

ISH4 Part 2

0:03

Well, it's 5:00 and the hearing is resuming.

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Miss Robbins has quite correctly reminded me

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and the other members of the examining authority that because we have the compulsory acquisition hearing that commences at six, that does need to be in effect a bit of a changeover. There is also a colleague looking away in the background who's dealing with any online attendees and has to be available to handle the commencement and they're bringing in of those those parties if there is anybody that's going to attend online. So in that regard really we've got to draw a line on

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for this hearing by about 25 past five.

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What I'm going to suggest, without hopefully offending either Mr. Walker or Mr Owen,

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is that I'm left with three passage to go through my questions you in your relevant representations. Subsequent written submissions have raised various concerns about drafting. What I would do is look to the applicant. Can you Please ensure that each of the points that DF, excuse me, DFS through Mr Owen, Mr. Walker, sorry, and CLDN through Mr. Walker have raised are addressed?

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So that their points are covered

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then there may be opportunity as we go depending on how quickly I get through my questions that there might be one or two

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more weight to your point perhaps from either Mr Owen or Mr. Walker that they they wish to raise and we may get those in Mr Strawn, Sir James Strong the applicant, absolutely we'll do that. Can I just give you in relation to the previous matter we were discussing just three references to note in answer to Mr Walker's concern because I think it has been addressed and I didn't want him to go away thinking hadn't Rep 2.025

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and 2.026

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and the answers to your questions TT 1.6.

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These are both representations from the local highway authorities as to whether they were satisfied about overlapping construction and operational effects, and whether a worse case is in fact sequential development and they are satisfied they were identifying traffic numbers would be

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worse if it's sequential than if they were overlapping.

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And that is also covered

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in Rep 2009, our answers to your question TT 1.6

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and the same in relation to the worst case for each topic, the worst case scenarios being selected IE is it worse to have sequential or overlapping

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and that's covered in Rep 3-0082 DFDS Section 4. I'm so sorry I I was conscious of time but I but Rep 3-008 which is a response to DFDS is Representations. Section 4 of that document explains that the worst case has been taken for traffic. It is in fact sequential,

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which is worst case because you have more vehicles if both

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if if the proposed developments in full operation than you do if you have partial construction and operation and that's been assessed for navigation

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purposes. In fact, the overlapping gives rise to a different effect which has been assessed in chapter 10.

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So I I I know

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I didn't want to take further time on that, but I didn't have those references to hand. But I hope that answers Mr Walkers concern

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and and we will continue rather than take further time we will address any of the further concerns in writing as you've asked us to do.

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Mr. Allen Robbie Owen CDM ports just very briefly Sir, I'm very happy with to proceed as you've outlined and can I take it that we are at liberty to put in our post hearing submissions of deadline for material relating to later items that we may not get to just because obviously we've prepared for that and would find it helpful if we could put the material into the examination. Much of it is the same as previously because nothing's changed, but that would be helpful if we could do that, please.

5:08

Yeah. I mean, I'm just wondering in that context whether it needs to be a full written submission or signposting of where you've previously raised the point and feel that it's not being addressed.

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So we can perhaps do a combination of the two where where appropriate. Thank you.

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And Mr. Walker, you're happy to also perhaps mirror that?

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Yes, Sir. Angus Walker, DFS, I'm happy as long as we have the opportunity to put things in writing and we'll try to catch them in.

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I mean, one, we do have one or two new things that have resulted from subsequent discussions like

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wayfinding and whether that should be mentioned in the DCO, but

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umm,

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put those in right, if we don't get them to them today. Thank you, Sir. Thank you. Right. So turning to requirement aids, which is the construction and environmental management plan, we have raised a written question about status. We have particularly asked

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IP is what they think of the status.

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Umm,

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certainly the way it's currently drafted as a document, I would have to say I think it's more of an outline

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construction environmental management plan than it is the full version that could become an operational document. And I say that because throughout it there are lots of examples of proposed we will do, it is proposed we will do this that or the other rather than seeing a lot of wild bees or must bees and as control measures.

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So just briefly, any observations on what you consider the status of the construction environmental management plan is? Should we be looking upon it as an outline

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which will then require were an order to be made a submission for approval which may then require various parties, local authority and other regulators to in effect go to an approval stage.

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James Storm for the applicant. Briefly, Sir, we are reviewing it in light of those points you've raised a requirement date was intended for it to be the final version. We know the observations that you've made and we're just reviewing whether the in light of what you've observed it should be an outline for subsequent approval or the language of the CMP would need to be

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reflect it being a final version. Certainly it is more normal for certainly the application stage for them to be treated as outlines

8:00

because there's there's scheme potentially evolves, detailed design work take changes often arise and or a contractor comes on board. That's understood Sir, Yes, very briefly. Also within the Kemp there's reference to blasting. Does it need to be there because there's no mention of blasting anywhere else in the application document. I would be very surprised, given the proximity of number of, sites, that the contractor will be doing any blasting.

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Point notice, James. From the point notice there isn't. I'm not aware of any intention for blasting.

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There are then also in the various tables that are in effect identify controls

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some issues, but one of particular concern is Table 3/4 which deals with some of the construction elements.

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And there are. There are matters in there where?

9:00

Umm

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training to be to be provided for pilots and or exemption holders are down to the contractor to arrange. Which to me doesn't seem right. And that's clearly a matter for

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the heart of the Harbour Master, Humber and or Dockmaster. It cannot be something that can be left to the contractor. I would have thought

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so. James from the applicant. Yes, we've noted that point and we agree.

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But I think that you know as general going through the tables there needs to be a review of all of them to make sure that the the right party is being identified to take the matter forward

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requirements set. Sarah, just very briefly observe Angus Walker DFS that the requirement of 15 almost says exactly the same as requirement 8. Perhaps you're going to say that

10:02

requirement 10, which is the noise insulation one. Again, we touched on this at the first hearing, still scratching my head

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as to how this gets enforced. There is. If an occupier were to raise a concern, it appears as currently drafted,

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you either accept or you don't. There is no vehicle

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for

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a potential party who has a concern

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to get some sort of review

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and it it's difficult to see how this would be enforced.

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Mr Straw or Mr Greenwood James Strong for the applicant. So the the intention of course in relation to the noise insulation is that there is already identified under the requirements and an annual requirement for noise insulation mitigation to those properties. And therefore, unlike other

requirements where that might still be at large and an issue as to whether or not it is required, this is the assumption having done the work is that there there is a requirement

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and therefore the requirement is on the face of it to offer

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that package of mitigation

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and then requirement 10/2. Of course it's entirely a matter for choice for the occupier as to whether they wish to have the noise mitigation installed. So that's that's the what 10 twos reflecting. If they do want it, then we're obliged to put it in. So that's why it was articulated in that way. There isn't

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scope for the applicant to dispute or or a discretion about providing the noise in the offer of the noise insulation. That's why it was drafted in that way.

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I I think in contrast to other

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requirements where for example, further noise assessment work is required and then there could be a dispute as to what what it's disclosing. That then certainly I think is a point that needs to be picked up in the explanatory memorandum because it's not clear

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that that's the assumption it's offered come what may.

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Um, but I think there also needs to be more of an explanation as to how in practise is it? It is expected this requirement would work

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because as I said earlier it's not clear if

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if the party receiving the offer is not content with what is being put before them, how that then might be addressed.

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So yes, point about clarification that that that's the obligation to offer. We can put in the explanatory memorandum subject to that. There's a straightforward, we would say enforcement mechanism because there's a straightforward requirement to offer it and no discretion. If I put it in that way as to the point you made about disputes in relation to the the detail of the alphabet we'll we'll review that and come back to your deadline for

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I'm coming to the point that Mister Walker

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wanted to make. But we we have this slight problem that wasn't addressed or fully ironed out when the revisions to the order were made at deadline one and subsequently deadline 3, where requirement 15

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refers to the camp, requirement 8 also revised requires refers to the camp it needs to be one or other

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and that that there needs to be some tidying up. And also as as we touched on earlier with the camp in particular

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if it's going to be treated as an outline document there then needs to be a requirement clearly written up that deals with submission

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of the approval process and then compliance. Yes, that's James talk of the applicant point noted. I think the in relation and and as I'm nudged on the left, agree with the point about 8 and 15

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both replicating each other. I think the same is true of 13. Actually

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I'm I'm not meant to pick up my drafting,

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so we we we will address that. There's a general review of all articles from Mr Owen, briefly Robbie Owen, CDM ports just really quickly, Sir, that there's a critical difference I want to point out between requirement 8 and 15 because requirement 8 refers to the authorised development being constructed in accordance with the Kemp, whereas 15-A refers to the development being constructed in general accordance with the Kemp. There's a critical difference and the same issue we see between Article 13 as Mr Straw

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was referred to, which refers to in accordance and requirement 15. So I think we need to understand what is the proposal, Is it in accordance or is it in general accordance? Because there's a big difference between the two and we'll certainly be making more submissions about the, in our view, outline nature of the camp and what needs to be done about it. But if the applicant could consider that discrepancy would be grateful. James Strong, the applicant, I can do that right now. It's in accordance with the word general, something you already raised and we are responding to in writing to remove the word general,

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right. Then quickly touching on again within requirement 15 and the reference to the navigational risk assessment,

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um, overnight I've been away and I had a quick look at Tilbury Two and fair amount I looked also able.

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Tilbury two definitely has reference to the NRA or an NRA within it as far as I could tell. Abel did, and I'm talking about the original bait

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able Order did not.

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Now, you touched on your views briefly yesterday and you're gonna make written submissions. I just think there needs to be clarity as to whether the applicant thinks it does need to be in or shouldn't be in.

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If it takes the view it shouldn't be in, then there needs to be an explanation and I think you you were talking along the lines of providing that. If it is in, then there needs to be clarity about,

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again, potentially at the moment it's an outline document because that certainly was how Harbour Master and Dockmaster yesterday were treating it, because it's a live document that's going to be involved. It may of itself not exist in its own right, but in effect

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umm

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amendments made are made to the existing operational NRA for the port. But again, I think that's that's a takeaway. I think go away review what you want, what what what you want to do. Make the submissions. The examining authority can look at that, other parties can look at their

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and then we can take that matter forward. Later on in the examination

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James stroke the outcome. We will do that. And thank you for the reference to Abel because that these chimes with what I was tentatively suggesting yesterday.

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Now we we turn to the slightly tricky requirement 18 and impact protection measures

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because Mr Elvin said I don't think I'm going to be saying much in this hearing. But apart from that yeah I, I, I think we we are in effect gonna have to play two hands with this. We've got draught wording that deals with a situation where there is non agreement between IoT and and I think that needs to be worked through again on a precautionary basis.

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As we've highlighted in our written question, the Examining Authority thinks there are problems with current drafting.

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Um, with requirement 18, it it needs tightening up. There's some sequential issues in terms of running order that also need to be addressed.

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There, then is also the issue

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of who's approving what making decisions

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now. It occurred to the examining authority as we were having a discussion over lunch

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this morning. I'm trying lunch this morning. You can't that's that's all wrong when we were having lunch. It's been a fairly long day that there does well will need to be some sort of approval mechanism ultimately.

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And that perhaps given the complicated nature of the relationship between Harbour Master Humber, dockmaster applicant wearing various different hats, that the approval mechanism for that requirement potentially has to be the Secretary of State for Transport.

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And that would mirror what the Secretary of State for Transport is doing with, I think, as far as I know, all of National Hwy schemes and all the schemes that preceded national highways creation when it was Highways England,

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where Secretary of State is used to, in effect, discharging requirements. This might be a requirement that has to go down that route.

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To, in effect create

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a situation where there is a authorising body that is not quite so closely wedded to the scheme in the interest of broader transparency

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from the applicant side. Any thoughts about how that might pan out

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as a proposition? I I'm getting nods from the IT director side of thing that that might be the best way to handle it but applicant first

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I'm so sorry. Sorry, James Storm for the applicant. So thank you. We will, I think, best to give it some thought and reflection

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as to whether that's

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an appropriate mechanism. The the the analogy with

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National Highways and the Secretary of State for Transport may not be

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exactly the same, bearing in mind

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the relationship of national highways as a

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sub and forget quite this, the status of it, But a company of the Secretary of State for Transport itself, which is why it's totally owned by the Secretary. Totally owned. Exactly. I I totally I do. I was doing its Rd protest actions a couple of people glueing themselves to motorways a couple of years ago. So I think it's wholly owned. So the the reason

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that that approval mechanism operates in that way is slightly different if I can put it in that way. But I prefer to just reflect on what you have identified as a as a possibility and then come back to as to whether we think we certainly as examined sorry, think there needs to be some sort of authorization given by somebody to US Secretary of State Transport seemed the obvious that is a body that is set up to deal with discharges

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of that nature. They might not want to deal with it as an extra piece of work, but they certainly are set

up to do it. There might be another party that you and or IoT or for that matter any other interested parties or for that matter the other person or other party

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how about the Humber think is inappropriate. But we think probably in this particular scenario there needs to be some arms length type approval route because it was getting a little bit messy in terms of drafting who was doing what issue specific hearing one. I think the Harbourmaster Humber was quite clear that he didn't believe he should be making ultimate decisions or recommendations about

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whether or not the applicant went to implement. Somebody needs to be making a judgement about whether or not those works proceed. Will will, as you say, you need to go away and think about it. Mr Elvin, I think you're indicating, yes, David Elvin for IOTI would respectfully agree that this this is on the assumption that we don't go down the other route. And of course as you've seen from the letter, the amended protective provisions for schedule four

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are agreed in principle with allowance for departure as long as it's substantial effect. But this is on the assumption that it doesn't. This only applies to the trunk. This is the protective measures of the trunk way and we think it ought to be an independent decision. And with all due respect to the those regulating here, they are all part of ABP and it's well established that independence requires someone to be independent of the parties. And

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the safest way of dealing with any dispute is for it to be adjudicated by the Secretary of State. And you could put in arbitration provisions, but that's a bit messy. And I mean, we're proposing it for one aspect of the protective provisions in due course, but

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Secretary of State would be

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a preferable mechanism,

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though arbitration might be quicker.

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I think not being cynical, I think we've taken the scenario of there's no agreement and requirement ageing. If there is an agreement between IoT and applicant, then what are we looking at? Are we, do we still have a requirement in the order or are we relying wholly

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on protective provision,

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James Storm the applicant. So again I think probably better just to come back to you on that to to. So I don't sort of set any hairs running, but can I, sorry,

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I'll come in. If at the end of that sort of consideration the view is there will be a requirement to deal with that. Then again he's going to need to be drafted that there is a scheme

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and that scheme will then be implemented in accordance with whatever approved details they'll end up. Yeah it needs to have that sort of treatment. So. So can I just add Angus Walker for the FTS that we we would not accept this just being a private arrangement between

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the applicant and IOTT that needs to be on the face of the order. I also would say that if these impact protection measures in what other form are are being built, then it should be a requirement that they must be built before work number 1 can be built.

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At the moment all works are permissive,

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Mr Strong said. James Strong don't necessarily want to get drawn down too far down the now until but but just but just to be clear the IT doesn't follow that the protective measures have to be built before you build

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Kareem work. One, it's about the operation. Yeah, it's the risk that's being identified of concern is about Roro vessels operating on the berth. The other risks have been assessed in relation to construction etcetera, which are a different matter. So it doesn't follow, I don't want to get too drawn down at this stage, but I just want to put that marker down. The the important thing is that there has to be two scenarios worked through. One is no agreement. So requirement

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18 as it currently stands needs reworking and amongst that there needs to be thought about how

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a decision is made about implementation and what it is that

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is implemented. The compliance side of things. The second route is OK, agreement is reached. We're not going to go down the route of the existing requirement 18. What replaces requirement 18 doesn't need to be replaced or is it struck from the draught order and reliance is placed on protective provision. Mr Elvin, David Elvin IT. As Mr Straw and indicated this morning, if if we reached agreement and you you've seen the form, then it seems likely that the existing Works 3 won't be needed

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because the protection will come through the measures that we think will be appropriate. And therefore, Regulation 18,

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as far as IT is concerned, would not be required and it would all be dealt with through Schedule 4 protective provisions.

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I think the important thing is the two parties go away and make sure it's clear

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what is you you think you potentially are agreeing and what the mechanics for all of that.

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And can I just, so I I said we'd look at the requirement itself if it remains. I just want to just say that in relation to what was said about independence, I don't fully subscribe to that in in the sense that the statutory,

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sorry, the obligations in respect of the company and safety terms there is a already statutory duties which they fulfil. And of course the analogy may be an unfortunate on the Secretary of State for Transport, because the Secretary of State for Transport is ultimately the arbiter on schemes for national highways. So it doesn't there's the structural mechanism that can still have someone who has statutory duties but associated with the company provided as the

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legislation assumes they perform their duty conscientiously and diligently. So but, but, but I will we will think about that, but I'm just, I just didn't want it to be assumed that there's some difficulty with the duty holder performing its safety functions

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appropriately in this context as in any many other contexts where there are overlapping jurisdictions.

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Thank you, Mr Strong.

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Next question was an update on the DIM deemed marine licence. But I think actually from what Mr Greenwood said earlier, there are regular liaison meetings going on. And do I take generally that as far as drafting is concerned, setting aside actual matters of, you know, ecological detail, but drafting type matters, there are no significant issues between you at the moment that obviously there's ongoing work about drafting. But

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has MO raised anything that is of so fundamental a concern to them that it becomes an issue or might

become an issue? Thank you Sir Brian Greenwood for ABP and absolutely not. They are very constructive discussions and

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both sides have been very sensible and taking it forward and I hope that we will have an agreed DML in very short order.

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And then just looking at protective provisions in those that you've already identified, putting aside those that think that should be protective provisions in their favour,

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how is progress going at the moment? Is it still on track?

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Thanks Sir Brian Greenwood for ABP. So for deadline four we will provide obviously a an update. They are all on track with one or two exceptions, and it's probably only fair to mention the exceptions. One exception is Cadent Gas,

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a tenant of AP

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and we have had a meeting with them last week and I think it's for us to go back to them and that will happen.

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The issue with APT or the IT operators,

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you will not be surprised to hear that draught protective provisions have passed between Burgess, Salmon and myself. They haven't actually got very far to date. I hoping that after today we can make good progress on them. Hopefully next week. I think it's for me to send something back to purchase.

32:45

So we'll work on that. Mister Elvin David. Elvin IoT. Yes. Well, they're they're they're they're already in as an inquiry document. They're referenced in the letter that was submitted this morning and there's agreement that they should be drafted to substantially like effect to those that are there and subject to the terms of the letter

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that that's quite right, Sir Brian Greenwood for AVP the the important word is substantially because there are certain provisions in the draught protective provisions that have been sent to us that are not aligned with what what is proposed as far as the works is that the the movement of the finger pier for example. Yeah, that's entirely agreed.

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And then Sir,

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I haven't yet provided them to DFDS. DFDS have asked for some protective provisions. Mr. Walker has kindly provided a an outline I have written to him indicating that we will be giving him a a draught protective provisions, but that is an action for me which hopefully will happen next week. The only other party I should mention where there may be issues and Mr Owen may wish to say something. Mr Owen has a on behalf of CDN, requested protective provisions.

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The view of ABP is that we do not consider that CD and the port of Killingholme actually merits as far as we're concerned has been identified specific protective provisions. So we are resisting the provision of protective provisions for CLDN at the present time, Sir

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Robbie Owen for CDN. Thank you, Sir. Protective provisions was obviously a matter I was going to be wanting to deal with in some detail today. But as we've effectively run out of time, I'll just say now that we will be making detailed submissions on this and contacting Mr Greenwood as well because we we do feel that it's disappointing, extremely disappointing. The applicant

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just decided not ready to engage with us on protective provisions and just in in effect referred to the geographical distance between Immingham and Porter killing home. In our view that does not deal with the concerns we have in relation to impact of construction and operation on our scheduled services, in relation to dredging, in relation to railway matters and other land side transport issues. And we are operating a nationally significant structure and and and and system of of transport and we feel

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under statutory powers and we feel that that warrants better consideration than we've had to date from the applicant in terms of protective provisions. So we will, we will keep trying and hopefully we may make some progress, but if if not, clearly I'll be needing to bring it back to you for consideration in due course.

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Thank you, Mr Owen. You've touched on rail in there.

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The examining authority is, I think it's fair to say, struggling a bit with the concept of why protective provisions with respect to rail are required, given that the applicant is not intending to make use of rail. And as far as we understand it, there are no physical works associated with the development that would affect any rail connection outside in effect the port of killing of port of Immingham.

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There is an issue with the applicant and access, maintenance access, that maintenance maintenance access and that

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Network Rail want that was pointed out to us while we were on site. So we we've seen that. So in your post hearing submissions, can you please

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explain precisely what it is about the rail element that is of particular concern? As I say, we we as an examining authority are

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struggling to grasp what the what the point is

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Robo and CDM ports. Yes, Sir, we will gladly explain that because

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that that's that's absolutely fine. Thank you.

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Right. Well, we we have gone a bit beyond what I said was the cut off. I'm no doubt going to get a a little bit of a battering around the ear from casting,

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but I I

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of need need to draw this hearing to a close. I think in terms of matters and actions arising hopefully that the applicants team in the background have had a running list of action points. I think we'll take the same approach as we did with the issue specific hearing three

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if that could be circulated to the interested parties

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once they've had the opportunity to review it, make any suggested changes, then it comes into the inspector and the examining authority as early as possible. Next week will issue what we consider to be the final version of actions.

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James Storm, the applicant. Yes, we intend to send it out tomorrow

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as a draught.

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Is that right? Yeah, yes.

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And hopefully the interested parties will be able to respond fairly quickly so that we can endeavour to get it out as early as possible next week. OK.

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Thank you very much. Well,

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and I'd like to thank everybody for their participation this afternoon.

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And and this issue specifically hearing for is therefore now closed

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and some of you I think we will be seeing again in a little while for compulsory acquisition hearing. Thank you very much.