned until noon. Thank you very
much.