

0

00:00:00.485 --> 00:00:03.935

Well, it's two o'clock and the hearing is resuming.

1

00:00:05.915 --> 00:00:08.495

Uh, and we'll hear first from Ms.

2

00:00:08.515 --> 00:00:11.655

Hutton on behalf of the Harbor Master Humber.

3

00:00:12.625 --> 00:00:14.655

Thank you, sir. Victoria Hutton for the Harbor Master.

4

00:00:15.395 --> 00:00:18.575

Um, sir, first if I could just address you again on the

5

00:00:18.855 --> 00:00:20.855

independence issue, if I can call it that.

6

00:00:21.475 --> 00:00:23.815

Uh, and then second, I'd just like to highlight a couple

7

00:00:23.815 --> 00:00:26.495

of the protective provisions which are particularly relevant

8

00:00:26.635 --> 00:00:28.255

to the issues we've been discussing.

9

00:00:29.875 --> 00:00:31.055

So as a matter of law,

10

00:00:31.595 --> 00:00:33.375

the Statutory Harbor Authority is independent,

11

00:00:33.375 --> 00:00:34.575

and we went through that yesterday,

12

00:00:34.675 --> 00:00:38.695

and it will be covered in, in the note, uh, to be

13

00:00:38.895 --> 00:00:40.855

provided by us and also by the applicant.

14

00:00:41.955 --> 00:00:44.215

The simple point, again, made yesterday is

15

00:00:44.215 --> 00:00:45.895

that the Statutory Harbor Authority acts

16

00:00:46.295 --> 00:00:47.655

contrary to its statute duties.

17

00:00:48.115 --> 00:00:52.375

It will be acting unlawfully in our submission.

18

00:00:52.395 --> 00:00:56.975

It is not open to the Secretary of State to reach a decision

19

00:00:57.795 --> 00:01:01.735

on the basis that it thinks that the SHA is not independent

20

00:01:01.885 --> 00:01:03.775

because it is, as a matter of fact,

21

00:01:06.365 --> 00:01:09.295

it's also not independent, uh, sorry, it's not, we say open

22

00:01:09.315 --> 00:01:10.895

to statutory, uh, STA of state

23

00:01:10.995 --> 00:01:12.055

to make a decision on the basis

24

00:01:12.055 --> 00:01:15.335

that the Statutory Harbor Authority will act unlawfully.

25

00:01:17.835 --> 00:01:20.095

And in that regard, I'd point the panel

26

00:01:20.155 --> 00:01:21.695

to the Port Marine Safety Code,

27

00:01:22.955 --> 00:01:27.535

and in particular, uh, paragraphs 1.3 and 1.4.

28

00:01:27.755 --> 00:01:30.575

So 1.3 says, Harbor authorities have a range of statutory

29

00:01:30.575 --> 00:01:33.175

and non statutory duties and powers ing

30

00:01:33.175 --> 00:01:35.655

to marine operations, uh,

31

00:01:35.915 --> 00:01:38.095

and then 1.4 for a Harbor Authority.

32

00:01:38.095 --> 00:01:40.095

These duties include a duty of care

33

00:01:40.115 --> 00:01:42.095

to those using the harbor, which means

34

00:01:42.095 --> 00:01:43.735

that they have an obligation to conserve

35

00:01:43.735 --> 00:01:47.015

and facilitate the safe use of the harbor, as well as a duty

36

00:01:47.015 --> 00:01:48.135

of care against loss caused

37

00:01:48.135 --> 00:01:50.495

by the Harbor Authority's negligence duties

38

00:01:50.595 --> 00:01:53.375

to ensure the safety of marine operations are matched

39

00:01:53.375 --> 00:01:56.415

with general and specific powers to enable the authority

40

00:01:56.435 --> 00:02:00.335

to discharge those duty, these duties, there are procedures

41

00:02:00.335 --> 00:02:02.095

for these to be changed where necessary.

42

00:02:04.225 --> 00:02:05.685

So that's the position, uh,

43

00:02:06.015 --> 00:02:08.125

under the legal regime, which currently exists.

44

00:02:09.945 --> 00:02:14.485

In any event, this draft DCO does give an

45

00:02:14.485 --> 00:02:18.925

additional layer of, um, uh,

46

00:02:19.235 --> 00:02:21.965

control to the S-S-A-S-H-A,

47

00:02:21.965 --> 00:02:24.085

and that's in the protective provisions

48

00:02:24.625 --> 00:02:26.285

in part one of Schedule four.

49

00:02:27.785 --> 00:02:32.365

And I'd, um, highlight in particular paragraph three,

50

00:02:33.575 --> 00:02:38.445

which effectively replaces the current, um, ability

51

00:02:38.625 --> 00:02:42.005

of the SHA to license works.

52

00:02:44.105 --> 00:02:48.765

So paragraph three, uh, is prior to the commence

53

00:02:48.765 --> 00:02:52.365

of development, um, the undertaken must submit

54

00:02:52.365 --> 00:02:55.085

to the statutory conservancy and navigation authority plans

55

00:02:55.085 --> 00:02:57.685

and sections of the title works, et cetera.

56

00:02:58.395 --> 00:02:59.925

It's then an approval process,

57

00:03:01.545 --> 00:03:04.165

and approval may be given subject

58

00:03:04.185 --> 00:03:08.805

to such reasonable requirements as the conservancy may make

59

00:03:08.825 --> 00:03:12.485

for the protection of trafficking or flow or the flow

60

00:03:12.505 --> 00:03:13.525

or regime of the river.

61

00:03:16.345 --> 00:03:18.525

So that's the first point, is

62

00:03:18.525 --> 00:03:20.005

that's in relation to construction.

63

00:03:20.395 --> 00:03:25.125

There's then paragraph 16, which is

64

00:03:25.125 --> 00:03:27.325

before commencing Marine commercial Operations,

65

00:03:27.505 --> 00:03:31.405

the undertake of a submit to the conservancy for approval

66

00:03:31.425 --> 00:03:34.085

of written statement of proposed safe operating procedures

67

00:03:34.425 --> 00:03:36.805

for access to an egress from the authorized development

68

00:03:36.905 --> 00:03:39.085

and must operate the authorized development only in

69

00:03:39.085 --> 00:03:42.365

accordance with such procedure as approved, including any

70

00:03:43.005 --> 00:03:44.805

approved alteration made from time to time.

71

00:03:45.705 --> 00:03:49.205

So that is the, the mechanism by which there is a, uh,

72

00:03:50.205 --> 00:03:51.805

a requirement on the, uh,

73

00:03:51.805 --> 00:03:53.565

it's obviously a protective provision for the SHA,

74

00:03:53.565 --> 00:03:55.885

but it's also a requirement on the SHA

75

00:03:56.305 --> 00:03:59.845

to look specifically at this development, uh,

76

00:03:59.985 --> 00:04:02.885

and to consider the operating procedures.

77

00:04:05.785 --> 00:04:08.765

And that is entirely consistent with the statutory regime

78

00:04:09.355 --> 00:04:13.165

currently in place, uh, which is why

79

00:04:14.385 --> 00:04:18.125

we say, or I say on behalf of the Harbor Master,

80

00:04:18.795 --> 00:04:21.005

there's no requirement for a permission

81

00:04:22.305 --> 00:04:25.165

to be granted under Section 154 of the Planning Act

82

00:04:25.355 --> 00:04:28.925

because this is not, uh, interfering

83

00:04:29.955 --> 00:04:32.085

with the powers of the Harbor Authority.

84

00:04:32.465 --> 00:04:37.085

So I hope that helps. Thank you,

85

00:05:23.835 --> 00:05:24.835

Mr. Hiland, if

86

00:05:24.835 --> 00:05:25.895

you'd like to make the points

87

00:05:25.895 --> 00:05:27.415

that you, you were going to make earlier.

88

00:05:28.835 --> 00:05:31.935

Thanks David Alvin for iot.

89

00:05:33.385 --> 00:05:37.425

I mean, I, I share the points of concern

90

00:05:37.425 --> 00:05:41.905

that have been expressed, uh, by DFDS and CLDN

91

00:05:42.005 --> 00:05:45.785

and indeed by Mr. Bradley about the mechanism for securing,

92

00:05:46.565 --> 00:05:51.145

um, uh, the, uh, DC0 both operationally

93

00:05:51.165 --> 00:05:52.945

and in terms of protective provisions.

94

00:05:53.735 --> 00:05:55.345

I've already made clear

95

00:05:55.605 --> 00:05:58.365

and will address this further in writing our concerns about

96

00:05:58.365 --> 00:05:59.885

the environmental impact assessment.

97

00:06:00.745 --> 00:06:03.805

Uh, the problem with a, um, an emerging

98

00:06:04.145 --> 00:06:07.965

or, um, adaptive NRA

99

00:06:09.105 --> 00:06:13.965

is of course, the NRA is itself part of the ES,

100

00:06:14.825 --> 00:06:17.125

uh, it's of course part of Appendix 10

101

00:06:18.385 --> 00:06:21.205

and ties into the assessment of effects of construction

102

00:06:21.225 --> 00:06:24.845

and operations of the proposed development.

103

00:06:27.495 --> 00:06:30.085

We've already expressed our concerns about the failure

104

00:06:30.185 --> 00:06:33.325

to assess actually what is being proposed in terms

105

00:06:33.325 --> 00:06:35.565

of the design vessel, and I don't go over that again.

106

00:06:38.365 --> 00:06:42.425

Uh, we will address you on the law, um, uh, in due course.

107

00:06:43.695 --> 00:06:48.025

However, part of the ES pro, the EIA process,

108

00:06:48.965 --> 00:06:53.745

um, is to set mitigation as a result of the assessment

109

00:06:55.165 --> 00:07:00.105

and, uh, to allow consultation on the ES itself.

110

00:07:01.645 --> 00:07:03.785

Now, an adaptive NRA

111

00:07:04.645 --> 00:07:09.145

or a changing NRA is an amendment to the ES by definition,

112

00:07:10.885 --> 00:07:14.825

and I just raised the question without proffering a solution

113

00:07:14.825 --> 00:07:19.185

at this stage, that that would have to be allowed

114

00:07:19.205 --> 00:07:22.625

for consultation as additional information to be lawful.

115

00:07:24.345 --> 00:07:27.185

Secondly, simply leaving matters up

116

00:07:27.925 --> 00:07:31.265

to the statutory harbor authority

117

00:07:32.285 --> 00:07:35.545

is not clearly securing mitigation.

118

00:07:36.145 --> 00:07:37.825

A framework is necessary.

119

00:07:38.805 --> 00:07:42.185

And as with CLDN, I would suggest

120

00:07:42.185 --> 00:07:44.825

that an appropriate arbiter is the Secretary of State,

121

00:07:44.955 --> 00:07:48.625

given the importance to National Fuel security, at least

122

00:07:48.885 --> 00:07:50.865

of the IO OT operators.

123

00:07:53.085 --> 00:07:56.665

Uh, it's not enough as ABP seeks to do, to say, oh, well,

124

00:07:56.665 --> 00:07:59.385

you've got a lot of cases of multiple regimes.

125

00:07:59.385 --> 00:08:01.225

Well, that is true. Um,

126

00:08:01.685 --> 00:08:04.665

but you usually have greater clarity than the sort

127

00:08:04.665 --> 00:08:07.265

of position that we've got here,

128

00:08:07.505 --> 00:08:12.385

particularly if the NRA is going to evolve over time.

129

00:08:16.485 --> 00:08:18.905

If you are doing a, a, a waste facility,

130

00:08:19.395 --> 00:08:23.665

which in fact is my next job, um, you would expect

131

00:08:24.595 --> 00:08:29.425

regulation from the Environment Agency for a permit, uh,

132

00:08:29.445 --> 00:08:32.825

to go with that waste facility, you would expect

133

00:08:32.885 --> 00:08:34.585

to have some idea at least of

134

00:08:34.585 --> 00:08:36.625

what the proposed license conditions are.

135

00:08:37.405 --> 00:08:40.225

Uh, the EA has its own jurisdiction

136

00:08:40.405 --> 00:08:42.385

and it will normally issue a draft decision

137

00:08:42.405 --> 00:08:43.945

or at least a draft permit,

138

00:08:44.205 --> 00:08:45.625

so you know what you're dealing with.

139

00:08:46.485 --> 00:08:47.905

We aren't in that position here,

140

00:08:48.045 --> 00:08:51.785

and we cannot be in that position if we are having a

141

00:08:53.085 --> 00:08:54.205

changing NRA,

142

00:08:55.845 --> 00:08:59.005

assuming the consultation requirements can be complied with,

143

00:08:59.845 --> 00:09:03.645

bearing in mind that the EIA has to be appropriate

144

00:09:04.145 --> 00:09:05.965

before consent can be issued

145

00:09:06.305 --> 00:09:09.045

and must be taken into account in the issue of consent,

146

00:09:10.905 --> 00:09:14.565

it may be that the appropriate way to deal with this is

147

00:09:14.565 --> 00:09:17.405

to leave matters as they stand at the date of any decision.

148

00:09:17.465 --> 00:09:19.685

If the Secretary of State considers it appropriate

149

00:09:19.705 --> 00:09:20.805

to make the DCA

150

00:09:21.745 --> 00:09:24.765

and for variations to be applied for in future,

151

00:09:26.475 --> 00:09:27.605

it's difficult to see

152

00:09:27.665 --> 00:09:30.605

how you can secure compliance with the law.

153

00:09:32.195 --> 00:09:36.405

Otherwise, it would be possible

154

00:09:36.825 --> 00:09:40.805

to have a mechanism, uh, to, if you are going

155

00:09:40.805 --> 00:09:44.845

to have an adaptive mechanism for the NRA to change,

156

00:09:45.825 --> 00:09:49.445

to have a subsidiary effectively subsidiary consenting

157

00:09:49.445 --> 00:09:51.205

process within the DCO.

158

00:09:51.445 --> 00:09:53.645

Although this lies well outside the terms

159

00:09:53.645 --> 00:09:56.125

of the current draft, uh,

160

00:09:56.475 --> 00:09:58.565

whereby there would be additional consultation

161

00:09:58.905 --> 00:10:02.885

and third party adjudication, IE the Secretary of State,

162

00:10:06.555 --> 00:10:09.285

Because of course you can have subsequent,

163

00:10:09.905 --> 00:10:12.245

if you take the analogy with planning applications

164

00:10:12.245 --> 00:10:15.005

and the like, you can have subsequent application, EI, a

165

00:10:15.585 --> 00:10:17.765

Barker case Commissioner and the uk.

166

00:10:18.985 --> 00:10:21.645

But what I don't see is, uh, understand is

167

00:10:21.665 --> 00:10:25.325

how lawfully you can achieve that either without a variation

168

00:10:25.945 --> 00:10:29.085

or without some mechanism built into the DCO,

169

00:10:29.455 --> 00:10:33.565

which would allow this, uh, continuation of the NRA process

170

00:10:34.305 --> 00:10:35.765

and securing of mitigation.

171

00:10:39.265 --> 00:10:40.765

And, uh, just just

172

00:10:41.345 --> 00:10:46.045

before we get too interested in what seemed to be,

173

00:10:46.145 --> 00:10:48.565

uh, operational controls, of course, I need

174

00:10:48.565 --> 00:10:51.085

to reiterate the fact, which I'm sure you are well aware of,

175

00:10:51.395 --> 00:10:53.805
that we are not satisfied ourselves,

176

00:10:53.805 --> 00:10:56.845
that operational controls are themselves sufficient,

177

00:10:57.425 --> 00:10:59.605
and we're looking for physical measures as well.

178

00:11:03.595 --> 00:11:04.595
Thank you

179

00:11:08.775 --> 00:11:09.775
Mrs. Drawn

180

00:11:09.775 --> 00:11:10.555
for the applicant,

181

00:11:15.325 --> 00:11:16.595
James drawn for the applicant.

182

00:11:17.375 --> 00:11:20.195
So I'm gonna pick up on comments made

183

00:11:20.195 --> 00:11:23.515
before the adjournment as well, so I,

184

00:11:23.775 --> 00:11:27.515
it won't respond directly to the points in, uh, I'll,

185

00:11:27.515 --> 00:11:28.915
I'll try and take them all together.

186

00:11:29.075 --> 00:11:33.035
I may the, the first of all, so far as the

187

00:11:33.575 --> 00:11:36.715
law is concerned, I agree entirely

188

00:11:36.715 --> 00:11:38.955

with the legal submissions made by Ms.

189

00:11:38.975 --> 00:11:43.155

Hutton and it chimes with the

190

00:11:44.175 --> 00:11:47.035

points I've already made to you that

191

00:11:47.805 --> 00:11:52.075

there is a basic flaw in the

192

00:11:52.675 --> 00:11:57.125

approach, which is premised on the notion that the

193

00:11:57.915 --> 00:11:59.845

statutory harbor authorities

194

00:12:00.515 --> 00:12:03.605

will do anything other than exercise their duties

195

00:12:03.785 --> 00:12:04.845

in accordance with the law.

196

00:12:05.905 --> 00:12:07.445

But I won't repeat those submissions,

197

00:12:08.625 --> 00:12:10.285

but going back then in,

198

00:12:10.985 --> 00:12:13.725

before we deal with the questions of independence,

199

00:12:13.725 --> 00:12:15.805

going back to the question of the NRA,

200

00:12:15.865 --> 00:12:18.845

and I think the way this originally started was,

201

00:12:18.985 --> 00:12:21.285

is there a need for the NRA to be

202

00:12:22.155 --> 00:12:24.285
reflected in requirement 15?

203

00:12:24.465 --> 00:12:26.885
You recall? That's how the conversation started.

204

00:12:28.755 --> 00:12:32.005
Just to be clear, the applicant has no,

205

00:12:32.145 --> 00:12:36.685
and never has any fundamental objection to the NRA

206

00:12:37.295 --> 00:12:41.685
being reflected or referred to in requirement 15.

207

00:12:41.945 --> 00:12:44.445
Indeed, we put forward the DC0 on that basis.

208

00:12:47.025 --> 00:12:51.085
The examining authority asked us to reflect on that as to

209

00:12:51.155 --> 00:12:52.845
what it added.

210

00:12:54.425 --> 00:12:57.285
And on reflection as you asked us,

211

00:12:57.585 --> 00:12:59.205
we didn't think it did add,

212

00:13:00.505 --> 00:13:02.445
and there are two basic reasons for that.

213

00:13:04.105 --> 00:13:06.445
The first is, as I've already pointed out,

214

00:13:07.185 --> 00:13:11.085
the NRA forms part of the environmental statement

215

00:13:12.545 --> 00:13:15.925

and is a document for certification as such.

216

00:13:21.185 --> 00:13:25.365

And the second is that the, whilst we're content

217

00:13:25.365 --> 00:13:28.405

for the NRA to be incorporated in the way we suggested

218

00:13:28.785 --> 00:13:30.405

or not, or left as it is

219

00:13:30.425 --> 00:13:33.245

as the certified document under the environmental statement,

220

00:13:34.225 --> 00:13:37.925

as a matter of principle, what it's identifying in relation

221

00:13:37.985 --> 00:13:42.645

to the measures that will be used are ones

222

00:13:42.995 --> 00:13:45.725

that are secured through the other

223

00:13:47.125 --> 00:13:49.365

regulatory regime that we've identified,

224

00:13:51.155 --> 00:13:52.765

without repeating all of those points,

225

00:13:52.905 --> 00:13:57.845

but the way the births will be operated, et cetera.

226

00:14:00.745 --> 00:14:02.605

So I just want to be clear,

227

00:14:02.605 --> 00:14:04.405

we haven't got a fundamental objection either way,

228

00:14:04.405 --> 00:14:06.725

which you asked us to consider the point we've done it,

229

00:14:06.725 --> 00:14:08.005
and as a matter of principle,

230

00:14:08.495 --> 00:14:10.125
where it's reflected in that way.

231

00:14:10.135 --> 00:14:11.965
There isn't actually a reflect, a need

232

00:14:11.985 --> 00:14:16.845
to specify it again in requirement 15, that

233

00:14:17.365 --> 00:14:22.245
I would point out is consistent with all

234

00:14:23.465 --> 00:14:26.725
the other DCOS stroke approvals that

235

00:14:28.665 --> 00:14:29.725
I'm aware of currently.

236

00:14:29.725 --> 00:14:32.205
Others may know of more, I don't know except

237

00:14:32.265 --> 00:14:35.045
for Tilbury two, where it was

238

00:14:35.595 --> 00:14:39.045
reflected in requirement in a specific requirement.

239

00:14:41.745 --> 00:14:45.645
And in that respect, it's probably important to,

240

00:14:46.345 --> 00:14:48.005
rather than get hung up on

241

00:14:48.675 --> 00:14:50.365
whether something's done in one document

242

00:14:50.365 --> 00:14:52.525

or another, just to reflect on the substance

243

00:14:52.525 --> 00:14:56.525
of what's going on in the Tilbury two NRA,

244

00:14:56.525 --> 00:15:01.005
which I've looked at over the lunch in German, uh,

245

00:15:01.005 --> 00:15:03.965
suggest if, if I can bear on the patience

246

00:15:03.965 --> 00:15:05.845
of the exam authority, they might want to do the same.

247

00:15:06.545 --> 00:15:10.925
But the NRA for TILBURY two are very much shorter document,

248

00:15:11.815 --> 00:15:14.965
which may help inform some of the criticisms

249

00:15:15.115 --> 00:15:18.085
that are now being advanced against our much

250

00:15:18.085 --> 00:15:19.245
more comprehensive NRA.

251

00:15:19.245 --> 00:15:20.245
But leave that aside.

252

00:15:21.025 --> 00:15:25.285
The NRA in question was identifying at the outset,

253

00:15:25.665 --> 00:15:29.485
the continuation of operational controls

254

00:15:29.715 --> 00:15:31.685
that would be exercised by the

255

00:15:32.325 --> 00:15:36.845
relevant statutory harbor authority as a given.

256

00:15:42.305 --> 00:15:45.965

And the NRA then went on to look at

257

00:15:48.175 --> 00:15:52.785

some risks and potential design responses

258

00:15:53.385 --> 00:15:54.905

IE to the physical infrastructure.

259

00:15:59.525 --> 00:16:03.785

And you'll see further that it is

260

00:16:04.375 --> 00:16:08.225

presupposes further simulation to be done

261

00:16:09.435 --> 00:16:13.105

after the hazard assessment to inform future design

262

00:16:14.285 --> 00:16:17.505

detail in the implementation of the DCO.

263

00:16:21.405 --> 00:16:24.225

So specifying, which still be two, seems

264

00:16:24.225 --> 00:16:26.825

to be an exception rather than the rule specifying

265

00:16:27.805 --> 00:16:31.145

the requirement to observe the NRA in that case

266

00:16:31.885 --> 00:16:33.985

may well have been because it was referring

267

00:16:33.985 --> 00:16:37.625

to design changes that have been identified.

268

00:16:37.985 --> 00:16:41.505

Physical design changes insofar as it was dealing

269

00:16:41.505 --> 00:16:44.865

with operational controls, it didn't specify them.

270

00:16:45.085 --> 00:16:46.505

And indeed it's consistent

271

00:16:46.505 --> 00:16:48.585

with our approach that it wouldn't have done.

272

00:16:49.085 --> 00:16:52.385

And so dcos, like the able DCO

273

00:16:52.385 --> 00:16:55.345

to which you've been referred other, uh, no doubt,

274

00:16:55.345 --> 00:16:56.585

wind farms and

275

00:16:56.585 --> 00:16:59.825

of course harbor revision orders wouldn't seek to specify

276

00:17:01.525 --> 00:17:04.385

in nras operational controls of that kind

277

00:17:04.385 --> 00:17:06.785

because of that separate regulatory regime.

278

00:17:09.925 --> 00:17:12.345

So it is important to look at the substance of these things,

279

00:17:12.805 --> 00:17:14.385

but I, I come back to the point

280

00:17:15.095 --> 00:17:18.305

that we have no fundamental objection, of course, in

281

00:17:19.685 --> 00:17:21.545

the NRA we produced

282

00:17:21.725 --> 00:17:24.985

and the principles, it's expressing being reflected on the

283

00:17:24.985 --> 00:17:27.945

face of the order, uh, by referring to the NRA.

284

00:17:31.175 --> 00:17:34.985

That is a different

285

00:17:35.735 --> 00:17:38.865

proposition, if I can put it that way, to

286

00:17:40.045 --> 00:17:43.105

the conflated submissions with the question, or sorry,

287

00:17:43.105 --> 00:17:45.665

before I deal with those, the question of, uh, independence,

288

00:17:45.685 --> 00:17:46.705

can I just deal with Mr.

289

00:17:47.155 --> 00:17:51.285

vin's? Uh, question about a adaptive NRA,

290

00:17:53.225 --> 00:17:57.045

The, to be clear, we have carried out

291

00:17:58.205 --> 00:18:01.765

a an NRA for the purposes

292

00:18:01.985 --> 00:18:05.565

of the environmental statement to assess the effects on

293

00:18:06.575 --> 00:18:11.205

navigation, which

294

00:18:12.585 --> 00:18:15.245

has been carried out by independent consultants,

295

00:18:17.105 --> 00:18:21.245

the conclusions of which have been endorsed by the HAS board

296

00:18:21.985 --> 00:18:26.205

and which we maintain properly assesses the relevant risks.

297

00:18:28.065 --> 00:18:30.205

The examining authority in the course

298

00:18:30.225 --> 00:18:32.805

of the examination has identified

299

00:18:33.035 --> 00:18:35.925

that others have come forward with their own

300

00:18:36.595 --> 00:18:38.845

nras in the examination process.

301

00:18:39.745 --> 00:18:41.325

And you've seen those two others.

302

00:18:41.585 --> 00:18:44.245

We disagree with the outputs,

303

00:18:45.145 --> 00:18:47.605

but there has been further information brought

304

00:18:47.605 --> 00:18:49.165

during the course of the examination

305

00:18:49.905 --> 00:18:54.085

and the examining authority has observed as to the

306

00:18:55.385 --> 00:18:57.445

merits, or I dunno if they put it quite in that way,

307

00:18:57.445 --> 00:19:00.605

but the, the observation about the has board

308

00:19:02.155 --> 00:19:05.805

reviewing all the material that then emerges

309

00:19:06.555 --> 00:19:08.205

through a process such as this.

310

00:19:08.345 --> 00:19:11.285

And we've indicated in principle we're content to do that.

311

00:19:11.395 --> 00:19:13.645

I've already, uh, made that clear,

312

00:19:17.665 --> 00:19:22.125

but that is not, uh, if, if MR suggesting

313

00:19:23.805 --> 00:19:26.965

a, an adaptive NRA is the way he put it,

314

00:19:27.545 --> 00:19:31.125

but part of a responsible approach

315

00:19:31.265 --> 00:19:34.205

to the underlying duty in the Port Marine Safety Code,

316

00:19:34.935 --> 00:19:37.125

where there is an ongoing duty regardless

317

00:19:37.185 --> 00:19:40.605

of environmental impact assessment, which is we satisfy

318

00:19:40.785 --> 00:19:42.245

for the purpose of bringing the application,

319

00:19:43.065 --> 00:19:47.325

but an ongoing duty on the duty holder, which will apply

320

00:19:48.325 --> 00:19:52.045

regardless of the outcome of this case, that in the future,

321

00:19:52.345 --> 00:19:55.845

but in light of information that's, that's been identified,

322

00:19:56.505 --> 00:19:59.925

the a willingness to continue to review

323

00:20:01.715 --> 00:20:05.005

Others' views of the risk

324

00:20:05.705 --> 00:20:08.725

and come to a a, a, an informed decision.

325

00:20:09.745 --> 00:20:12.085

And that should not be confused with the notion

326

00:20:12.085 --> 00:20:14.325

that there is some inherent defect

327

00:20:14.865 --> 00:20:18.965

in the environmental statement, which did that as compared

328

00:20:18.995 --> 00:20:22.005

with the assimilation of further information

329

00:20:22.025 --> 00:20:25.405

as it's referred to under the EIA regulations,

330

00:20:26.975 --> 00:20:28.925

Which will inform the Secretary of State,

331

00:20:29.145 --> 00:20:32.485

but as a prior step is going to inform the HAS board.

332

00:20:32.625 --> 00:20:34.925

And I can't speak to what the HAS board's

333

00:20:35.495 --> 00:20:38.405

views will be on the further information,

334

00:20:38.405 --> 00:20:41.685

because that's the basic principle that they should be able

335

00:20:41.705 --> 00:20:45.925

to express those views informed by the relevant information.

336

00:20:46.305 --> 00:20:48.965

But the fact that they're getting prepared to do that

337

00:20:49.785 --> 00:20:54.205
is actually, um, indicative of their performance

338

00:20:54.205 --> 00:20:56.485
of their Port Marine Safety Code obligations.

339

00:20:57.865 --> 00:20:59.525
Not a recognition

340

00:20:59.525 --> 00:21:02.565
that there's some inherent defect in the NRA itself,

341

00:21:02.905 --> 00:21:05.965
but rather a recognition that people have come along

342

00:21:05.965 --> 00:21:08.565
with more information they want the has board to consider.

343

00:21:08.865 --> 00:21:10.845
And we're acting on the examining authorities'

344

00:21:11.435 --> 00:21:12.645
impetus in that respect.

345

00:21:13.665 --> 00:21:16.605
So I don't accept for a moment I make that clear

346

00:21:16.875 --> 00:21:20.765
that this is a new NRA for EIA purposes

347

00:21:21.225 --> 00:21:23.365
or a new document for, in that sense,

348

00:21:24.155 --> 00:21:26.605
it's supplementary information which is going to be

349

00:21:27.205 --> 00:21:28.805
properly considered, and then

350

00:21:29.565 --> 00:21:33.125

whatever conclusions reached will will inform the, um,

351

00:21:34.625 --> 00:21:35.725

the examining authority.

352

00:21:38.025 --> 00:21:42.125

So there is no EIA regulation issue at all,

353

00:21:42.985 --> 00:21:45.925

and that is, again, seeking to do precisely what

354

00:21:46.955 --> 00:21:49.165

Lord Justice Sullivan identified as the

355

00:21:49.885 --> 00:21:52.565

treating the environmental impact assessment as a,

356

00:21:52.905 --> 00:21:56.765

as an obstacle course rather than a, a, a process

357

00:21:56.905 --> 00:21:59.725

of assimilating information, getting other people's views on

358

00:21:59.725 --> 00:22:03.165

that information and enabling a fully informed decision.

359

00:22:03.505 --> 00:22:04.925

The two things are very distinct,

360

00:22:05.025 --> 00:22:08.045

and it's unfortunate that it's been put in the way of, of,

361

00:22:08.065 --> 00:22:09.645

um, informed decision making.

362

00:22:10.985 --> 00:22:14.965

Can I then just deal briefly with this idea of the Secretary

363

00:22:14.965 --> 00:22:19.245

of State becoming the decision maker in relation

364

00:22:19.405 --> 00:22:21.005
to Harbor Authority matters?

365

00:22:22.335 --> 00:22:27.045
First of all, that notion is posited on the false premise

366

00:22:27.145 --> 00:22:29.725
of identified earlier as a matter of law which Ms.

367

00:22:29.725 --> 00:22:30.725
Hutton's spoken to.

368

00:22:31.665 --> 00:22:32.965
It does simply doesn't arise

369

00:22:32.985 --> 00:22:37.765
unless you presuppose some, uh, lack of independence

370

00:22:37.765 --> 00:22:40.405
or in conflict of interest, which simply doesn't exist.

371

00:22:42.165 --> 00:22:47.005
Secondly, I, I as a, as, as a, as a lawyer, fundamentally

372

00:22:48.225 --> 00:22:51.965
reject the notion that there's any proper legal foundation

373

00:22:52.185 --> 00:22:53.845
for such a submission that's been put

374

00:22:53.845 --> 00:22:56.205
before this examining authority

375

00:22:56.625 --> 00:22:59.885
to question the Harbor Master's independence

376

00:23:00.705 --> 00:23:04.085
or any part of the statutory Harbor authorities independence

377

00:23:04.145 --> 00:23:06.525

in the exercise of their statutory functions.

378

00:23:08.305 --> 00:23:10.125

And Mr.

379

00:23:10.215 --> 00:23:13.885

Elvin recognizes that there are lots of other, uh,

380

00:23:14.855 --> 00:23:19.245

situations where one body has different functions,

381

00:23:19.245 --> 00:23:20.805

which is obviously the case,

382

00:23:22.265 --> 00:23:27.005

and it does not affected by the significance

383

00:23:27.625 --> 00:23:30.725

to the, in this case, IO OT operators of their interests.

384

00:23:31.225 --> 00:23:34.645

And it can't be any more than a,

385

00:23:34.845 --> 00:23:38.605

a local authority applying for permission to build a school

386

00:23:39.385 --> 00:23:42.445

and seeking approval of the access which involves the safety

387

00:23:42.505 --> 00:23:46.325

of children accessing the school, which would be of a matter

388

00:23:46.325 --> 00:23:51.125

of significant public concern that anymore one would suggest

389

00:23:51.125 --> 00:23:54.365

that the local highway authority in approving the school's

390

00:23:54.945 --> 00:23:59.445

pro uh, decision would somehow allow a conflict of interest

391

00:23:59.545 --> 00:24:02.885

to compromise the integrity of their decision making

392

00:24:03.465 --> 00:24:07.925

on the safety of that design for safe operation by children.

393

00:24:09.345 --> 00:24:13.965

The different nature of it being oil versus safety

394

00:24:14.065 --> 00:24:17.445

of children doesn't and can't affect the legal principles.

395

00:24:18.305 --> 00:24:20.165

So it's an unprecedented,

396

00:24:21.205 --> 00:24:23.605

evidenced an unprincipled objection

397

00:24:23.985 --> 00:24:26.325

to the basics statutory separation.

398

00:24:28.145 --> 00:24:31.165

It therefore doesn't require a different decision maker.

399

00:24:32.545 --> 00:24:36.685

And in principle, it would be an extraordinary step,

400

00:24:37.545 --> 00:24:40.085

not, I assume welcome by the S of state,

401

00:24:40.705 --> 00:24:42.885

but you just have to think of the implications

402

00:24:43.075 --> 00:24:46.845

that the sector state was somehow better placed

403

00:24:47.385 --> 00:24:50.165

to make the ultimate decision on the safety of the harbor

404

00:24:50.955 --> 00:24:54.485

than the harbor master with his years of experience

405

00:24:54.485 --> 00:24:57.285

and ability to draw on all of those who work

406

00:24:57.345 --> 00:25:00.725

for him in terms of pilotage, his knowledge

407

00:25:00.725 --> 00:25:04.285

of all the different types of ships that operate, which

408

00:25:04.285 --> 00:25:06.885

of course is different to the individual operators.

409

00:25:07.345 --> 00:25:09.445

The IOT operate tankers,

410

00:25:10.565 --> 00:25:13.125

DFDS operate ro the Harbor Master,

411

00:25:13.345 --> 00:25:16.965

and those who work under him, uh, have the experience

412

00:25:17.205 --> 00:25:18.885

of controlling, operating

413

00:25:18.905 --> 00:25:22.965

and, um, overseeing the safety of the harbor for all

414

00:25:22.965 --> 00:25:24.885

of those vessels in the way they operate.

415

00:25:26.305 --> 00:25:27.725

But to suggest that the Secretary

416

00:25:27.725 --> 00:25:29.605

of State becomes the arbiter of that sort

417

00:25:29.605 --> 00:25:33.045

of decision making, uh, is, is a bizarre concept.

418

00:25:35.765 --> 00:25:39.545

But of course, there's a further principle

419

00:25:39.545 --> 00:25:41.905

that the Secretary State would then be taking on the

420

00:25:42.145 --> 00:25:45.265

functions of the duty holder under the Port Marine Safety

421

00:25:45.415 --> 00:25:49.305

Code, and no doubt consequently the liabilities.

422

00:25:52.405 --> 00:25:56.545

And that's an even more bizarre proposition in this context.

423

00:25:58.405 --> 00:26:01.465

The statutory Harbor authorities not only are vested

424

00:26:01.465 --> 00:26:05.705

with exercising those functions responsibly, independently

425

00:26:06.245 --> 00:26:07.585

and safely, but

426

00:26:07.585 --> 00:26:09.985

of course they have liabilities which flow from

427

00:26:10.295 --> 00:26:11.705

that responsibility.

428

00:26:13.205 --> 00:26:17.745

And another incentive if one would not needed any greater

429

00:26:17.745 --> 00:26:19.945

incentive to act, uh, responsibly and safely.

430

00:26:20.365 --> 00:26:22.425

But to transfer that, uh,

431

00:26:22.425 --> 00:26:25.785

onto the Secretary State in circumstances which simply

432

00:26:26.605 --> 00:26:28.105

not warranted in any shape

433

00:26:28.105 --> 00:26:31.025

or form, uh, again, is a bizarre proposition.

434

00:26:32.925 --> 00:26:37.305

So for those reasons, uh, sir, we, we submit that the

435

00:26:38.185 --> 00:26:42.465

ordinary operation, uh, in accordance with the law

436

00:26:44.395 --> 00:26:47.285

does not merit this notion of

437

00:26:47.945 --> 00:26:50.725

in creating some different orbit of, in relation

438

00:26:50.725 --> 00:26:53.965

to statutory Harbor authority functions in relation to

439

00:26:54.745 --> 00:26:56.445

the safe operation of this harbor.

440

00:27:20.835 --> 00:27:22.065

Thank you, Mr. Tron. Um,

441

00:27:22.085 --> 00:27:26.545

before passing to the ips, uh, an observation here is that

442

00:27:28.245 --> 00:27:31.185

whilst cogent in respect to navigational safety

443

00:27:31.325 --> 00:27:36.265

and the safety of, of, of like the operation of the, uh,

444

00:27:36.265 --> 00:27:40.745

harbor and port, um, that proposition is in

445

00:27:41.565 --> 00:27:45.585

itself, uh, that you make in itself, uh, coherent.

446

00:27:45.585 --> 00:27:48.185

What it doesn't do is address the point that, uh, the safety

447

00:27:48.405 --> 00:27:53.265

of the oil terminal is not within the,

448

00:27:54.005 --> 00:27:58.305

uh, jurisdiction of the, uh, of the SHA.

449

00:28:00.325 --> 00:28:01.385

And so it's a different,

450

00:28:01.575 --> 00:28:03.705

it's a different safety re regime regime in other words.

451

00:28:03.765 --> 00:28:05.745

And that I think may be where we need

452

00:28:05.745 --> 00:28:10.065

to explore a little bit more, that is there a gap here

453

00:28:10.065 --> 00:28:12.105

that we need to be addressing in this DCO

454

00:28:14.555 --> 00:28:15.785

James Strong for the applicant?

455

00:28:15.785 --> 00:28:20.705

Thank you, sir. The, the, my understanding of in relation to

456

00:28:20.705 --> 00:28:23.505

that question is that the safety

457

00:28:23.965 --> 00:28:26.665

of the oil terminal is within the jurisdiction

458

00:28:26.665 --> 00:28:28.225

of the statutory Harbor authority,

459

00:28:28.745 --> 00:28:33.105

particularly since it's regulating the vessel traffic

460

00:28:33.725 --> 00:28:37.425

in, in and around the oil terminal, and is

461

00:28:37.425 --> 00:28:39.985

therefore responsible for that traffic.

462

00:28:41.645 --> 00:28:46.225

If, if the questions related to, for example, the oil

463

00:28:46.615 --> 00:28:50.185

that in relation to coma regulations, then

464

00:28:50.185 --> 00:28:54.465

of course the HSE remains the overseer in relation

465

00:28:54.465 --> 00:28:55.985

to regulation of that kind.

466

00:28:56.765 --> 00:29:01.105

Uh, and that covers their jurisdiction in relation

467

00:29:01.125 --> 00:29:03.385

to particularly the landside aspects.

468

00:29:04.125 --> 00:29:05.905

And so there is an overlap,

469

00:29:05.905 --> 00:29:09.625

but the HSE has already made its position clear in my

470

00:29:09.625 --> 00:29:11.785

submission as to the marine side

471

00:29:11.805 --> 00:29:13.865

and the regulation of traffic in

472

00:29:13.905 --> 00:29:18.505

and around the oil terminal, which could conflict

473

00:29:18.725 --> 00:29:23.465

and indeed allied not just our tr our proposed

474

00:29:23.465 --> 00:29:25.705

traffic, but any proposed traffic that is

475

00:29:26.005 --> 00:29:27.465

and remains the responsibility

476

00:29:27.485 --> 00:29:28.905

of the Statuary Harbor authority.

477

00:29:29.645 --> 00:29:33.785

And hence why the Harbor master, he can speak for himself,

478

00:29:33.805 --> 00:29:35.465

but has already made it clear

479

00:29:35.735 --> 00:29:40.665

that he's acutely conscious in making his judgements of

480

00:29:40.695 --> 00:29:41.925

that responsibility

481

00:29:42.785 --> 00:29:46.365

and hence his, his views in relation to simulations

482

00:29:46.365 --> 00:29:49.765

and the way he would approach ensuring the safety of,

483

00:29:49.865 --> 00:29:52.685

of the old terminal, as well as its continued operation,

484

00:29:52.685 --> 00:29:53.805

which is a slightly different issue.

485

00:29:53.825 --> 00:29:58.485

So I, in my submission, they are the two are the,

486

00:29:58.555 --> 00:30:00.685

there's no difference in what I said earlier

487

00:30:00.945 --> 00:30:01.965

to that principle.

488

00:30:02.635 --> 00:30:05.725

Perhaps you can help with our consideration

489

00:30:05.725 --> 00:30:10.565

that the HSE has opined on land use planning matters,

490

00:30:11.705 --> 00:30:14.685

but as far as I can see in the evidence, so far,

491

00:30:14.705 --> 00:30:19.005

the HSE has not been involved in looking at, uh,

492

00:30:19.145 --> 00:30:21.765

safety issues of the infrastructure.

493

00:30:24.185 --> 00:30:28.005

In other words, the, the, the, the, the trunk way

494

00:30:28.265 --> 00:30:29.485

and the, uh, PI

495

00:30:30.295 --> 00:30:31.485

James drawn for the applicant.

496

00:30:31.485 --> 00:30:33.485

Yes, sir. And that, and that, that is consistent with

497

00:30:33.515 --> 00:30:37.845

what has happened in, in all other cases, as I,

498

00:30:37.945 --> 00:30:39.805

as I think we've referred to previously

499

00:30:40.465 --> 00:30:42.805

and indeed navigational risk assessments

500

00:30:42.905 --> 00:30:47.565

and the way they're approached, that the NNRA

501

00:30:48.275 --> 00:30:52.005

process, uh, has risk matrices, et cetera.

502

00:30:52.315 --> 00:30:56.805

They're not the same as those adopted by the HSC,

503

00:30:57.135 --> 00:30:59.445

which is dealing with landside

504

00:30:59.545 --> 00:31:02.765

and in particular, population effects

505

00:31:03.695 --> 00:31:05.845

based on statistical processes.

506

00:31:06.785 --> 00:31:09.565

The obvious example, you've seen it in operation,

507

00:31:09.625 --> 00:31:13.965

but for example, gas, uh, storage, in this case,

508

00:31:14.065 --> 00:31:17.365

oil storage, where calculations can be done as

509

00:31:17.365 --> 00:31:21.645

to the effects of catastrophic events.

510

00:31:22.345 --> 00:31:25.445

But the risk factor the HSE is concerned

511

00:31:25.445 --> 00:31:27.245

with in those respects are

512

00:31:28.645 --> 00:31:30.085

multiple loss of life, for example.

513

00:31:30.265 --> 00:31:33.605

And therefore, there's a risk matrices approach of

514

00:31:33.665 --> 00:31:37.725

how long people can be present in concentrations

515

00:31:38.025 --> 00:31:39.365

by reference to proximity.

516

00:31:39.905 --> 00:31:43.005

And that's not the same principles save, of course,

517

00:31:43.035 --> 00:31:45.605

that they have expressed views about passengers

518

00:31:46.225 --> 00:31:47.685

and that you hence the restriction on

519

00:31:47.685 --> 00:31:49.805

passengers, uh, onshore

520

00:31:50.385 --> 00:31:51.385

In indeed.

521

00:31:51.465 --> 00:31:52.725

Um, the, the,

522

00:31:52.725 --> 00:31:55.965

the point in question though is, let's put it another way.

523

00:31:56.145 --> 00:31:59.365

Uh, is the, uh, IO OT trunk way

524

00:31:59.425 --> 00:32:03.165

and its piers, uh, landside or marine,

525

00:32:07.445 --> 00:32:11.225

The trunk way, I, I'm pretty sure they're, they're,

526

00:32:11.225 --> 00:32:13.345
they're marine, but I'm, I'm correct.

527

00:32:17.965 --> 00:32:21.905
And in, so in so doing the HSE has so far not,

528

00:32:22.285 --> 00:32:23.385
um, taken a position

529

00:32:26.555 --> 00:32:27.705
James form for the applicant.

530

00:32:27.805 --> 00:32:32.265
Yes, they, they have not taken a position on the

531

00:32:34.085 --> 00:32:37.225
marine navigational risk assessment, but

532

00:32:37.245 --> 00:32:40.965
nor would they, I mean, as in that is remains the function

533

00:32:41.665 --> 00:32:45.605
of the statutory Harbor authorities to assess

534

00:32:46.325 --> 00:32:47.605
navigational risk.

535

00:32:48.425 --> 00:32:51.885
And so that

536

00:32:52.185 --> 00:32:54.405
that's not just common to consideration

537

00:32:54.405 --> 00:32:56.045
of this proposed development,

538

00:32:56.545 --> 00:32:59.565
but common to the operation of the IO ot.

539

00:33:00.745 --> 00:33:03.205

Um, sorry, in case I've got anything wrong, I'm please,

540

00:33:04.305 --> 00:33:05.765

if I do, then someone will tell me,

541

00:33:05.865 --> 00:33:10.085

but that's common to the continued operation of the IO ot,

542

00:33:10.265 --> 00:33:14.045

the continued application of controls in

543

00:33:14.185 --> 00:33:18.965

and around the IO ot, then what's acceptable, for example,

544

00:33:19.525 --> 00:33:23.285

allowing priority to, uh, oil vessels

545

00:33:23.705 --> 00:33:24.725

and their birthing.

546

00:33:25.225 --> 00:33:27.565

So yes, you are right, yes, sir,

547

00:33:27.565 --> 00:33:30.645

that the HSE doesn't express views on that,

548

00:33:30.985 --> 00:33:32.565

but then they never do

549

00:33:32.585 --> 00:33:35.165

and wouldn't be expected to under their responsibilities.

550

00:33:35.225 --> 00:33:36.525

But the SHA does,

551

00:33:37.955 --> 00:33:40.765

Just on a fact, on that matter, I'm gonna ask just on, I,

552

00:33:40.965 --> 00:33:42.685

I was going to intervene, David Elley.

553

00:33:42.685 --> 00:33:44.525

That's right. But I'll put the question first.

554

00:33:44.635 --> 00:33:46.005

Yeah, please. Um,

555

00:33:46.595 --> 00:33:47.845

because we might want

556

00:33:47.845 --> 00:33:49.325

to ask the Harvard Master something first

557

00:33:49.325 --> 00:33:52.205

before we come to whatever I've, in terms

558

00:33:52.345 --> 00:33:56.485

of the actual Como site, what is the boundary

559

00:33:57.125 --> 00:33:58.365

Includes the trunk way,

560

00:33:59.785 --> 00:34:01.525

So, but so Trunk way,

561

00:34:01.665 --> 00:34:05.565

and does it then also include, include the finger P and

562

00:34:05.885 --> 00:34:06.885

I didn't think so. I think

563

00:34:06.885 --> 00:34:10.325

it's the trunk way. Oh, it does. I,

564

00:34:11.015 --> 00:34:12.765

Sorry, sorry, Sorry, Mr. Strong.

565

00:34:12.765 --> 00:34:13.765

Can I just Yeah, of

566

00:34:13.765 --> 00:34:14.245

Course. Get

567

00:34:14.245 --> 00:34:15.205

Instructions. Yeah.

568

00:34:16.165 --> 00:34:18.485

I think this becomes quite an important point. Yes.

569

00:34:18.985 --> 00:34:20.525

Yes. Coleman covers all,

570

00:34:20.625 --> 00:34:22.365

all the operations on the, on the, on the finger.

571

00:34:22.485 --> 00:34:23.485

P including the arms.

572

00:34:25.395 --> 00:34:28.015

Yes. Everything. It includes the operations

573

00:34:28.015 --> 00:34:29.175

on the finger p

574

00:34:29.835 --> 00:34:31.375

And the main pier.

575

00:34:31.795 --> 00:34:35.735

Yes. Uh, and you'll note from the HSE letter of,

576

00:34:35.935 --> 00:34:39.775

I think the 4th of November, hang on 13th of November,

577

00:34:39.945 --> 00:34:44.375

which is in rep 6 0 4 3,

578

00:34:45.125 --> 00:34:48.575

that what they say is that jurisdiction does not extend

579

00:34:48.575 --> 00:34:50.735

of vessels in the marine environment.

580

00:34:51.355 --> 00:34:53.255

And then paragraph five, this, that's the end

581

00:34:53.255 --> 00:34:55.815

of paragraph four in paragraph five, which follows, it says,

582

00:34:56.555 --> 00:35:00.455

um, uh, uh, given

583

00:35:00.605 --> 00:35:03.095

that it hasn't expressed to you about, uh, about that,

584

00:35:03.195 --> 00:35:06.615

but I mean, we can put this informally, uh, uh,

585

00:35:06.715 --> 00:35:07.815

in a document for you.

586

00:35:07.915 --> 00:35:10.535

But our understanding is that coma applies

587

00:35:11.925 --> 00:35:15.655

despite the jetties going out, uh, beyond the land.

588

00:35:18.735 --> 00:35:20.595

So James Strong for the applicant.

589

00:35:20.705 --> 00:35:22.395

That is our understanding as well.

590

00:35:23.055 --> 00:35:25.795

Uh, I, my, I understood the question

591

00:35:25.795 --> 00:35:28.195

to be about expressing views in relation

592

00:35:28.195 --> 00:35:29.955

to the navigational risk assessment,

593

00:35:30.535 --> 00:35:33.235

but if, if, if I misunderstood, misunderstood

594

00:35:33.235 --> 00:35:38.085

or misstate the position, I, I'm, our understanding as I'm

595

00:35:38.615 --> 00:35:42.605

instructed behind me is that exactly that the coma

596

00:35:43.825 --> 00:35:46.605

categorization covers the trunk way.

597

00:35:47.065 --> 00:35:49.925

And I think also the finger pair, the,

598

00:35:50.185 --> 00:35:53.285

the question I was addressing was about the HSE expressing

599

00:35:53.295 --> 00:35:56.565

views on navigational risk,

600

00:35:56.815 --> 00:35:58.725

which I, I think Mr.

601

00:35:58.975 --> 00:36:01.205

Elvin is confirming is the same,

602

00:36:01.865 --> 00:36:05.445

and their calculation in relation to land use planning about

603

00:36:06.285 --> 00:36:10.485

catastrophic events being related to proximity of people

604

00:36:10.585 --> 00:36:12.085

to the, to those incidents.

605

00:36:13.945 --> 00:36:16.725

I'm not, I'm not sure I go, I, I, I agree with Mr.

606

00:36:17.005 --> 00:36:19.805

Raan up to a point, but I'm not sure I accept

607

00:36:19.805 --> 00:36:22.605

that they have no res that there is no jurisdiction.

608

00:36:23.385 --> 00:36:26.685

If the catastrophic event impacts upon the Coer side,

609

00:36:27.645 --> 00:36:29.165

I think there may well be an overlap there.

610

00:36:29.265 --> 00:36:31.885

And certainly it places significant duties on

611

00:36:32.385 --> 00:36:33.385

Iot. I I think there

612

00:36:33.385 --> 00:36:34.485

might be an overlap

613

00:36:34.485 --> 00:36:36.565

because if there were an incident that

614

00:36:37.165 --> 00:36:39.405

affected something on the finger p let's say,

615

00:36:39.745 --> 00:36:43.565

and there are some IO OT personnel on the finger peer,

616

00:36:44.625 --> 00:36:48.045

uh, HCC would be in their investigating the accident,

617

00:36:53.175 --> 00:36:54.565

James drawn for the applicant.

618

00:36:57.285 --> 00:36:59.445

I, again, if apologies if my,

619

00:36:59.465 --> 00:37:03.925

if it's the way I'm expressing myself, the HSCs approach

620

00:37:04.505 --> 00:37:07.685

to assessment in relation to that risk

621

00:37:07.745 --> 00:37:12.005

as they've already identified is Cal, their calculations

622

00:37:12.465 --> 00:37:16.605

and intolerability of risk are identified by reference

623

00:37:16.665 --> 00:37:21.165

to the effect of those events and proximity.

624

00:37:21.625 --> 00:37:23.805

You've seen reference in some of the NRA

625

00:37:23.805 --> 00:37:27.205

and we've made some observations of the I-O-T-N-R-A.

626

00:37:27.425 --> 00:37:29.205

Can I, can I just, sorry.

627

00:37:30.305 --> 00:37:33.005

My understanding of the evidence that we've recine

628

00:37:33.105 --> 00:37:35.245

so far is the HSE has ruled

629

00:37:35.465 --> 00:37:39.685

or opined on the potential for, uh,

630

00:37:41.355 --> 00:37:43.565

como sites surrounding the proposed development

631

00:37:43.985 --> 00:37:47.085

to have effects on the proposed development.

632

00:37:47.715 --> 00:37:50.965

They have not opined on the op the opposite, the,

633

00:37:50.985 --> 00:37:53.165

in other words, the possibility

634

00:37:53.465 --> 00:37:56.045

of the proposed development having effects on cytes.

635

00:37:58.335 --> 00:38:00.085

Maybe I could be corrected on that.

636

00:38:00.105 --> 00:38:02.485

If, if, if, if you wish, if,

637

00:38:04.065 --> 00:38:05.765

Uh, well, James, for the applicant,

638

00:38:05.965 --> 00:38:07.165

I, I will, I will check.

639

00:38:07.875 --> 00:38:10.205

Because the distinction,

640

00:38:10.505 --> 00:38:14.525

the way you put the distinction may be different

641

00:38:14.525 --> 00:38:15.925

to the way I've understood it

642

00:38:15.925 --> 00:38:19.405

or maybe actually coincident with the way I, I just need

643

00:38:19.405 --> 00:38:20.925

to check how they've expressed themselves.

644

00:38:21.785 --> 00:38:24.005

Can, can I just just point out that

645

00:38:24.355 --> 00:38:26.925

that is my understanding of paragraph five of the letter

646

00:38:27.395 --> 00:38:30.525

that I've just referred to also for clarifi, sorry,

647

00:38:30.525 --> 00:38:34.685

David Elvin for iot also, uh, clarification that in our coma

648

00:38:35.385 --> 00:38:40.245

duties, uh, of the IO report, the, one of the, uh,

649

00:38:40.595 --> 00:38:43.925

main two identified hazards is vessel collision

650

00:38:44.595 --> 00:38:49.325

with the oil infrastructure, we can make that available.

651

00:38:54.905 --> 00:38:57.035

Turning to Harbor Master,

652

00:38:59.505 --> 00:39:02.635

what role do you think you've got in, in all of

653

00:39:02.745 --> 00:39:06.755

that in terms of, uh, ensuring, um,

654

00:39:07.825 --> 00:39:09.315

that there isn't an incident?

655

00:39:10.065 --> 00:39:12.755

Because we, we do seem to be at the margins

656

00:39:12.855 --> 00:39:14.835

of two legislative areas.

657

00:39:18.955 --> 00:39:20.875

Victoria Hutton for the Harbor Master. Thank you, sir.

658

00:39:21.015 --> 00:39:24.075

Um, you would've heard the comments from Captain Furman

659

00:39:24.075 --> 00:39:26.075

earlier and indeed throughout this examination

660

00:39:26.745 --> 00:39:31.315

that the iot Trunk ways forefront of the mind, um,

661

00:39:31.695 --> 00:39:34.755
and I'll just ask him to explain, I think,

662

00:39:34.795 --> 00:39:38.115
and he has already explained that it is what it is one

663

00:39:38.115 --> 00:39:40.395
of the risks that is clearly to be taken into account,

664

00:39:40.535 --> 00:39:43.715
but Captain Furman might be able to explain that further.

665

00:39:47.535 --> 00:39:50.915
Andrew Furman, harbormaster Humber, uh, yes, sir.

666

00:39:51.015 --> 00:39:55.115
Uh, as is, as said, um, the, my real

667

00:39:56.115 --> 00:39:59.235
interest is in controlling all all navigational risks on the

668

00:39:59.315 --> 00:40:01.475
Humber, one of which is impact with structure,

669

00:40:01.935 --> 00:40:05.075
and one of which is impact with structure with with IOT.

670

00:40:05.415 --> 00:40:08.115
And again, in these circumstances, considering the trunk

671

00:40:08.115 --> 00:40:11.515
where, so I would see myself very much

672

00:40:12.495 --> 00:40:14.595
at the forefront of controlling those risks

673

00:40:14.775 --> 00:40:16.915
and preventing that impact, um,

674

00:40:17.095 --> 00:40:19.835

and being forefront in that risk assessment.

675

00:40:20.735 --> 00:40:25.635

In regards to, um, Passover

676

00:40:25.635 --> 00:40:29.235

of responsibilities, um, a very, a very common, uh,

677

00:40:29.675 --> 00:40:32.315

situation that we come up against is the barrier

678

00:40:32.445 --> 00:40:34.595

where the HSE starts and finishes

679

00:40:34.735 --> 00:40:36.915

and in general, that is at the gangway.

680

00:40:37.175 --> 00:40:40.475

And quite often in regards to investigation is

681

00:40:40.475 --> 00:40:42.395

where the Marine Accident investigation branch

682

00:40:42.495 --> 00:40:46.115

or the MCA takeover, um, that doesn't necessarily

683

00:40:46.755 --> 00:40:48.115

directly relate to coma,

684

00:40:48.215 --> 00:40:51.395

but it sounds very similar to to that term understanding.

685

00:40:54.255 --> 00:40:58.395

Can I, sorry, David Alvin for iot, can I just point out

686

00:40:58.395 --> 00:41:01.875

that the Coma competent authority is not the Harbor Master,

687

00:41:02.655 --> 00:41:05.715

but the HSE, um,

688

00:41:06.055 --> 00:41:10.555

and that, um, the statutory duty for the, uh,

689

00:41:10.555 --> 00:41:13.915

rising in relation to the coma competent authority is, is

690

00:41:13.915 --> 00:41:15.155

therefore the HSE.

691

00:41:15.695 --> 00:41:18.475

And so it isn't matter entirely within the

692

00:41:18.475 --> 00:41:20.155

control of the Harbor Master.

693

00:42:11.490 --> 00:42:15.895

Certainly, I mean, the HSE correspondence is pretty

694

00:42:15.895 --> 00:42:17.135

brief, to say the least.

695

00:42:18.315 --> 00:42:20.855

Um, they do appear

696

00:42:20.855 --> 00:42:23.415

to be focusing on the consultation zones,

697

00:42:23.415 --> 00:42:26.135

which I've shown in some of the application documents.

698

00:42:26.135 --> 00:42:28.135

And of course, they do not, the consultation zones

699

00:42:28.875 --> 00:42:32.535

do not clear and include anything

700

00:42:32.995 --> 00:42:37.175

or much of, uh, in fact, the marine side of,

701

00:42:37.595 --> 00:42:39.015

um, iot.

702

00:42:40.635 --> 00:42:44.735

Um, we have certainly sought through the questions

703

00:42:44.735 --> 00:42:47.495

that we put to them recently to get clarification as to

704

00:42:47.495 --> 00:42:50.095

where what they had and hadn't been looking at.

705

00:42:50.875 --> 00:42:54.095

Uh, they seem pretty adamant that they had looked as far

706

00:42:54.095 --> 00:42:58.095

as they should look in terms of their area of jurisdiction.

707

00:42:59.155 --> 00:43:03.575

Um, but as Mr. Bradley indicated, it, it, it might be

708

00:43:03.575 --> 00:43:07.415

that we are in the territory where there is is a bit

709

00:43:07.535 --> 00:43:11.335

of a gap, uh, between, uh, where one jurisdiction

710

00:43:12.515 --> 00:43:14.415

begins and the other ends.

711

00:43:15.115 --> 00:43:18.895

Um, taking the point of Captain Furman that his view

712

00:43:19.435 --> 00:43:23.615

is he will always be looking at safety first, um,

713

00:43:23.835 --> 00:43:26.455

almost irrespective of what the structure is.

714

00:43:27.235 --> 00:43:31.575

Um, he's looking to avoid situation of a lesion, um,

715

00:43:31.635 --> 00:43:34.455

or for that matter, vessel to vessel collision, uh,

716

00:43:34.525 --> 00:43:36.055

when they're actually in motion.

717

00:43:38.285 --> 00:43:40.495

Yeah. Andrew Furman, harbormaster, Humber, just, just

718

00:43:40.495 --> 00:43:44.455

to make clear the sensitivity of the infrastructure

719

00:43:44.685 --> 00:43:47.455

that the vessels navigating, it is taken into consideration.

720

00:43:47.555 --> 00:43:48.815

So I know a couple

721

00:43:48.815 --> 00:43:49.695

of times in my written

722

00:43:49.695 --> 00:43:50.895

submissions have been picked up for same.

723

00:43:50.915 --> 00:43:53.815

We all this, we don't, when I say we treat everything

724

00:43:53.815 --> 00:43:56.055

with the same, we apply the same principles.

725

00:43:56.195 --> 00:43:57.655

We don't treat an oil terminal

726

00:43:57.755 --> 00:43:59.655

as we do a, a wharf in the upper river.

727

00:43:59.755 --> 00:44:01.495

So the, the, the risk

728

00:44:01.495 --> 00:44:03.895

and the consequences is a huge part

729

00:44:03.895 --> 00:44:04.975

of the, the risk assessment

730

00:44:41.145 --> 00:44:42.435

Differentiate between

731

00:45:41.785 --> 00:45:42.135

Hello,

732

00:45:50.215 --> 00:45:50.435

Mr.

733

00:45:50.525 --> 00:45:52.755

Elvin. Did you, did you have a point? Yeah, because,

734

00:45:54.175 --> 00:45:57.675

Um, David Alvin for IOT, firstly, um,

735

00:45:57.905 --> 00:45:59.555

captain Furman suggested

736

00:45:59.555 --> 00:46:01.275

that a risk assessment had been

737

00:46:01.275 --> 00:46:02.795

undertaken for the oil terminal.

738

00:46:02.845 --> 00:46:04.835

We've not seen it. I wonder if we could

739

00:46:04.835 --> 00:46:05.875

be provided with it, please.

740

00:46:06.875 --> 00:46:07.875

Secondly,

741

00:46:08.975 --> 00:46:10.195

Uh, I'm sorry, could you,

742

00:46:10.855 --> 00:46:12.155
can you take us through that again?

743

00:46:12.535 --> 00:46:13.715
He appeared to be suggesting

744

00:46:13.715 --> 00:46:15.075
that a risk assessment had been

745

00:46:15.075 --> 00:46:16.395
undertaken for the oil terminal.

746

00:46:17.975 --> 00:46:20.115
So, um, Victoria Harten for the Harbor, ma,

747

00:46:20.175 --> 00:46:21.275
that's not what he said.

748

00:46:21.745 --> 00:46:22.875
It's happened a few times now,

749

00:46:22.895 --> 00:46:24.475
but words have been put into the Harbor

750

00:46:24.475 --> 00:46:25.675
Master's mouth. Well,

751

00:46:25.675 --> 00:46:26.675
Perhaps it could be clearer.

752

00:46:28.615 --> 00:46:30.395
Um, If there isn't one, then fine.

753

00:46:30.855 --> 00:46:33.275
No, there isn't a secret risk assessment.

754

00:46:34.015 --> 00:46:36.475
Um, but so just on the point about, sorry,

755

00:46:36.555 --> 00:46:37.555

I have another point, Ms. Upton,

756

00:46:37.555 --> 00:46:41.875

please. Um, the, the other, the other concern I had

757

00:46:42.735 --> 00:46:46.955

was, uh, the Reg five duty under the control

758

00:46:46.955 --> 00:46:51.755

of hazards regs, which requires the operator IE the IO OT

759

00:46:52.075 --> 00:46:54.875

operators to demonstrate to the competent authority

760

00:46:55.055 --> 00:46:57.635

that's the duty is on the IO OT operators,

761

00:46:58.585 --> 00:47:00.555

that it has taken all measures necessary

762

00:47:00.615 --> 00:47:02.195

as specified in the regulations.

763

00:47:02.655 --> 00:47:04.475

And that comes back to a point I raised at one

764

00:47:04.475 --> 00:47:08.315

of the earlier hearings, that the duty is imposed squarely

765

00:47:08.415 --> 00:47:10.715

on the IO OT operators to ensure

766

00:47:11.065 --> 00:47:13.035

that it has done everything necessary.

767

00:47:13.935 --> 00:47:17.875

And that is one of our concerns. Sorry, Ms.

768

00:47:18.035 --> 00:47:19.515

Ton, I just wanted to finish my point.

769

00:47:20.015 --> 00:47:21.515

Of course. Um, well,

770

00:47:22.205 --> 00:47:26.965

Sorry, Ms.

771

00:47:27.165 --> 00:47:28.165

Ton.

772

00:47:28.585 --> 00:47:30.965

So thank you. Uh, Victoria Outten for the Harbor Master,

773

00:47:31.235 --> 00:47:35.485

just in terms of gap, of course, I'm, uh, appearing for the

774

00:47:36.245 --> 00:47:37.605

Humber Harbor Master

775

00:47:37.745 --> 00:47:40.965

and by extension for the Harbor Authority.

776

00:47:41.545 --> 00:47:44.885

But the, there's of course the Immingham dock, SHA,

777

00:47:45.535 --> 00:47:49.605

where the geography issue is, um, less apparent.

778

00:47:49.805 --> 00:47:51.645

'cause obviously they could, they have responsibilities,

779

00:47:51.725 --> 00:47:52.725

landside and Marine,

780

00:47:53.585 --> 00:47:55.725

and then there's obviously the overlap with the Humber.

781

00:47:55.905 --> 00:47:58.685

So it is just relevant to take that into account as well.

782

00:48:01.665 --> 00:48:05.005

Indeed, it is, uh, been exercising our minds.

783

00:48:10.405 --> 00:48:11.405

Mr. A,

784

00:48:12.525 --> 00:48:13.525

Uh, thank you, sir. Robbie

785

00:48:13.525 --> 00:48:15.025

Owen for CRDN.

786

00:48:15.035 --> 00:48:17.825

There were just a couple of points I wanted to, um,

787

00:48:18.415 --> 00:48:19.825

come back on, which I think might be

788

00:48:19.825 --> 00:48:22.825

of assistance following comments made by, uh, Ms.

789

00:48:22.825 --> 00:48:24.385

Hutton and also Mr. str.

790

00:48:25.645 --> 00:48:30.445

Um, the first point made by Mr.

791

00:48:30.445 --> 00:48:32.685

Straw was the suggestion of the Secretary State

792

00:48:32.705 --> 00:48:34.285

as an independent arbiter you were told

793

00:48:34.385 --> 00:48:36.125

was, was, was bizarre.

794

00:48:36.465 --> 00:48:38.525

Um, and,

795

00:48:38.525 --> 00:48:41.925

and based on a basic flaw and approach

796

00:48:42.465 --> 00:48:44.645

or a false premise, um, of course,

797

00:48:48.175 --> 00:48:53.115

All that would be involved in were the DCO to be made

798

00:48:53.115 --> 00:48:57.035

and, and, and include a requirement for approval by the

799

00:48:57.555 --> 00:49:01.595

secretary State of a further, uh, NRA, uh,

800

00:49:01.595 --> 00:49:04.395

that would just be an, in effect, an extension of

801

00:49:04.395 --> 00:49:06.875

what the Secretary State would be doing if

802

00:49:06.875 --> 00:49:08.435

and when this DCO is made,

803

00:49:08.435 --> 00:49:11.395

because, um, you will put with your report

804

00:49:11.395 --> 00:49:14.955

before the Secretary of State, uh, all of the assessments

805

00:49:14.955 --> 00:49:16.475

and appraisals, including, of course,

806

00:49:16.855 --> 00:49:19.355

the environmental statement, which includes the NRA

807

00:49:19.775 --> 00:49:20.915

and the Secretary

808

00:49:20.915 --> 00:49:23.435

of State will in making decision on the application,

809

00:49:23.785 --> 00:49:26.715

clearly be looking at the NRA as well as everything else,

810

00:49:26.815 --> 00:49:28.475

and, and considering whether it's appropriate.

811

00:49:28.495 --> 00:49:29.915

So there's no difference between

812

00:49:30.505 --> 00:49:32.835

what the Citrus State will be doing, uh,

813

00:49:32.895 --> 00:49:34.075

on receipt of your report.

814

00:49:34.535 --> 00:49:36.315

Um, uh, between that and,

815

00:49:36.415 --> 00:49:39.315

and what, what the Citrus State will be doing in relation to

816

00:49:39.985 --> 00:49:42.995

discharge of a, of a requirement that the,

817

00:49:43.785 --> 00:49:45.875

that a further version of the NRA should be approved.

818

00:49:46.015 --> 00:49:49.755

And of course, the, the Central State, uh,

819

00:49:49.855 --> 00:49:51.995

has expertise available to him.

820

00:49:52.175 --> 00:49:53.675

It would be perfectly possible for

821

00:49:54.775 --> 00:49:58.475

the requirement if there were to be one, to provide for

822

00:49:59.095 --> 00:50:00.315

the MCA, for example,

823

00:50:00.495 --> 00:50:02.995

to advise the Secretary State on these matters.

824

00:50:03.215 --> 00:50:05.555

And, and the MCA obviously is an agency

825

00:50:05.575 --> 00:50:07.275

of the same Secretary State.

826

00:50:07.375 --> 00:50:09.715

So that would be one solution.

827

00:50:09.715 --> 00:50:11.235

There are a number of different ways this could be done.

828

00:50:11.255 --> 00:50:14.395

And, um, a number of relevant examples.

829

00:50:14.695 --> 00:50:18.195

The second point I wanted to make goes back

830

00:50:18.195 --> 00:50:21.275

to this full s premise, the basic flaw and approach.

831

00:50:21.535 --> 00:50:24.315

And you, you were told by Ms.

832

00:50:24.335 --> 00:50:27.485

Hutton that, um, Harbor Master Humber is independent,

833

00:50:28.185 --> 00:50:33.165

is independent as a matter of law and fact, um, and Mrs.

834

00:50:33.165 --> 00:50:36.845

Strawn, in effect, well, he did endorse that.

835

00:50:37.105 --> 00:50:40.725

Um, but you are being told different things here and,

836

00:50:40.785 --> 00:50:44.045

and that there, there is a fundamental inconsistency in

837

00:50:44.045 --> 00:50:45.285

what the applicant is saying

838

00:50:45.285 --> 00:50:48.205

because if we go back to the document

839

00:50:48.205 --> 00:50:53.045

that was submitted at Deadline one, which was the,

840

00:50:53.665 --> 00:50:56.285

uh, the document by the applicant, the Port of Ingham

841

00:50:56.285 --> 00:50:57.925

and River Humber Management Control

842

00:50:57.925 --> 00:51:00.965

and Regulation, that's Rep 1 0 14,

843

00:51:02.555 --> 00:51:05.165

that helpfully sets out the applicant's understanding

844

00:51:05.225 --> 00:51:08.445

of the, uh, regulatory regime applying

845

00:51:08.505 --> 00:51:09.965

to navigation of the Humber.

846

00:51:10.105 --> 00:51:13.565

And, and the applicant themselves note at paragraph 8.1

847

00:51:14.425 --> 00:51:17.765

in relation to its functions as firstly owner

848

00:51:17.785 --> 00:51:19.085

and operator of the Port of Ingham

849

00:51:19.185 --> 00:51:20.605

and the SAT Harbor Authority.

850

00:51:21.605 --> 00:51:24.885

Secondly, as the statutory Conservation

851

00:51:24.885 --> 00:51:25.925

and Navigation Authority

852

00:51:26.825 --> 00:51:28.845

and Humber Statutory Hunger Authority.

853

00:51:29.425 --> 00:51:32.245

And thirdly, as the Competent Harbor Authority, they say,

854

00:51:32.245 --> 00:51:36.685

and I quote, it would be somewhat disingenuous to suggest

855

00:51:36.955 --> 00:51:40.085

that each component whilst falling under the corporate

856

00:51:40.325 --> 00:51:43.525

umbrella of ABP undertakes its obligations

857

00:51:43.625 --> 00:51:46.285

and carries out its functions separately

858

00:51:46.505 --> 00:51:48.005

and distinct from the other.

859

00:51:49.425 --> 00:51:51.605

So those are the applicant's own words.

860

00:51:51.665 --> 00:51:56.405

And indeed they then also confirm at paragraph 10.23

861

00:51:57.515 --> 00:52:01.445

that the, uh, ABP Harbor Authority Safety Board,

862

00:52:01.705 --> 00:52:05.245

whilst being a separate board from the main ABP board

863

00:52:05.875 --> 00:52:08.205

comprises of the comprises of the same membership.

864

00:52:08.205 --> 00:52:11.645

That's to say not only is it the same corporate body,

865

00:52:12.675 --> 00:52:14.485

it's also the same natural persons

866

00:52:14.485 --> 00:52:16.405

that carry out these functions.

867

00:52:16.545 --> 00:52:19.405

So it, it seems

868

00:52:19.405 --> 00:52:22.725

to me plain from the applicant's own submission way back at

869

00:52:22.885 --> 00:52:25.645

Deadline one, that they are admitting there is

870

00:52:25.665 --> 00:52:27.205

no structural independence.

871

00:52:27.205 --> 00:52:29.245

They say it would be, it would be disingenuous to,

872

00:52:29.265 --> 00:52:30.285

to suggest there was.

873

00:52:30.785 --> 00:52:34.965

So, I, I simply don't understand what we're being told.

874

00:52:35.385 --> 00:52:38.485

And it, it seems to us to be a very different set

875

00:52:38.485 --> 00:52:41.245

of circumstances to those that apply in the planning arena.

876

00:52:41.425 --> 00:52:44.725

And we, um, set out in our submissions, uh,

877

00:52:44.735 --> 00:52:49.325

after ISH four, the, uh, particular importance

878

00:52:49.325 --> 00:52:52.085

that functional separation in cases subject

879

00:52:52.085 --> 00:52:55.565

to environmental impact assessment, um, has been given

880

00:52:56.105 --> 00:52:57.205

by, by the courts.

881

00:52:57.385 --> 00:52:59.565

And we, uh, referred you to the Holocaust

882

00:53:00.125 --> 00:53:04.205

Memorial case on handling arrangements, um, from 2020.

883

00:53:04.545 --> 00:53:07.525

And we attached that, where in that case,

884

00:53:07.625 --> 00:53:09.965

the central state's handling arrangements for

885

00:53:09.965 --> 00:53:12.525

that claim application were found to be inadequate.

886

00:53:12.585 --> 00:53:15.685

So it, it seems to me that a, a a, again,

887

00:53:15.685 --> 00:53:17.845

there's a fundamental inconsistency here in terms of

888

00:53:17.845 --> 00:53:20.325

what we're being told, and the applicants themselves have

889

00:53:20.395 --> 00:53:22.245

said, uh, it seems

890

00:53:22.245 --> 00:53:24.245

to me there is no structural independence,

891

00:53:24.245 --> 00:53:28.245

and yet that's not what we were told, um, half an hour ago.

892

00:53:28.345 --> 00:53:32.365

So I, I, I leave that point with you to support

893

00:53:33.785 --> 00:53:36.165

my submissions that there needs to be an element

894

00:53:36.185 --> 00:53:39.565

of structural independence added to the DC0, uh, in the way

895

00:53:39.905 --> 00:53:42.205

or along the lines that we discussed before lunch.

896

00:53:44.495 --> 00:53:46.285

Thank you, Mr. Rowan. I'm

897

00:53:46.305 --> 00:53:49.965

before, um, Mr. Gould may wish to come in as well,

898

00:53:50.065 --> 00:53:54.845

but, um, one of the things I, I wanted to follow up,

899

00:53:54.845 --> 00:53:56.845

which I think links your point, and Ms.

900

00:53:56.845 --> 00:53:59.845

Hatton's point on behalf of the Hub, master Humber, is

901

00:54:01.735 --> 00:54:04.565

let's pursue a, a, a hypothetical line here.

902

00:54:04.705 --> 00:54:06.885

Uh, if there should be a,

903

00:54:10.765 --> 00:54:12.605

a discontinuity, if you like,

904

00:54:12.705 --> 00:54:16.885

or a, um, indeed a, a disagreement between the um,

905

00:54:17.845 --> 00:54:21.485

SCNA and the Port of Immingham, uh,

906

00:54:21.945 --> 00:54:26.885

Harbor Authority in respect to that interface between

907

00:54:27.985 --> 00:54:31.965

marine operations, navigational and pilotage operations,

908

00:54:32.465 --> 00:54:34.125

and infrastructural matters.

909

00:54:34.595 --> 00:54:38.045

Basically the interface between land and water

910

00:54:38.185 --> 00:54:39.885

or between infrastructure and water.

911

00:54:43.425 --> 00:54:46.125

How in practice does that get arbitrated?

912

00:54:46.955 --> 00:54:49.365

Does, is there any kind of hierarchy here

913

00:55:02.985 --> 00:55:06.525

Except Victoria Hudden for the Harbor Master, not aware

914

00:55:06.725 --> 00:55:09.485

of a legislative hierarchy,

915

00:55:09.865 --> 00:55:12.725

and I'm informed the hub master can't think of any example

916

00:55:12.745 --> 00:55:14.845

of a disagreement which demonstrates the

917

00:55:14.935 --> 00:55:16.325

Coast collaborative working.

918

00:55:17.545 --> 00:55:21.045

Um, if, if, if, for example,

919

00:55:21.105 --> 00:55:23.525

the Harbor Master came independently to view

920

00:55:23.525 --> 00:55:26.845

that it was unsafe for a particular ship

921

00:55:26.865 --> 00:55:29.045

to birth at a particular place in a particular time,

922

00:55:29.345 --> 00:55:30.645

he would make a special direction.

923

00:55:30.745 --> 00:55:33.925

And he's not, um, beholden to anyone about that.

924

00:55:33.925 --> 00:55:36.565

That's his power, um, and his loan.

925

00:55:37.825 --> 00:55:41.605

So Yes, the point is that there is,

926

00:55:41.885 --> 00:55:43.205

there is no legislative hierarchy.

927

00:55:43.385 --> 00:55:46.245

So may, may I just say one thing in response to Mr. Owen,

928

00:55:47.025 --> 00:55:50.365

um, because he read out 8.1 of the note the state,

929

00:55:50.365 --> 00:55:52.845

but of course it goes on to give an example

930

00:55:52.945 --> 00:55:54.125

of what it was talking about.

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00:55:54.145 --> 00:55:58.765

And it's unfair to, um, take paragraph 8.1 as somehow

932

00:55:58.835 --> 00:56:00.165

that this is all inter mesh together.

933

00:56:00.405 --> 00:56:03.645

'cause the example that was given was VTS, um,

934

00:56:04.105 --> 00:56:08.325

vessel Traffic Service, vessel Traffic Service, um, operated

935

00:56:08.425 --> 00:56:12.285

by the Harbor Control manager has, um, it can't undertake

936

00:56:12.285 --> 00:56:13.445

that role efficiently and safely

937

00:56:13.665 --> 00:56:16.405

unless there's closely liaison with the port of Iham.

938

00:56:16.745 --> 00:56:17.885

So it's very important.

939

00:56:18.305 --> 00:56:19.845

Yes, of course there is close

940

00:56:20.475 --> 00:56:22.045

cooperation between these bodies.

941

00:56:23.005 --> 00:56:25.285

I mean, another example is line management on

942

00:56:25.285 --> 00:56:26.725

financial and administrative matters.

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00:56:26.725 --> 00:56:29.245

Someone has to be, rather than making sweeping statements,

944

00:56:29.275 --> 00:56:33.965

very careful about where, um, matters do come together

945

00:56:33.965 --> 00:56:35.925

and where there is, uh, independence.

946

00:56:36.385 --> 00:56:38.205

So I dunno if that's helped at all. But

947

00:56:40.165 --> 00:56:44.365

I, I think, um, this, this picture is starting to, to,

948

00:56:44.385 --> 00:56:46.965

to clarify as the process of the three sets

949

00:56:46.965 --> 00:56:49.325

of hearings has progressed.

950

00:56:49.825 --> 00:56:53.405

Uh, there's just one, I think blurring,

951

00:56:53.405 --> 00:56:56.645

which we recognize is, is perhaps in the nature of things,

952

00:56:56.745 --> 00:57:00.085

but is it adequate for us in our recommendation

953

00:57:00.265 --> 00:57:01.325

to the Secretary of State?

954

00:57:01.325 --> 00:57:03.205

That is our consideration now.

955

00:57:03.265 --> 00:57:07.765

And that is should, um, there be a disagreement on whether

956

00:57:08.505 --> 00:57:11.965

impact protection measures to infrastructure are required

957

00:57:12.515 --> 00:57:16.125

between the port of Ingham SHA

958

00:57:16.705 --> 00:57:18.405

and the Humber Harbor master.

959

00:57:19.065 --> 00:57:23.045

My, your, your representation so far is the, uh, uh,

960

00:57:23.045 --> 00:57:26.365

harbormaster Hamburg could say you will not operate

961

00:57:26.435 --> 00:57:30.365

that ship type at this in these particular conditions.

962

00:57:31.225 --> 00:57:32.605

That's the submission we hear so far.

963

00:57:41.385 --> 00:57:44.605

So, so yes, with Victoria Harden for the Harbor Master,

964

00:57:45.225 --> 00:57:47.365

one distinction, of course, the special direction is given

965

00:57:47.365 --> 00:57:50.485

to the vessel as opposed to, to a,

966

00:57:50.505 --> 00:57:55.445

to the port about operating the, um, uh, the pier.

967

00:57:56.425 --> 00:57:58.965

The, the other observation I would make, of course, is

968

00:57:58.965 --> 00:58:02.565

that under the d the draft DC0, it is the

969

00:58:04.165 --> 00:58:07.885

SCNA who is given the, um, responsibility

970

00:58:08.025 --> 00:58:10.445

for approving safe operating procedures.

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00:58:10.665 --> 00:58:11.965

So actually this might be one example,

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00:58:12.025 --> 00:58:14.005

having said there's no hierarchy actually under the draft

973

00:58:14.325 --> 00:58:17.645

DCO, that responsibility falls on the SCNA.

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00:58:18.705 --> 00:58:20.845

And so if the SCNA

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00:58:22.045 --> 00:58:24.565

approved safe operating procedures under paragraph 16

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00:58:24.625 --> 00:58:26.525

of part one of Schedule four,

977

00:58:27.385 --> 00:58:29.405

and there was a proposal not to comply with those,

978

00:58:29.405 --> 00:58:31.565

then there would be non-compliance with the DCO.

979

00:58:33.945 --> 00:58:35.165

Indeed. And that's it.

980

00:58:35.305 --> 00:58:37.285

That's taken me to the, the, the, the point

981

00:58:37.355 --> 00:58:39.485

that is exercising us, which is

982

00:58:39.485 --> 00:58:41.685

that the way the DACO is draft at the moment is

983

00:58:42.115 --> 00:58:43.685

that is clear your point.

984

00:58:44.065 --> 00:58:47.085

And in fact, you made the point earlier on today that, um,

985

00:58:47.465 --> 00:58:52.045

the SCNA has no business in requiring, uh, construction

986

00:58:52.065 --> 00:58:53.725

of impact protection measures.

987

00:58:54.425 --> 00:58:56.325

So the question then shifts,

988

00:58:56.325 --> 00:58:58.605

and I I I'm going to ask you for an opinion first,

989

00:58:58.625 --> 00:59:00.685

but I think it's probably for the applicant to, to,

990

00:59:00.685 --> 00:59:02.085

to give a definitive answer.

991

00:59:02.545 --> 00:59:07.245

And that is, does the port of Ingham, SHA have the, uh,

992

00:59:07.545 --> 00:59:12.325

the, the, the, the power in indeed the duty to require, uh,

993

00:59:12.465 --> 00:59:13.725

impact protection measures?

994

00:59:13.725 --> 00:59:16.765

And is the DC0 being drafted in the wrong way in this case?

995

00:59:16.765 --> 00:59:18.565

Are we talking about the wrong SHA

996

00:59:30.685 --> 00:59:31.805

Victoria hadn't for the Harbor Masters?

997

00:59:31.945 --> 00:59:33.885

So we will look at that more closely.

998

00:59:33.945 --> 00:59:35.325

But if I can give an initial view,

999

00:59:35.895 --> 00:59:38.125

which is from our understanding of the legislation,

1000

00:59:38.185 --> 00:59:42.765

the same, um, points that I gave earlier would apply in that

1001

00:59:43.305 --> 00:59:47.005

the way the legislative regime is set up is for, uh,

1002

00:59:47.385 --> 00:59:48.885

the potential for directions.

1003

00:59:49.385 --> 00:59:51.925

We could also look at bylaws as well as one another as

1004

00:59:52.435 --> 00:59:54.605

many ways to, to skin a particular cat.

1005

00:59:55.505 --> 00:59:59.885

Um, but the, uh, that means

1006

00:59:59.955 --> 01:00:02.005

that you could essentially have a direction

1007

01:00:02.005 --> 01:00:06.245

that you will only operate in certain, um, conditions, tags,

1008

01:00:06.465 --> 01:00:08.245

uh, operational parameters.

1009

01:00:09.185 --> 01:00:10.245

Um, but it,

1010

01:00:10.305 --> 01:00:11.845

but the, we don't understand there

1011

01:00:11.845 --> 01:00:15.205

to be anything in the legislation whereby the do must have

1012

01:00:15.205 --> 01:00:20.165

power to, um, to require someone to build a certain piece

1013

01:00:20.165 --> 01:00:24.125

of infrastructure, uh, which is why we say

1014

01:00:24.125 --> 01:00:26.245

that it would be inappropriate for the arbiter

1015

01:00:26.245 --> 01:00:27.325

to be the harbor master.

1016

01:00:27.325 --> 01:00:31.645

Equally, that principle would apply to the Dock Master, uh,

1017

01:00:31.665 --> 01:00:34.525

or indeed to the SHA to the port of the Port of Ingham.

1018

01:00:35.585 --> 01:00:38.485

So again, probably for the applicant, but I hope that helps.

1019

01:00:39.095 --> 01:00:40.685

Thank you for that. That if you like,

1020

01:00:41.305 --> 01:00:42.845

it is essentially a holding answer,

1021

01:00:43.145 --> 01:00:45.765

but I think it's now for the applicant to take a view

1022

01:00:46.345 --> 01:00:49.285

on whether you can answer now whether you want to consider,

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01:00:49.825 --> 01:00:53.805

uh, whether it's for the Port of Ingham, SHA,

1024

01:00:54.185 --> 01:00:56.725

to determine whether impact retention measures are

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01:00:56.795 --> 01:00:57.845

appropriate or not.

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01:01:02.705 --> 01:01:04.375

James drawn for the applicant, sir.

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01:01:04.625 --> 01:01:06.695

We'll certainly reflect on your question,

1028

01:01:06.695 --> 01:01:11.335

but again, my, my understanding is that the Port of em SHA

1029

01:01:11.865 --> 01:01:15.375

could require the impact protection measures

1030

01:01:15.375 --> 01:01:16.455

to be delivered in

1031

01:01:16.455 --> 01:01:21.295

because the Dock Master, for example, has the power

1032

01:01:21.435 --> 01:01:23.455

to control birthing

1033

01:01:23.475 --> 01:01:28.295

and birthing of vessels on the facilities in the same way,

1034

01:01:29.115 --> 01:01:33.895

uh, as the Harbor Master can control the vessels.

1035

01:01:33.915 --> 01:01:37.495

And that's where the overlapping jurisdiction is relevant,

1036

01:01:37.495 --> 01:01:41.295

because whilst the Dock Master doesn't have, uh,

1037

01:01:41.325 --> 01:01:43.655

control over the vessels as they're coming in

1038

01:01:43.655 --> 01:01:48.055

or leaving, um, there is control over the ability

1039

01:01:48.155 --> 01:01:50.935

to issue directions in relation to the facilities.

1040

01:01:51.755 --> 01:01:56.575

Uh, so in subject to any corrections that I may need to make

1041

01:01:56.595 --> 01:01:58.415

of having just answered your question off the cover,

1042

01:01:58.715 --> 01:02:01.215

in principle yes, that that could be the result.

1043

01:02:01.555 --> 01:02:03.135

The, the DC is drafted

1044

01:02:03.445 --> 01:02:06.975

because of that overlap to identify the role

1045

01:02:06.975 --> 01:02:10.815

of the Harbor master in stipulating that

1046

01:02:10.815 --> 01:02:13.335

because of the way the arrangements work,

1047

01:02:13.635 --> 01:02:18.015

but there is in principle, the ability for such a result

1048

01:02:18.035 --> 01:02:20.885

to occur as a, as in consequence of a Dock Master's

1049

01:02:21.755 --> 01:02:23.885

understanding and approach to safety.

1050

01:02:26.325 --> 01:02:28.565

I, I think consideration might be given to whether

1051

01:02:31.545 --> 01:02:35.445

the, uh, the way that the drafting has started

1052

01:02:35.625 --> 01:02:36.725

and indeed evolved,

1053

01:02:37.505 --> 01:02:40.405

has perhaps been leading us down the wrong track by, uh,

1054

01:02:40.405 --> 01:02:43.205

putting that obligation on the Harbor master

1055

01:02:43.265 --> 01:02:44.685

rather than on the Dock Master.

1056

01:02:46.505 --> 01:02:49.085

And that's part of the reason why yesterday or the day

1057

01:02:49.085 --> 01:02:51.645

before, whenever it was the request for the note about

1058

01:02:51.645 --> 01:02:56.205

who does what in terms of the, the actual, um,

1059

01:02:56.645 --> 01:02:58.205

consideration, the consenting, um,

1060

01:02:58.985 --> 01:03:01.605

for the various structures in the river and

1061

01:03:01.625 --> 01:03:04.085

or, um, control of shipping

1062

01:03:05.065 --> 01:03:09.045

was requested in connection with this specific proposal, so

1063

01:03:09.045 --> 01:03:12.165

that we do get clarity about whether it is one, two,

1064

01:03:12.225 --> 01:03:14.165

or even three of the harp.

1065

01:03:14.325 --> 01:03:16.525

'cause because there are the constant harbor authority out

1066

01:03:16.525 --> 01:03:19.405

there as well, um, as to which one it is

1067

01:03:19.505 --> 01:03:21.685

or which combination might be.

1068

01:03:22.275 --> 01:03:26.205

Because if we do end up with a, uh, requirement

1069

01:03:26.675 --> 01:03:28.205

that similarly worded,

1070

01:03:28.345 --> 01:03:32.005

or at least has the flavor of requirement 18,

1071

01:03:32.135 --> 01:03:35.685

there will need to be certainty in there as as to who

1072

01:03:36.945 --> 01:03:39.805

the undertaker would be seeking advice from.

1073

01:03:41.945 --> 01:03:45.685

And, and then the consequence, uh, consideration

1074

01:03:45.795 --> 01:03:47.085

that I'd like you

1075

01:03:47.085 --> 01:03:51.805

to exercise your minds on is if there should be, uh, an

1076

01:03:53.105 --> 01:03:57.565

irreconcilable disagreement between the, uh, SCNA

1077

01:03:57.785 --> 01:04:02.765

and the Port of Ingham, uh, SHA between, if you like,

1078

01:04:02.825 --> 01:04:03.845

har Harbormaster

1079

01:04:03.845 --> 01:04:06.845

and Dock Master, if one perhaps personalizes it,

1080

01:04:06.885 --> 01:04:10.885

I don't know that's appropriate, then who arbitrates

1081

01:04:15.595 --> 01:04:18.945

James Sha for the applicant, sir, in relation,

1082

01:04:18.945 --> 01:04:20.945

just sticking with requirement 18,

1083

01:04:21.615 --> 01:04:25.025

obviously reflect on whether there's merit in referring in

1084

01:04:25.225 --> 01:04:29.945

addition to the Dock Master, the way you, I don't think

1085

01:04:29.945 --> 01:04:31.745

that fundamentally changes the

1086

01:04:32.485 --> 01:04:34.985

way in which the requirements intended to operate.

1087

01:04:35.085 --> 01:04:36.425

It just introduces,

1088

01:04:37.065 --> 01:04:38.545

I regret that we haven't got onto

1089

01:04:38.685 --> 01:04:40.345

how requirement 18 operates yet.

1090

01:04:40.455 --> 01:04:43.585

Well, we may have to take a pause before we get onto that.

1091

01:04:43.925 --> 01:04:47.145

But on that specific point, which is really, uh,

1092

01:04:47.545 --> 01:04:50.465

a consequence of all the discussion that's flowed prior,

1093

01:04:51.645 --> 01:04:54.465

who Arbitrates, and that I think is, is the, the, the,

1094

01:04:54.685 --> 01:04:57.465

the essence, because at the moment, uh, again,

1095

01:04:57.465 --> 01:05:01.905

if we take ourselves back to, uh, rep 1 0 14, uh,

1096

01:05:01.905 --> 01:05:06.585

which was cited just now, the, in the, the inference

1097

01:05:06.745 --> 01:05:08.465

of that is that it's arbitrated

1098

01:05:08.565 --> 01:05:10.625

by the Harbor Authority Safety Board

1099

01:05:13.005 --> 01:05:15.585

In, in the event, sorry, James drawn for the applicant.

1100

01:05:16.005 --> 01:05:19.605

Uh, so yes, in in principle the

1101

01:05:20.385 --> 01:05:21.445

has board or,

1102

01:05:21.545 --> 01:05:24.645

or of the applicant is

1103

01:05:24.745 --> 01:05:28.205

the, Uh, how do I put it?

1104

01:05:28.205 --> 01:05:31.805

The, where the everything flows into subject of course.

1105

01:05:32.345 --> 01:05:36.485

So the de the, the performance of, uh, functions

1106

01:05:37.065 --> 01:05:38.965

by the Harbor master that have been allocated

1107

01:05:39.105 --> 01:05:42.325

by the HAS board in the event of

1108

01:05:43.565 --> 01:05:47.085

a conflict between the Dock Master and Harbor master.

1109

01:05:47.895 --> 01:05:51.525

There isn't any example the I aware of

1110

01:05:52.745 --> 01:05:56.205

in the context of requirement 18.

1111

01:05:56.875 --> 01:05:59.765

Even a difference of view there wouldn't create a conflict

1112

01:05:59.765 --> 01:06:01.165

which required arbitration,

1113

01:06:01.165 --> 01:06:04.565

because if the wording were to act on the recommendation

1114

01:06:04.865 --> 01:06:09.165

of either to, to install them, then the decision has

1115

01:06:09.165 --> 01:06:10.245

to be made in the,

1116

01:06:10.785 --> 01:06:14.765

the arbitrators you pointed out is effectively the statutory

1117

01:06:14.765 --> 01:06:18.085

harbor authority or function of the,

1118

01:06:18.585 --> 01:06:20.445

um, ABP ports.

1119

01:06:22.025 --> 01:06:24.565

I'm sorry that we, we heard yet previously

1120

01:06:24.565 --> 01:06:28.445
that the HSB is not a star, uh, is not an SHA,

1121

01:06:28.825 --> 01:06:30.365
it oversees the SHA,

1122

01:06:30.365 --> 01:06:33.605
Sorry, the o that's my the has You are absolutely right.

1123

01:06:33.605 --> 01:06:35.085
Sorry, James won the applicant.

1124

01:06:35.085 --> 01:06:36.325
Sorry, that's my, that's my

1125

01:06:36.715 --> 01:06:38.325
misspeaking if I put it that way.

1126

01:06:39.095 --> 01:06:40.725
Hence the, hence the difficulties been been

1127

01:06:40.725 --> 01:06:41.925
wrestling with for four months.

1128

01:06:43.195 --> 01:06:46.765
Well, um, I wouldn't put 'em down to my, the way I speak,

1129

01:06:47.465 --> 01:06:50.405
but many things could be a,

1130

01:06:50.845 --> 01:06:52.605
I think give, this was, again, not ad homm.

1131

01:06:52.705 --> 01:06:55.485
Uh, this was the point that the, the, the picture

1132

01:06:55.505 --> 01:06:59.245
that's been presented has some, uh, blurred outlines.

1133

01:06:59.635 --> 01:07:03.525

Well, James, the applicant, uh, blurred outlines, uh, I,

1134

01:07:03.785 --> 01:07:05.365

I'm not sure that I would put it in that way.

1135

01:07:05.625 --> 01:07:09.645

Uh, the, what you have is a function

1136

01:07:10.545 --> 01:07:14.765

of a long history, which you can trace back

1137

01:07:14.825 --> 01:07:18.405

to the 19th century where there was the introduction

1138

01:07:18.985 --> 01:07:22.085

of conservators of these sorts of rivers,

1139

01:07:22.505 --> 01:07:24.085

and then the evolution of that.

1140

01:07:24.785 --> 01:07:28.485

But underlying the basic principle are,

1141

01:07:29.045 --> 01:07:32.805

although you, if you call it blurring, I, I wouldn't call it

1142

01:07:32.805 --> 01:07:34.845

that you, what you have is a number

1143

01:07:34.845 --> 01:07:37.485

of functions subsumed within one body.

1144

01:07:37.545 --> 01:07:40.365

And I've already drawn parallels where things like

1145

01:07:40.365 --> 01:07:44.205

that exist, but within that one body,

1146

01:07:44.895 --> 01:07:48.245

there is practical management of the separation

1147

01:07:48.245 --> 01:07:51.325

of functions, hence taking objection to Mr.

1148

01:07:51.385 --> 01:07:54.805

Owen's, reference to one paragraph without them reading.

1149

01:07:54.875 --> 01:07:59.085

What then follows as to the way recognizing that

1150

01:07:59.785 --> 01:08:03.525

one body, the way those are then allocated to allow,

1151

01:08:03.905 --> 01:08:07.165

as it's explained in eight point 10, the harbor master

1152

01:08:07.705 --> 01:08:10.245

to fulfill, and I'm quoting its various duties

1153

01:08:10.305 --> 01:08:13.405

and responsibilities as an entirely separate management

1154

01:08:13.805 --> 01:08:16.125

function and be seen to be so doing,

1155

01:08:16.565 --> 01:08:18.125

albeit within the corporate structure.

1156

01:08:18.465 --> 01:08:23.245

So yes, it's a product of history. Does it work?

1157

01:08:24.485 --> 01:08:28.885

Absolutely. And I go back to this point that whilst there is

1158

01:08:28.885 --> 01:08:31.725

that corporate structure and criticism's now made of it,

1159

01:08:32.315 --> 01:08:36.085

it's worked historically, currently,

1160

01:08:36.785 --> 01:08:39.365

and I gave you the ironic example

1161

01:08:39.505 --> 01:08:43.085

of the DFDS outer harbor being promoted by the applicant,

1162

01:08:43.705 --> 01:08:45.405

but now operated by another operator.

1163

01:08:45.425 --> 01:08:47.925

It, it, there's no basis for saying that the harbor must,

1164

01:08:47.925 --> 01:08:51.245

couldn't then properly exercise control of

1165

01:08:51.425 --> 01:08:53.845

how these ships then operate into the outer harbor

1166

01:08:54.145 --> 01:08:55.145

At this time. That's

1167

01:08:55.145 --> 01:08:57.605

not, not the point that we're looking at.

1168

01:08:57.865 --> 01:09:00.285

Um, and we're not, we're certainly not, um,

1169

01:09:00.465 --> 01:09:02.045

taking prior judgment on that.

1170

01:09:02.585 --> 01:09:05.765

But the, uh, the, the point in question really is

1171

01:09:05.765 --> 01:09:09.285

that we are moving into completely new territory here

1172

01:09:10.355 --> 01:09:12.685

with this proposed development, uh,

1173

01:09:13.025 --> 01:09:16.605

and we have to examine whether

1174
01:09:17.235 --> 01:09:20.845
what has hap uh, historically been quite satisfactory

1175
01:09:21.665 --> 01:09:24.245
is something needs to have an additional level

1176
01:09:24.305 --> 01:09:25.365
of control or not.

1177
01:09:25.625 --> 01:09:27.005
So that's what what we've been doing.

1178
01:09:45.775 --> 01:09:49.895
I suspect everybody, at least who's, who's used

1179
01:09:49.895 --> 01:09:53.975
to working in in in the planning arena, uh, might,

1180
01:09:53.985 --> 01:09:55.455
might appreciate the difficulty.

1181
01:09:55.455 --> 01:09:57.775
Certainly the examining authority finds itself in,

1182
01:09:58.045 --> 01:10:01.215
because we are used to a situation where,

1183
01:10:03.035 --> 01:10:06.575
um, across a variety of,

1184
01:10:06.755 --> 01:10:08.415
um, matters.

1185
01:10:09.115 --> 01:10:10.615
You normally have a situation

1186
01:10:11.465 --> 01:10:15.495
where there is an authorizing body, um,

1187
01:10:16.115 --> 01:10:19.215

and an applicant developer, whatever you wanna describe them

1188

01:10:19.275 --> 01:10:23.655

as, has to discharge conditions, requirements, whatever.

1189

01:10:24.205 --> 01:10:27.415

They go to the regulator, they seek the approval,

1190

01:10:27.555 --> 01:10:31.695

the regulator decides yay or nayyy to whatever.

1191

01:10:32.715 --> 01:10:36.895

Um, now if, if the, if that's a negative IA refusal,

1192

01:10:37.445 --> 01:10:40.015

then under normal circumstances, there's a right

1193

01:10:40.015 --> 01:10:41.375

of appeal to another body.

1194

01:10:42.075 --> 01:10:44.895

Um, classically in in this arena, it's the,

1195

01:10:44.965 --> 01:10:46.375

it's the planning inspector, it's a planning

1196

01:10:46.375 --> 01:10:48.015

inspector on a planning appeal.

1197

01:10:48.305 --> 01:10:49.575

Let's do it that way.

1198

01:10:49.885 --> 01:10:51.695

What we're struggling here with, here with

1199

01:10:52.395 --> 01:10:55.815

is we don't really have that set up,

1200

01:10:56.275 --> 01:11:00.535

and it's not clear within, um, requirement 18

1201

01:11:01.195 --> 01:11:03.175
how, what the mechanics of it are

1202

01:11:03.635 --> 01:11:06.815
and ultimately how a decision can be made.

1203

01:11:07.755 --> 01:11:10.575
Um, I didn't want to use the pun,

1204

01:11:10.575 --> 01:11:12.495
but I'm gonna have to do it, hold water.

1205

01:11:14.905 --> 01:11:19.645
Um, and we have been wrestling

1206

01:11:19.645 --> 01:11:21.805
with this issue probably from the

1207

01:11:22.045 --> 01:11:23.285
commencement of the examination.

1208

01:11:24.065 --> 01:11:28.525
Uh, here we are in the third DCO hearing, um,

1209

01:11:29.385 --> 01:11:32.245
and we are still probably scratching our heads about

1210

01:11:32.835 --> 01:11:35.845
precisely how requirement 18 is gonna operate.

1211

01:11:41.145 --> 01:11:44.165
Mr. Straw, any observations on what I've just said?

1212

01:11:44.225 --> 01:11:49.085
And then Ms. Hutton, um, because there's Ms.

1213

01:11:49.085 --> 01:11:51.765
Hutton and Harvard Mar Master, you are kind of regulators,

1214

01:11:52.065 --> 01:11:54.445

but you are distancing yourselves.

1215

01:11:55.465 --> 01:11:57.285

Um, we've got the Dock Master

1216

01:11:57.905 --> 01:11:59.885

as another statutory Harbor authority

1217

01:12:00.695 --> 01:12:03.645

who's not at the table, but he's another regulator.

1218

01:12:04.425 --> 01:12:09.245

Um, but you know, it, it,

1219

01:12:09.425 --> 01:12:12.125

it is proving challenging to us to work our way through

1220

01:12:12.265 --> 01:12:14.445

how this requirement might work in practice.

1221

01:12:15.385 --> 01:12:16.385

Mr. Strom,

1222

01:12:18.385 --> 01:12:22.685

So James Strom for the applicant, uh, just

1223

01:12:23.705 --> 01:12:25.845

one observation about this being

1224

01:12:26.355 --> 01:12:29.645

uncharted territory in the latest, um, your,

1225

01:12:29.645 --> 01:12:32.005

your latest observation as well.

1226

01:12:32.425 --> 01:12:37.245

Um, the, uh, I just to refer back to ex,

1227

01:12:37.605 --> 01:12:41.605

I have referred back to examples based under the Harbor

1228

01:12:42.325 --> 01:12:45.485

revision orders and the creation of navigation authorities

1229

01:12:46.015 --> 01:12:49.085

where this commonality, if, if I put it that way,

1230

01:12:49.275 --> 01:12:50.485

between an applicant

1231

01:12:51.225 --> 01:12:55.565

and then a Harbor Authority, managing Harbor Safety is,

1232

01:12:55.665 --> 01:12:58.085

is a feature and not, not unusual,

1233

01:12:58.705 --> 01:13:02.445

but back to the specific point about requirement 18, the,

1234

01:13:02.625 --> 01:13:06.205

the way we, we say it's, it simply operates is

1235

01:13:06.205 --> 01:13:10.045

that at the moment, there is no requirement

1236

01:13:11.105 --> 01:13:14.285

to construct the impact protection measures as a result

1237

01:13:14.285 --> 01:13:16.205

of the conclusions that have been reached

1238

01:13:17.065 --> 01:13:19.565

and the, including the, the position

1239

01:13:19.565 --> 01:13:24.285

of the Harbor Master having looked at the risks involved.

1240

01:13:25.075 --> 01:13:29.045

However, the intention was to have the ability to

1241

01:13:29.555 --> 01:13:31.725

implement the impact protection measures

1242

01:13:32.425 --> 01:13:34.605

as a potential response

1243

01:13:35.225 --> 01:13:37.965

if the risk profile were changed,

1244

01:13:38.625 --> 01:13:41.285

and it was thought that other measures couldn't address

1245

01:13:41.445 --> 01:13:42.525

that risk profile.

1246

01:13:43.465 --> 01:13:46.765

And so that is the function of requirement 18.

1247

01:13:47.315 --> 01:13:50.605

That in the event of the

1248

01:13:51.795 --> 01:13:56.085

Statutory Conservancy navigation authority recommending

1249

01:13:56.865 --> 01:14:01.125

the implementation of such measures, the

1250

01:14:02.205 --> 01:14:04.805

mechanics of requirement 18, then follow as

1251

01:14:04.805 --> 01:14:09.405

to the way in which the, uh, applicant, the undertaker, uh,

1252

01:14:09.635 --> 01:14:11.405

goes about taking into account

1253

01:14:11.405 --> 01:14:13.405

that recommendation to operate.

1254

01:14:13.865 --> 01:14:17.005

The underlying principle, of course, of that is

1255

01:14:17.005 --> 01:14:20.525

that the Harbor Master would have the ability

1256

01:14:20.705 --> 01:14:24.125

to direct vessels, not to use iert,

1257

01:14:25.305 --> 01:14:30.005

absent some change in the safety, in this case,

1258

01:14:30.025 --> 01:14:31.405

impact protection measures.

1259

01:14:31.665 --> 01:14:34.245

So it's the, it's the gateway provision

1260

01:14:34.705 --> 01:14:35.845

to allow that to happen.

1261

01:14:35.905 --> 01:14:38.045

But the underlying teeth

1262

01:14:38.345 --> 01:14:40.725

for the Harbor Master is the ability

1263

01:14:40.785 --> 01:14:42.645

to issue a special direction.

1264

01:14:42.825 --> 01:14:46.685

You can't birth there. And, um, just

1265

01:14:46.685 --> 01:14:49.205

to complete the picture, of course, under the relevant

1266

01:14:50.485 --> 01:14:53.405

regulatory regime, it is a, I believe, a criminal offense

1267

01:14:53.585 --> 01:14:57.125

to fail to comply with the direction of the Harbormaster.

1268

01:14:57.385 --> 01:14:59.805

So it's not as if, uh,

1269

01:14:59.865 --> 01:15:01.605

and it works in that restrictive way,

1270

01:15:02.825 --> 01:15:04.605

it wouldn't matter if there's a difference

1271

01:15:04.605 --> 01:15:06.605

of view in the sense that the Hub Master's

1272

01:15:06.605 --> 01:15:07.925

issued a special direction.

1273

01:15:08.025 --> 01:15:11.245

If you fail to comply, you are guilty of a criminal,

1274

01:15:11.625 --> 01:15:13.405

you're liable to criminal prosecution.

1275

01:15:13.445 --> 01:15:14.965

I would put it in that way rather than saying you're guilty.

1276

01:15:15.265 --> 01:15:16.525

So that, but anyway, that's

1277

01:15:16.525 --> 01:15:17.645

the way it's intended to operate.

1278

01:15:17.865 --> 01:15:18.865

And

1279

01:15:20.145 --> 01:15:24.045

If I may thank you Mr. Strong, there's something for, uh,

1280

01:15:24.045 --> 01:15:26.045

harbormaster, uh, has happened, um, um,

1281

01:15:27.305 --> 01:15:30.125

in the draft protective provisions for FDNA.

1282

01:15:30.505 --> 01:15:33.965

Uh, the final paragraph, uh,

1283

01:15:34.185 --> 01:15:37.405

on disputes may be of interest here.

1284

01:15:38.065 --> 01:15:41.205

Uh, in that any dispute or writing between the Undertaker

1285

01:15:41.205 --> 01:15:43.725

and the Statutory Conservancy navigation authority under

1286

01:15:43.725 --> 01:15:45.805

this part of the, under this part of the schedule,

1287

01:15:45.805 --> 01:15:50.445

which is the protective provisions, is to be determined

1288

01:15:50.445 --> 01:15:54.925

by arbitration as provided in Article 35 Well, 35,

1289

01:15:55.545 --> 01:15:58.605

um, refers to essentially

1290

01:16:00.345 --> 01:16:02.405

an arbitrator to be agreed

1291

01:16:02.785 --> 01:16:05.885

or failing agreement to be appointed by the president

1292

01:16:05.885 --> 01:16:10.565

of the ICE in respect of the sort

1293

01:16:10.565 --> 01:16:13.565

of matters under which dispute might arise.

1294

01:16:14.865 --> 01:16:19.725

Is that the best form of arbitration? Uh, we can foresee?

1295

01:16:20.505 --> 01:16:22.965

Um, if that's not something you want

1296

01:16:22.965 --> 01:16:25.645
to respond on immediately, I'd understand.

1297

01:16:28.505 --> 01:16:30.485
Thanks sir. Victoria Harden for the Harbor Master.

1298

01:16:30.865 --> 01:16:33.205
Um, we'll take away the question about

1299

01:16:33.205 --> 01:16:34.405
the form of arbitration.

1300

01:16:34.705 --> 01:16:36.765
In terms of the principle of arbitration.

1301

01:16:37.585 --> 01:16:38.725
Um, no issue

1302

01:16:38.925 --> 01:16:43.205
because there are those two different roles of ABP, so

1303

01:16:43.265 --> 01:16:44.365
that's what we have discussed.

1304

01:16:44.365 --> 01:16:45.885
There's not issue in terms of the principle,

1305

01:16:46.305 --> 01:16:47.325
but we will take away.

1306

01:16:47.545 --> 01:16:49.685
Um, the point about the, the form,

1307

01:16:52.985 --> 01:16:56.365
Uh, it's probably kind of almost ridiculous for me to say,

1308

01:16:56.385 --> 01:17:00.165
but I just wonder whether the president of the RI, uh,

1309

01:17:00.165 --> 01:17:02.445

of the ICE would be the

1310

01:17:03.795 --> 01:17:08.085

appropriately qualified to, um, help appoint a

1311

01:17:08.615 --> 01:17:11.285

arbitrator of the right nation nature here.

1312

01:17:15.165 --> 01:17:17.385

Uh, Victoria Aden for the Harbormaster. Thank you, sir.

1313

01:17:17.385 --> 01:17:19.505

Yes, we'll, we'll consider that. Thank you,

1314

01:17:25.185 --> 01:17:26.185

Mr. Walker.

1315

01:17:26.775 --> 01:17:28.885

Thank you, sir. Angus Walker for d ft s.

1316

01:17:28.985 --> 01:17:30.525

Um, I've been listening

1317

01:17:30.525 --> 01:17:32.445

to the conversation over the last hour

1318

01:17:32.445 --> 01:17:33.725

and 20 minutes, um,

1319

01:17:33.815 --> 01:17:36.325

which I think it's important we've spent time on it

1320

01:17:36.325 --> 01:17:38.125

because it does seem to be at the very heart

1321

01:17:38.125 --> 01:17:39.165

of this application.

1322

01:17:39.945 --> 01:17:44.165

Um, trivially the easiest way to resolve, uh,

1323

01:17:44.315 --> 01:17:46.805
requirement 18 is just to provide

1324

01:17:46.805 --> 01:17:49.285
that the impact protection must be in place

1325

01:17:49.385 --> 01:17:51.285
before the, um,

1326

01:17:52.435 --> 01:17:55.005
main development either is constructed

1327

01:17:55.065 --> 01:17:58.645
or operated, depending on your, the conclusions

1328

01:17:58.645 --> 01:18:02.205
of your investigations In ISH five, about

1329

01:18:02.845 --> 01:18:06.085
construction vessels potentially hitting IOT.

1330

01:18:07.465 --> 01:18:10.805
Um, I just wanted to just step back a bit and say,

1331

01:18:10.905 --> 01:18:13.525
and make two points about

1332

01:18:14.585 --> 01:18:17.725
why this is particular a particular issue

1333

01:18:18.745 --> 01:18:22.005
in this application compared to other harbor applications,

1334

01:18:22.005 --> 01:18:26.245
for example, where generally you can regulate,

1335

01:18:27.185 --> 01:18:30.445
uh, matters with external regulators and so on.

1336

01:18:30.785 --> 01:18:34.565

The first one, as we have heard exhaustively, is the, um,

1337

01:18:35.445 --> 01:18:36.765

independence issue

1338

01:18:36.785 --> 01:18:39.605

and the structural structural independence issue where

1339

01:18:40.515 --> 01:18:44.245

various bodies of ABP feed feed into each other and so on.

1340

01:18:44.345 --> 01:18:49.085

So some sort of external, um, approval

1341

01:18:49.785 --> 01:18:53.845

we would support IOT and CLDN on that, uh, is needed.

1342

01:18:55.465 --> 01:18:59.685

Um, the second one is the heightened navigational risk

1343

01:19:01.035 --> 01:19:05.365

that we're working in, where two of the main, um, in,

1344

01:19:05.545 --> 01:19:07.685

in interested parties have commissioned their own

1345

01:19:07.685 --> 01:19:10.285

navigational risk assessments, both of which conclude

1346

01:19:10.355 --> 01:19:12.445

that impact protection is necessary,

1347

01:19:13.305 --> 01:19:17.485

or the moving of the finger p to make this, make the risks

1348

01:19:18.105 --> 01:19:19.805

not intolerable and make them all a

1349

01:19:21.905 --> 01:19:24.485

and we just can't leave all this till later.

1350

01:19:24.625 --> 01:19:26.245

You, you have to be satisfied

1351

01:19:26.245 --> 01:19:29.765

because of the supreme importance of safety

1352

01:19:31.035 --> 01:19:34.005

that it is, this project is capable of being

1353

01:19:34.955 --> 01:19:37.005

made safe before you approve it.

1354

01:19:38.305 --> 01:19:42.725

Um, it's a pity that the Dock Master isn't here to,

1355

01:19:42.905 --> 01:19:46.685

to answer some of the questions about, uh, independence

1356

01:19:46.685 --> 01:19:47.805

and what his role would be.

1357

01:19:48.665 --> 01:19:52.565

Um, but really I think those are the two overarching

1358

01:19:53.545 --> 01:19:56.765

issues that they make this a different application from

1359

01:19:57.655 --> 01:19:58.765

other similar ones.

1360

01:19:59.655 --> 01:20:00.655

Thank you.

1361

01:20:04.515 --> 01:20:05.065

Thank you, Mr.

1362

01:20:43.915 --> 01:20:45.735

You mentioned that when

1363
01:20:45.735 --> 01:20:46.735
We're gonna get a break. Yeah.

1364
01:20:46.735 --> 01:20:49.695
We, we, we are conscious of where we are time-wise,

1365
01:20:50.115 --> 01:20:52.055
and we probably ought to be adjourning soon,

1366
01:20:52.075 --> 01:20:53.175
but we are also aware

1367
01:20:53.205 --> 01:20:55.055
that potentially the Harbor master

1368
01:20:55.305 --> 01:20:56.415
would like to be released.

1369
01:20:57.515 --> 01:20:59.495
Um, we've,

1370
01:21:04.315 --> 01:21:06.055
One of the other things that we've been toying

1371
01:21:06.055 --> 01:21:08.215
with in terms particularly the control measures

1372
01:21:08.835 --> 01:21:13.095
and the in potential in initial control measures is

1373
01:21:13.115 --> 01:21:17.415
to possibly look at, um, a requirement, um, that goes

1374
01:21:17.965 --> 01:21:22.495
down the a grampian type route, um,

1375
01:21:23.765 --> 01:21:26.695
whereby, um, the order

1376
01:21:27.395 --> 01:21:31.215

in a requirement would identify in effect

1377

01:21:31.405 --> 01:21:32.415

what the starting

1378

01:21:33.515 --> 01:21:38.455

or initial, um, control measures would be along the lines of

1379

01:21:38.525 --> 01:21:43.015

what, uh, captain Furman has outlined, um, in terms

1380

01:21:43.515 --> 01:21:48.335

of windage current, um, and, and some of those.

1381

01:21:48.475 --> 01:21:52.095

So at least there is a baseline, um,

1382

01:21:52.225 --> 01:21:57.015

where everybody knows from day one, um, in effect

1383

01:21:57.225 --> 01:21:59.375

where this scheme might operate from.

1384

01:21:59.565 --> 01:22:01.935

That doesn't mean that later on there

1385

01:22:01.935 --> 01:22:03.055

might not be in a review.

1386

01:22:03.995 --> 01:22:08.895

It also does not tie we, we believe, um,

1387

01:22:09.475 --> 01:22:11.015

the hands of the Harbor Master

1388

01:22:11.235 --> 01:22:13.855

or anybody else with a regulatory interest

1389

01:22:14.685 --> 01:22:18.615

because all it would say is in effect something like

1390

01:22:18.645 --> 01:22:23.215

that prior to the operation of the proposed development, um,

1391

01:22:24.765 --> 01:22:27.335

control measures, whatever they are, would have been

1392

01:22:27.855 --> 01:22:29.135

identified and published.

1393

01:22:48.845 --> 01:22:50.345

Any observations from the applicant

1394

01:22:53.165 --> 01:22:54.625

in the first instance,

1395

01:22:58.925 --> 01:23:03.865

Uh, James Strong for, for the applicant, uh, on the basis

1396

01:23:03.965 --> 01:23:06.045

of what you articulated?

1397

01:23:06.405 --> 01:23:08.885

I mean, subject to the, the exact wording,

1398

01:23:08.985 --> 01:23:11.845

but in principle, I'm just gonna check.

1399

01:23:11.985 --> 01:23:16.965

Um, we, we don't anticipate a in principle objection

1400

01:23:16.965 --> 01:23:19.125

to that in providing clarity

1401

01:23:22.305 --> 01:23:23.305

Cap. Captain Furman

1402

01:23:23.305 --> 01:23:25.085

will be at a slight disadvantage

1403

01:23:25.525 --> 01:23:29.685

'cause he won't necessarily be aware of the concept of a,

1404

01:23:29.805 --> 01:23:31.045

a grampian type condition.

1405

01:23:31.045 --> 01:23:33.085

But no doubt he's getting some advice.

1406

01:23:33.985 --> 01:23:38.685

Uh, um, I'm climbing

1407

01:23:38.695 --> 01:23:39.695

Boots are not required.

1408

01:23:40.065 --> 01:23:42.645

If I try and give an, an example outside

1409

01:23:45.325 --> 01:23:46.925

anything to do specific with this case.

1410

01:23:47.105 --> 01:23:50.965

But, um, there are instances where, for instance,

1411

01:23:51.285 --> 01:23:53.525

a new housing scheme is being developed,

1412

01:23:54.015 --> 01:23:56.525

there will be a requirement for some highway work

1413

01:23:56.525 --> 01:23:57.645

to be done offsite.

1414

01:23:58.545 --> 01:24:01.925

Um, there might be an issue about the safety safe operation

1415

01:24:01.925 --> 01:24:05.245

of the junction as part of the planning process.

1416

01:24:05.765 --> 01:24:09.005

Consideration will be given to that, uh, issue.

1417

01:24:09.545 --> 01:24:13.845

And what often happens is a planning permission is granted.

1418

01:24:14.345 --> 01:24:16.525

It will have a condition attached to it

1419

01:24:16.875 --> 01:24:20.405

that says certain works must be done to that junction

1420

01:24:21.385 --> 01:24:25.485

before the government can be occupied Under that situation,

1421

01:24:25.505 --> 01:24:27.045

the planning authority isn't saying

1422

01:24:27.045 --> 01:24:29.645

to the highway authority, this is what the scheme is,

1423

01:24:29.865 --> 01:24:31.965

and we are approving whatever the scheme is.

1424

01:24:32.625 --> 01:24:36.285

All, all the planning authority is seeking to ensure is that

1425

01:24:36.465 --> 01:24:38.885

before occupation of the development,

1426

01:24:39.135 --> 01:24:40.685

there is a safe junction.

1427

01:24:42.385 --> 01:24:46.405

It is then up to others to ensure that that safe junction,

1428

01:24:47.225 --> 01:24:50.605

um, is designed, then built and then available.

1429

01:24:51.505 --> 01:24:55.885

So coming back to this case, what we're kind of suggesting

1430

01:24:56.465 --> 01:25:00.405

is, is there at least a way of getting the, at the start

1431

01:25:01.385 --> 01:25:04.245

it clearly identified as to

1432

01:25:04.275 --> 01:25:06.805

what those operational limits would be?

1433

01:25:08.435 --> 01:25:10.965

Does that help? Certainly for Captain Furman's, Bethany,

1434

01:25:11.105 --> 01:25:12.165

he won't be used to.

1435

01:25:12.705 --> 01:25:15.685

Yes. And similarly for io some of the iot team,

1436

01:25:15.685 --> 01:25:17.565

they won't necessarily be familiar.

1437

01:25:17.825 --> 01:25:21.205

The lawyers will be, but, um, and,

1438

01:25:21.205 --> 01:25:23.725

and planners will be in highway engineers and whatever else,

1439

01:25:23.865 --> 01:25:27.565

but, uh, those involved in, uh, shipping won't necessarily

1440

01:25:27.765 --> 01:25:28.965

'cause it, it'll be a different concept.

1441

01:25:29.145 --> 01:25:30.205

But Ms.

1442

01:25:30.205 --> 01:25:31.685

Hutton, are you able

1443

01:25:31.685 --> 01:25:34.485

to give any thoughts on what's just been suggested?

1444
01:25:35.725 --> 01:25:36.925
Victoria Hudden for the Harbor Master?

1445
01:25:37.185 --> 01:25:40.205
So, contrary to your, uh, supposition,

1446
01:25:40.205 --> 01:25:42.205
it's the lawyer who's gonna ask for clarification here.

1447
01:25:42.665 --> 01:25:45.085
Um, just just so I'm clear,

1448
01:25:45.605 --> 01:25:48.125
'cause at the moment there is this, there is paragraph 16

1449
01:25:48.705 --> 01:25:52.325
in the protective provisions, um, for the conservancy,

1450
01:25:52.775 --> 01:25:56.805
which is a grampian style paragraph because it's

1451
01:25:56.805 --> 01:25:59.245
before commencing marine commercial operations

1452
01:26:00.105 --> 01:26:05.045
and the requirement to submit approval for proposals

1453
01:26:05.045 --> 01:26:06.485
for safe operating procedures.

1454
01:26:06.505 --> 01:26:08.925
So that's written in a ramp in style.

1455
01:26:10.195 --> 01:26:14.525
Just so I am clear that one, as I understand,

1456
01:26:14.525 --> 01:26:17.125
the suggestion would be that that would be published,

1457
01:26:17.625 --> 01:26:19.405

so publicized the operating procedures.

1458

01:26:19.865 --> 01:26:23.605

Two, is the suggestion of the panel that the,

1459

01:26:23.945 --> 01:26:27.885

the grampian style requirement would have the operating

1460

01:26:28.125 --> 01:26:32.325

procedures in it, IE spelled out tugs, wind, et cetera?

1461

01:26:33.385 --> 01:26:36.765

Or is it as paragraph 16 is currently written

1462

01:26:36.765 --> 01:26:38.365

that it is a scheme to be approved?

1463

01:26:42.645 --> 01:26:44.165

I think what we are saying is

1464

01:26:44.165 --> 01:26:47.645

that we would expect the directions to have been written

1465

01:26:48.505 --> 01:26:53.325

and available for everybody out in the wider world to be,

1466

01:26:53.745 --> 01:26:58.045

um, aware of before the development became operational.

1467

01:26:58.855 --> 01:26:59.925

Thank you, sir. But

1468

01:26:59.925 --> 01:27:01.405

That should not frustrate

1469

01:27:01.755 --> 01:27:03.605

what Captain Furman would be doing

1470

01:27:03.745 --> 01:27:06.405

and others would be doing to get to that point,

1471
01:27:06.405 --> 01:27:09.325
because those directions would have to be in place

1472
01:27:10.225 --> 01:27:12.445
in any event from, as we understand it,

1473
01:27:12.445 --> 01:27:13.685
which is why I came back to the,

1474
01:27:13.705 --> 01:27:15.685
the highway junction type concept.

1475
01:27:15.795 --> 01:27:16.795
Yeah.

1476
01:27:17.405 --> 01:27:19.005
Victoria Hutton for the Harbor Master. Thank you.

1477
01:27:19.005 --> 01:27:20.005
So I think that's clear

1478
01:27:20.005 --> 01:27:24.005
because yes, I, I don't believe there'd be any issue with,

1479
01:27:24.075 --> 01:27:29.005
with publication of, um, the scheme of operation.

1480
01:27:29.865 --> 01:27:33.365
Um, if, if it were proposed that the DCO were,

1481
01:27:33.365 --> 01:27:38.245
were putting in initial operational requirements on

1482
01:27:38.305 --> 01:27:41.045
its face, then that's where the issue may arise.

1483
01:27:41.755 --> 01:27:43.725
What, what, what we're trying to make sure is

1484
01:27:43.725 --> 01:27:45.405

that the ground rules, which would come

1485

01:27:45.405 --> 01:27:48.685

through the consideration of, um, the legislation

1486

01:27:48.745 --> 01:27:50.605

and everything that Captain Furman does,

1487

01:27:51.065 --> 01:27:55.445

and maybe the Dock Master does, would have been set out,

1488

01:27:56.425 --> 01:27:59.205

um, literally before the first ship birth

1489

01:28:05.075 --> 01:28:06.045

Paragraph 16

1490

01:28:09.515 --> 01:28:10.405

submitted to the,

1491

01:28:14.955 --> 01:28:15.885

there's something missing

1492

01:28:20.465 --> 01:28:21.965

Ms. Hunt on behalf.

1493

01:28:22.865 --> 01:28:26.765

Uh, it just seems to us that, uh,

1494

01:28:27.755 --> 01:28:29.925

paragraph 16 just doesn't go quite far enough.

1495

01:28:30.625 --> 01:28:32.245

That's the, really the summary,

1496

01:28:32.385 --> 01:28:35.725

and I think that that's the, uh, perhaps the opportunity

1497

01:28:36.065 --> 01:28:40.925

for further discussion with the applicant, uh, as to

1498

01:28:41.905 --> 01:28:44.285

all it's saying is that the undertaker must submit to

1499

01:28:45.305 --> 01:28:48.005

the SCNA doesn't say, uh, that

1500

01:28:49.085 --> 01:28:50.125

anything's gotta be done with.

1501

01:28:53.335 --> 01:28:55.205

Thank you. Victoria Harden for the hub, master, sir.

1502

01:28:55.285 --> 01:28:56.445

I mean, there is the requirement

1503

01:28:56.445 --> 01:28:58.805

and must operate the authorized development only in

1504

01:28:58.805 --> 01:29:00.605

accordance with such procedure as approved,

1505

01:29:02.225 --> 01:29:03.925

but do you mean in the application process?

1506

01:29:04.555 --> 01:29:06.405

Yeah, well, it, it doesn't say anything about

1507

01:29:06.835 --> 01:29:08.965

what the application, I mean, the application

1508

01:29:08.985 --> 01:29:12.925

to the S-N-S-C-N-A, um, it then says you can't do anything

1509

01:29:12.925 --> 01:29:17.845

until it's approved, but it doesn't, uh, uh, doesn't say how

1510

01:29:17.845 --> 01:29:19.845

that approval is, is given. I

1511

01:29:19.845 --> 01:29:21.285

See, I see. Um,

1512

01:29:21.425 --> 01:29:22.425

Thanks. And basic,

1513

01:29:22.425 --> 01:29:23.925

essentially, how is it secured?

1514

01:29:24.545 --> 01:29:27.285

Yes. Okay. Um, so thank you.

1515

01:29:27.625 --> 01:29:31.005

Um, thank you Victoria Headmaster.

1516

01:29:31.005 --> 01:29:32.045

We, we will take that away

1517

01:29:32.105 --> 01:29:35.245

and have a think about how that could, um, be drafted.

1518

01:29:38.595 --> 01:29:42.295

Mr. Uh, Robbie? Erin, CLDN.

1519

01:29:43.555 --> 01:29:47.575

So I think, I think a GRAMPIAN requirement, um, in,

1520

01:29:47.635 --> 01:29:50.615

in principle could work,

1521

01:29:50.835 --> 01:29:53.055

but of course, it immediately begs the question as to

1522

01:29:53.645 --> 01:29:56.655

what happens in the event of there being disagreement

1523

01:29:57.965 --> 01:30:00.735

between the Harbor master on the one hand

1524

01:30:00.835 --> 01:30:03.735

and the ips in terms of the nature

1525

01:30:03.735 --> 01:30:04.975

of these control measures.

1526

01:30:05.355 --> 01:30:09.575

Uh, and it puts you straight back to the, um, lack

1527

01:30:09.575 --> 01:30:11.535

of independence concern that we all have.

1528

01:30:11.915 --> 01:30:14.855

Um, and it's another case of the applicant

1529

01:30:15.365 --> 01:30:18.335

marking its own homework in effect, and

1530

01:30:18.365 --> 01:30:20.055

therefore it doesn't really get over

1531

01:30:20.445 --> 01:30:24.935

that fundamental concern that, uh, in my view with, with,

1532

01:30:25.245 --> 01:30:28.695

with a good basis the, the, the, the ips have on this point.

1533

01:30:29.075 --> 01:30:31.695

Um, so the device, the device of a grampian requirement

1534

01:30:32.265 --> 01:30:36.455

would be fine, but it would need to have that element

1535

01:30:36.475 --> 01:30:39.215

of independence written into it to provide a safeguard

1536

01:30:39.215 --> 01:30:41.095

for the interests, the, the,

1537

01:30:41.095 --> 01:30:44.895

the critically important interests of the, of CLDN and and,

1538

01:30:44.995 --> 01:30:46.495

and, um, other ips.

1539

01:30:49.345 --> 01:30:53.335

Thank you msra. Um, perhaps

1540

01:30:53.995 --> 01:30:58.935

we could seek advice from hub Master, um, should

1541

01:31:00.235 --> 01:31:01.855

an SSA's decision

1542

01:31:01.955 --> 01:31:04.895

or direction be disagreed with by a stakeholder?

1543

01:31:05.325 --> 01:31:06.575

What is the recourse?

1544

01:31:06.575 --> 01:31:08.935

What, what form of appeal might there be?

1545

01:31:11.735 --> 01:31:13.055

Victoria Hutton for the Harbor Master?

1546

01:31:13.645 --> 01:31:14.895

Well, it's judicial review.

1547

01:31:15.355 --> 01:31:18.655

Um, if the Harbor master is exercising statutory functions,

1548

01:31:19.195 --> 01:31:21.375

uh, it's not a matter of of appeal.

1549

01:31:21.875 --> 01:31:23.415

Um, and in response to Mr.

1550

01:31:23.615 --> 01:31:26.335

O, what I would highlight is that the ips don't have

1551

01:31:27.205 --> 01:31:30.695

statutory responsibility relating to the safe operation

1552

01:31:30.695 --> 01:31:32.095
of the Humber.

1553

01:31:32.355 --> 01:31:35.095
And so it would be entirely inappropriate for them

1554

01:31:35.195 --> 01:31:36.775
to be regulating that issue.

1555

01:31:37.475 --> 01:31:39.375
So, um, if, if,

1556

01:31:39.435 --> 01:31:41.455
if a particular matter weren't taken into account

1557

01:31:41.455 --> 01:31:42.895
that there was a material consideration

1558

01:31:43.235 --> 01:31:46.015
or a decision was irrational, um, there are the,

1559

01:31:46.275 --> 01:31:50.335
the regular public law procedures in order to, um,

1560

01:31:51.075 --> 01:31:52.975
to ensure those decisions are held to account.

1561

01:31:53.635 --> 01:31:55.215
If I could just come back on that, Robio

1562

01:31:55.215 --> 01:31:57.335
and CODN, the ipss aren't seeking

1563

01:31:57.335 --> 01:31:59.015
to be the regulators at all.

1564

01:31:59.455 --> 01:32:01.605
We're seeking an element of independence here.

1565

01:32:02.305 --> 01:32:04.885

Um, yeah, that is, that is what we're seeking,

1566

01:32:04.945 --> 01:32:06.045

and it's no answer.

1567

01:32:06.265 --> 01:32:09.125

I'm afraid to say that judicial review is the remedy here

1568

01:32:09.125 --> 01:32:11.605

because, uh, as everyone knows, it's a very high bar.

1569

01:32:11.605 --> 01:32:15.645

And of course, the court cannot, um, uh, disagree

1570

01:32:15.645 --> 01:32:18.885

with matters of judgment, um, in relation to factual issues,

1571

01:32:18.885 --> 01:32:20.405

which is what would be concerned here.

1572

01:32:20.585 --> 01:32:23.965

Uh, it, it's only concern with errors of law, uh, in effect,

1573

01:32:23.965 --> 01:32:26.085

that's what the judicial review process is for.

1574

01:32:26.345 --> 01:32:28.925

So it's, it's, it's not, not an appropriate remedy

1575

01:32:29.225 --> 01:32:32.365

for dealing with the lack of independence concern.

1576

01:33:03.445 --> 01:33:07.085

I think it would be just worth asking Ms.

1577

01:33:07.085 --> 01:33:08.965

Hutton if there's anything to further

1578

01:33:08.985 --> 01:33:10.445

to say in response to that

1579
01:33:12.365 --> 01:33:13.485
Victoria Hutton for the Harbor Master.

1580
01:33:13.705 --> 01:33:15.485
So we'll end up going round the houses,

1581
01:33:15.785 --> 01:33:18.205
but the legislation is the legislation,

1582
01:33:18.555 --> 01:33:20.205
it's the statutory Harbor Authority,

1583
01:33:20.205 --> 01:33:22.125
which has the relevant duties and powers.

1584
01:33:22.585 --> 01:33:24.125
Um, there's no getting round that.

1585
01:33:24.225 --> 01:33:28.285
So, uh, I've made my submissions on judicial review,

1586
01:33:28.285 --> 01:33:30.645
and it would be inappropriate to have any IP

1587
01:33:30.665 --> 01:33:34.765
or group of ips standing in the shoes of the SHA in any way.

1588
01:33:35.305 --> 01:33:38.765
But we will have another look at, um, paragraph 16

1589
01:33:39.665 --> 01:33:43.845
and, um, see if we can provide some comfort to the panel,

1590
01:33:44.475 --> 01:33:46.765
obviously in, in, in discussions with the applicant.

1591
01:33:47.745 --> 01:33:50.645
Yes. Again, I, I don't think we should prolong it,

1592
01:33:50.825 --> 01:33:52.365

uh, unnecessarily.

1593

01:33:52.505 --> 01:33:55.245

The, the, but the point that most Mr. Owens making is that,

1594

01:33:55.505 --> 01:33:59.805

um, JR is unlikely to be the, the appropriate

1595

01:34:00.515 --> 01:34:03.565

mechanism in regard to a

1596

01:34:04.165 --> 01:34:05.845

disagreement over the judgment.

1597

01:34:06.625 --> 01:34:08.125

Uh, in other words, the, the,

1598

01:34:08.125 --> 01:34:10.765

the SH a's judgment appears to be final on this,

1599

01:34:11.625 --> 01:34:15.005

Uh, Yeah, uh, Victoria Hutton for the hub master

1600

01:34:15.585 --> 01:34:18.685

as it should be, because that is the legislative regime,

1601

01:34:19.185 --> 01:34:20.205

and it is his judgment.

1602

01:34:20.625 --> 01:34:24.645

And, and this pro process in my submission, uh,

1603

01:34:24.935 --> 01:34:29.205

can't seek to upend the legislative regime

1604

01:34:29.205 --> 01:34:31.405

that is in place, which does give the judgment

1605

01:34:31.905 --> 01:34:33.325

to the S Harbor authority.

1606

01:34:34.205 --> 01:34:36.405

I think that if I could encourage you,

1607

01:34:36.405 --> 01:34:39.605

just in taking this away for further consideration, uh,

1608

01:34:39.605 --> 01:34:43.205

what we really, I think have exposed is the problem at the

1609

01:34:43.335 --> 01:34:47.965

interfaces, the interface in this case between the, um,

1610

01:34:48.685 --> 01:34:51.645

SCNA and the Port SHA

1611

01:34:52.065 --> 01:34:54.765

and at the interface between the Port SHA

1612

01:34:55.465 --> 01:34:57.805

and the, uh, responsibilities

1613

01:34:57.905 --> 01:35:00.005

of the operator of the Como site.

1614

01:35:01.185 --> 01:35:02.765

So I think that, that your

1615

01:35:03.625 --> 01:35:06.485

Sutton will be looking very closely at the first of those.

1616

01:35:07.345 --> 01:35:10.925

Uh, I suggest that it's necessary for the, uh, applicant

1617

01:35:11.385 --> 01:35:14.805

and the IOT operators to be continuing

1618

01:35:14.805 --> 01:35:16.925

to look very closely at that other interface

1619

01:35:17.625 --> 01:35:19.965

and see whether there's anything further we can do to give,

1620

01:35:20.225 --> 01:35:24.485

uh, effectively, uh, uh, um,

1621

01:35:24.875 --> 01:35:27.245

comfort to the Secretary of State

1622

01:35:27.245 --> 01:35:29.725

of making a decision on this DC0 application,

1623

01:35:32.815 --> 01:35:34.125

James drawn for the applicant.

1624

01:35:34.465 --> 01:35:36.925

So obviously you can reflect on that.

1625

01:35:37.385 --> 01:35:38.565

Can I just, I don't want

1626

01:35:38.565 --> 01:35:40.805

to get prolonged debate about independence,

1627

01:35:40.825 --> 01:35:44.605

but there is law on precisely the issue

1628

01:35:44.955 --> 01:35:47.885

that you just heard about, to the effect,

1629

01:35:48.705 --> 01:35:51.485

and I'm summarizing an awful lot of law here,

1630

01:35:51.505 --> 01:35:56.285

but to the effect that judicial review is an adequate remedy

1631

01:35:57.265 --> 01:36:01.965

for addressing perceived lack of independence, where

1632

01:36:02.875 --> 01:36:06.445

it's involving a review of the exercise of judgment.

1633

01:36:07.705 --> 01:36:10.325

The difference can arise

1634

01:36:11.215 --> 01:36:15.845

where there is fact, a process of fact finding where,

1635

01:36:16.185 --> 01:36:19.925

um, one may need the independence

1636

01:36:20.665 --> 01:36:24.765

to be more than simply a judicial review of the

1637

01:36:25.405 --> 01:36:26.685

rationality of the judgment.

1638

01:36:27.665 --> 01:36:32.125

And it's been up to the, either the House of law

1639

01:36:32.125 --> 01:36:34.165

or the Supreme Court, depending on when they were in the

1640

01:36:34.165 --> 01:36:35.245

case of Una Bigham.

1641

01:36:35.865 --> 01:36:39.925

We, I, I can, I don't want to weary the examine authority

1642

01:36:39.945 --> 01:36:41.125

of the loss of law on that,

1643

01:36:41.185 --> 01:36:45.725

but it has been examined in the context of Article six

1644

01:36:45.785 --> 01:36:48.045

of the European Convention on Human Rights,

1645

01:36:48.085 --> 01:36:50.245

when people are concerned about decision makers

1646

01:36:50.675 --> 01:36:51.845

lacking independence.

1647

01:36:52.145 --> 01:36:55.085

And the, the law has,

1648

01:36:55.585 --> 01:36:57.845

has quite some quite clear statements to make about that.

1649

01:37:00.465 --> 01:37:02.565

Uh, I do agree that,

1650

01:37:02.595 --> 01:37:04.085

that we shouldn't prolong this very much.

1651

01:37:04.145 --> 01:37:07.925

Um, I, I encourage you to very useful,

1652

01:37:08.505 --> 01:37:12.405

but, um, I don't think independence is the point

1653

01:37:12.675 --> 01:37:14.805

that is moot to Mr.

1654

01:37:14.905 --> 01:37:17.885

Owen's point here. I think it's, it's, the point is

1655

01:37:17.885 --> 01:37:21.765

that the, the that, uh, uh, as it stands,

1656

01:37:21.985 --> 01:37:26.085

the SHA, um, will be, um, uh,

1657

01:37:26.715 --> 01:37:30.845

basically imposing conditions, uh, on operation.

1658

01:37:31.185 --> 01:37:34.125

Um, and there is, uh, no

1659

01:37:35.885 --> 01:37:38.845

apparent way for those conditions to be challenged.

1660

01:37:40.885 --> 01:37:44.765

I think the point that Mr. Owen to be fair is making is

1661

01:37:44.765 --> 01:37:49.085

that whether those conditions would be sufficient, um,

1662

01:37:50.565 --> 01:37:53.205

I think we should, um, seek

1663

01:37:53.705 --> 01:37:56.685

or give iot the opportunity to comment on

1664

01:37:58.505 --> 01:38:01.205

the graming condition suggestion.

1665

01:38:02.305 --> 01:38:06.845

Um, Mr. Elvin, anything to comment on in that regard?

1666

01:38:08.105 --> 01:38:10.045

I'm not sure we are as keen on it as, as others.

1667

01:38:10.305 --> 01:38:12.565

Um, I think we prefer the controls

1668

01:38:12.565 --> 01:38:15.565

to be spelled out in the DCO, uh,

1669

01:38:15.705 --> 01:38:18.685

and it certainly wouldn't assist with any physical

1670

01:38:19.825 --> 01:38:21.245

impact protection measures.

1671

01:38:22.225 --> 01:38:25.805

And also, um, it's not going to assist

1672

01:38:26.345 --> 01:38:28.365

to the extent there's an overlap with the coma.

1673

01:38:28.715 --> 01:38:29.715

This is

1674

01:39:06.315 --> 01:39:08.015

Mr. Gould, Right?

1675

01:39:08.315 --> 01:39:11.575

Robbie Owen for CLDN, I wonder if I can just, um, comment on

1676

01:39:11.765 --> 01:39:15.295

what you, uh, what what you were saying a moment ago.

1677

01:39:15.475 --> 01:39:19.175

Um, uh, the concern CLDN has is,

1678

01:39:19.475 --> 01:39:21.655

is not just the independence one,

1679

01:39:21.675 --> 01:39:24.695

but the fact that we are contemplating, in effect,

1680

01:39:24.745 --> 01:39:27.775

postponing a judgment on the acceptability

1681

01:39:28.515 --> 01:39:32.815

of operational controls to, to, to, to later in the process

1682

01:39:33.035 --> 01:39:34.895

beyond a decision on the DCO.

1683

01:39:35.795 --> 01:39:39.575

And therefore, we are concerned

1684

01:39:39.575 --> 01:39:42.775

that there should be a proper process to test, uh,

1685

01:39:43.135 --> 01:39:44.175

judgment in that respect.

1686

01:39:44.995 --> 01:39:46.615

And therefore, I think it's very different

1687

01:39:46.615 --> 01:39:49.015
to the situation Mr.

1688

01:39:49.015 --> 01:39:53.175
Straw is referring to with the, uh, the reference

1689

01:39:53.175 --> 01:39:57.895
to the law on this, um, where yes, in a normal circumstance,

1690

01:39:57.955 --> 01:40:01.215
ju judicial review is appropriate to test the judgment of a,

1691

01:40:01.395 --> 01:40:05.535
of, of a, of a personal body having statutory

1692

01:40:05.535 --> 01:40:06.695
powers in their exercise.

1693

01:40:07.035 --> 01:40:10.135
Um, but, but that's, that's in a very different context in,

1694

01:40:10.135 --> 01:40:12.335
in generality to what we're contemplating here, which is,

1695

01:40:12.355 --> 01:40:15.775
as I say, postponing a decision, uh, going to the core

1696

01:40:15.835 --> 01:40:18.535
of the environmental impact assessment of this application.

1697

01:40:19.075 --> 01:40:22.135
Uh, and, and therefore it's entirely appropriate, um, uh,

1698

01:40:22.635 --> 01:40:25.015
in the event of this being delayed to a requirement,

1699

01:40:25.015 --> 01:40:26.415
and I absolutely hear what Mr.

1700

01:40:26.465 --> 01:40:27.495

Elvin said about that.

1701

01:40:27.805 --> 01:40:29.575

It's entirely appropriate, we would say, for there

1702

01:40:29.575 --> 01:40:33.135

to be an element of independence that isn't judicial review

1703

01:40:33.155 --> 01:40:36.735

to test matters of, of fact and judgment.

1704

01:40:37.195 --> 01:40:39.375

Um, that would be our position on that.

1705

01:40:57.285 --> 01:41:00.485

I think we have probably taken consideration

1706

01:41:00.485 --> 01:41:03.525

of requirement 18 NRA type matters

1707

01:41:03.945 --> 01:41:07.325

and any other alternative as far as we can.

1708

01:41:08.065 --> 01:41:10.245

Um, I'm conscious of the time,

1709

01:41:10.265 --> 01:41:13.725

but I, there were just a few questions on protective protect

1710

01:41:14.805 --> 01:41:16.685

Humber Masters, a protective provision

1711

01:41:16.705 --> 01:41:21.245

or the, um, uh, yeah, um,

1712

01:41:21.995 --> 01:41:25.405

part one, uh, if, if, if people will indulge us just

1713

01:41:25.405 --> 01:41:26.725

to ask two or three questions,

1714

01:41:27.385 --> 01:41:29.005
we can then adjourn after that.

1715

01:41:29.055 --> 01:41:33.325
We'll come back to protective provisions of others, um,

1716

01:41:33.335 --> 01:41:34.445
after the adjourn.

1717

01:41:34.665 --> 01:41:37.685
But they do not, if that discussion,

1718

01:41:37.725 --> 01:41:40.445
I don't think in involve needs involve the harbor master.

1719

01:41:40.985 --> 01:41:42.765
So is everybody agreeable

1720

01:41:42.765 --> 01:41:44.445
that we probably spent about another five,

1721

01:41:44.995 --> 01:41:47.845
hopefully no more than 10 minutes, uh, to result

1722

01:41:47.865 --> 01:41:50.605
or to, to go through just quickly some, um, matters

1723

01:41:50.635 --> 01:41:54.845
with the Harbor master and the protective provisions in part

1724

01:41:55.025 --> 01:41:56.325
one of Schedule four,

1725

01:41:57.105 --> 01:41:59.885
and then we'll adjourn, um,

1726

01:42:00.305 --> 01:42:02.045
for a mid-afternoon break at that point.

1727

01:42:22.305 --> 01:42:26.205

So looking at paragraph three in part one

1728

01:42:26.225 --> 01:42:30.885
of schedule four, um,

1729

01:42:31.025 --> 01:42:33.925
and this is, you know, the protective provisions

1730

01:42:33.925 --> 01:42:35.245
for the statutory conservancy

1731

01:42:35.245 --> 01:42:37.445
and navigation authority, um,

1732

01:42:39.545 --> 01:42:41.525
in the, the second

1733

01:42:42.505 --> 01:42:46.165
or the second sub, uh, subparagraph, um,

1734

01:42:47.655 --> 01:42:49.605
where there's the approval mechanism.

1735

01:42:49.985 --> 01:42:53.085
Um, and in effect, what we, what we are seeing is

1736

01:42:53.085 --> 01:42:55.885
that if no decision is made within 28 days,

1737

01:42:56.745 --> 01:42:58.045
in effect, is it deemed approval?

1738

01:43:00.465 --> 01:43:03.685
Is the Harbor master content with that,

1739

01:43:04.225 --> 01:43:06.125
or should it be the other way around

1740

01:43:06.195 --> 01:43:08.725
that if there's no decision, it's a deemed refusal

1741
01:43:18.125 --> 01:43:19.365
Victoria Harden for the Harbor Master?

1742
01:43:19.635 --> 01:43:21.045
Yeah, so we, we discussed this.

1743
01:43:21.075 --> 01:43:25.165
That point is that 28 days is a sufficient period of time

1744
01:43:25.865 --> 01:43:27.805
we consider for the decision.

1745
01:43:28.345 --> 01:43:31.525
If it's not, uh, then there could be a refusal

1746
01:43:32.205 --> 01:43:33.205
'cause there haven't been enough time

1747
01:43:33.265 --> 01:43:34.445
to consider the application.

1748
01:43:35.105 --> 01:43:39.845
So it's perfectly possible to refuse, uh, on the basis that,

1749
01:43:41.035 --> 01:43:42.365
that something is outstanding.

1750
01:43:42.465 --> 01:43:45.445
For example, comments from the Environment Agency.

1751
01:43:49.325 --> 01:43:52.085
We just felt we, we needed to ask the question.

1752
01:43:52.365 --> 01:43:55.645
'cause it's an area sometimes where, uh,

1753
01:43:55.645 --> 01:43:56.965
regulators don't realize

1754
01:43:57.155 --> 01:43:58.565

that if they don't make the decision,

1755

01:43:58.595 --> 01:43:59.805

they end up with an approval.

1756

01:44:00.025 --> 01:44:01.805

But if the Harbor master is comfortable

1757

01:44:01.805 --> 01:44:04.085

that either he can make the decision in 28 days

1758

01:44:04.545 --> 01:44:09.125

or he will issue a refusal to protect his position, uh,

1759

01:44:09.125 --> 01:44:12.605

then we need not, I think, query that any further.

1760

01:44:12.825 --> 01:44:14.565

But we felt we had to raise it. Thank

1761

01:44:14.565 --> 01:44:15.565

You, sir.

1762

01:44:15.625 --> 01:44:19.165

Um, because normally most parties are looking for it

1763

01:44:19.165 --> 01:44:20.165

to be the other way around.

1764

01:44:20.195 --> 01:44:21.445

They prefer that it, it,

1765

01:44:21.505 --> 01:44:23.805

it drops into the deemed refusal category.

1766

01:44:24.965 --> 01:44:25.085

I

1767

01:44:29.525 --> 01:44:30.025

So thank you.

1768

01:44:30.205 --> 01:44:31.545

If you felt strongly on that point.

1769

01:44:31.905 --> 01:44:34.265

Adeem refusal wouldn't be a problem for us either.

1770

01:44:34.335 --> 01:44:35.625

It's just that we are satisfied

1771

01:44:35.625 --> 01:44:37.225

with the way it's drafted at the moment.

1772

01:44:38.195 --> 01:44:38.625

Thank you.

1773

01:44:49.345 --> 01:44:53.935

There may just be a small drafting issue within, um, the,

1774

01:44:54.075 --> 01:44:58.455

the latter part of, um, that subparagraph.

1775

01:44:58.795 --> 01:45:01.855

Um, let's get how

1776

01:45:01.855 --> 01:45:03.375

Many lines do 1, 2, 3

1777

01:45:03.675 --> 01:45:06.735

Fourth line down towards the middle?

1778

01:45:06.745 --> 01:45:10.735

We've got subparagraph one and then must not.

1779

01:45:10.915 --> 01:45:13.095

We think there probably ought to be an and in there.

1780

01:45:17.165 --> 01:45:19.455

Alright, so I'm looking at the wrong place. Where, where,

1781

01:45:20.075 --> 01:45:23.655

Uh, again, in, in paragraph three, subparagraph

1782

01:45:23.755 --> 01:45:24.895

2 0 2,

1783

01:45:26.925 --> 01:45:31.585

Uh, fourth line after under subparagraph one,

1784

01:45:32.055 --> 01:45:35.465

then it goes on to say must not reasonably, I think it must,

1785

01:45:35.565 --> 01:45:37.385

it should be and must not reasonably.

1786

01:45:37.765 --> 01:45:38.905

Yes, I think that's right, sir.

1787

01:45:43.945 --> 01:45:45.475

Does that, does that accord with

1788

01:45:45.475 --> 01:45:48.315

what the applicant thinks should be appearing there

1789

01:45:54.735 --> 01:45:56.035

or was there something else supposed

1790

01:45:56.035 --> 01:45:57.315

to be there that there's missing

1791

01:46:02.365 --> 01:46:03.635

James Strong for the applicant?

1792

01:46:03.895 --> 01:46:04.875

Yes, sir. I think you are right.

1793

01:46:17.135 --> 01:46:17.425

Then

1794

01:46:17.425 --> 01:46:22.025

Looking at paragraph 3, 3, 4,

1795
01:46:23.755 --> 01:46:27.215
um, where there's a consultation

1796
01:46:28.165 --> 01:46:30.815
with the environment agency, we are just wondering whether

1797
01:46:31.785 --> 01:46:33.975
there should also be a consultation with a,

1798
01:46:34.095 --> 01:46:36.415
a marine management organization in there as well.

1799
01:46:37.735 --> 01:46:37.855
I,

1800
01:46:42.935 --> 01:46:45.275
Um, Victoria Hutton for the Harbor Master.

1801
01:46:46.535 --> 01:46:48.595
So, uh, yes, we're certainly open to that.

1802
01:46:48.835 --> 01:46:51.685
I think it, uh, as the regime currently exists, there's the

1803
01:46:52.195 --> 01:46:55.965
licensing function of the SHA for works,

1804
01:46:56.025 --> 01:46:57.845
but it's subject to the MMO license.

1805
01:46:58.155 --> 01:47:00.365
Here we have the deemed marine license

1806
01:47:01.425 --> 01:47:05.205
and so I, I suppose it would make sense to have them

1807
01:47:05.205 --> 01:47:06.885
as a consultee as well, but

1808
01:47:09.955 --> 01:47:12.165

They wouldn't be now. They wouldn't be

1809

01:47:12.185 --> 01:47:13.205

Now because they can.

1810

01:47:16.415 --> 01:47:18.785

Well, we, we've raised the question, do you want

1811

01:47:18.785 --> 01:47:22.265

to go away and think about the any need or otherwise?

1812

01:47:23.135 --> 01:47:24.625

That can always be put back

1813

01:47:24.625 --> 01:47:27.545

to the applicant if the need is thought to be appropriate.

1814

01:47:28.275 --> 01:47:29.945

Thank you. So yes, Victoria Den

1815

01:47:29.945 --> 01:47:31.065

from the Harbor Master will do that.

1816

01:47:39.935 --> 01:47:41.175

I think the f the fourth

1817

01:47:41.195 --> 01:47:45.735

and last question we've already addressed, which is in terms

1818

01:47:45.735 --> 01:47:47.975

of arbitration, is the Institute

1819

01:47:47.975 --> 01:47:49.775

of Civil Engineers the right arbitrator

1820

01:47:49.955 --> 01:47:53.655

or should another arbitrator be acting in this capacity?

1821

01:47:54.595 --> 01:47:56.095

Uh, Victoria Haren for the Heart Masters.

1822

01:47:56.275 --> 01:47:59.375

So we will take that away, uh, noting the qualify

1823

01:48:00.335 --> 01:48:02.615

relevant qualifications and we will come back to you.

1824

01:48:11.965 --> 01:48:14.815

That concludes what we wanted to, to, uh,

1825

01:48:15.275 --> 01:48:17.135

do on protective revisions with you.

1826

01:48:17.915 --> 01:48:20.495

Um, I presume the applicant's got nothing further

1827

01:48:20.635 --> 01:48:22.935

to say on this set of protective provisions.

1828

01:48:25.415 --> 01:48:28.415

I think then it is appropriate that we adjourn, um,

1829

01:48:29.365 --> 01:48:30.655

suggestions for duration.

1830

01:48:31.025 --> 01:48:32.335

We're coming up to 10 to four.

1831

01:48:33.365 --> 01:48:36.935

What, what we are intending to do is to look at

1832

01:48:37.795 --> 01:48:42.015

DFD S'S protective provisions as suggested, um,

1833

01:48:42.695 --> 01:48:44.855

I OT and the Protective

1834

01:48:46.345 --> 01:48:49.815

Protective provisions suggested by dps CLDN.

1835

01:48:50.755 --> 01:48:54.975

Um, and we'll do, do deal

1836

01:48:54.975 --> 01:48:56.815

with each one in turn.

1837

01:48:57.955 --> 01:49:00.895

Um, the other thing that we were toying with

1838

01:49:01.955 --> 01:49:05.655

was in the same way yesterday on some of the navigational

1839

01:49:06.195 --> 01:49:08.175

issues with I OT

1840

01:49:08.175 --> 01:49:10.815

and the applicant, we said, do you want to go away in a room

1841

01:49:10.815 --> 01:49:12.615

and have a chat?

1842

01:49:13.995 --> 01:49:17.575

It, would there be any merit in US adjourning for longer

1843

01:49:17.715 --> 01:49:21.095

to enable some face-to-face discussions to be held

1844

01:49:21.765 --> 01:49:24.695

between DFDS, applicant, CLDN,

1845

01:49:24.695 --> 01:49:29.295

applicant IOT applicant and then we come back

1846

01:49:29.505 --> 01:49:30.975

after you've had those opportunities

1847

01:49:31.155 --> 01:49:34.335

to separately discuss Mr. Mr. Greenman,

1848

01:49:35.075 --> 01:49:36.075

Uh, thank you. Thank you sir.

1849

01:49:36.075 --> 01:49:38.535

Uh, Brian Greenwood for, uh, the applicant.

1850

01:49:38.915 --> 01:49:42.295

So just to update, I'm sure, uh, uh, Mr. Walker was going

1851

01:49:42.295 --> 01:49:43.815

to say this in the second, uh,

1852

01:49:43.915 --> 01:49:45.695

the second half of this session.

1853

01:49:46.235 --> 01:49:48.525

Um, Ms. Walker very kindly

1854

01:49:48.765 --> 01:49:51.165

provided some draft protective provisions.

1855

01:49:51.385 --> 01:49:55.165

Um, uh, we did delay in re re responding.

1856

01:49:55.225 --> 01:49:59.045

So Mr. Walker got a revised, uh, set

1857

01:49:59.045 --> 01:50:01.285

of protective provisions only a few days ago,

1858

01:50:01.665 --> 01:50:02.805

and he's one day,

1859

01:50:03.345 --> 01:50:06.405

and Mr. Walker has very kindly said he'll respond, uh,

1860

01:50:07.325 --> 01:50:09.605

tomorrow, uh, Friday.

1861

01:50:10.025 --> 01:50:11.925

Yes. Um, Mr.

1862

01:50:12.245 --> 01:50:15.485

Ern hasn't had, uh, a set of protective provisions.

1863

01:50:15.795 --> 01:50:19.965

They have actually been, uh, approved, uh, an amended draft

1864

01:50:20.025 --> 01:50:21.445

for me to send to Mr.

1865

01:50:21.765 --> 01:50:23.885

Ern, which he will get during the course

1866

01:50:23.945 --> 01:50:24.965

of, I hope this evening.

1867

01:50:25.505 --> 01:50:28.205

Um, so, so we are dealing with that

1868

01:50:28.305 --> 01:50:31.365

and Mr. Owen will, I'm sure quite rightly say if given the

1869

01:50:31.365 --> 01:50:34.005

opportunity that we haven't to actually discuss them

1870

01:50:34.005 --> 01:50:35.525

with him before now, uh,

1871

01:50:35.785 --> 01:50:40.405

and he's quite correct as far as uh, IOT are concerned, um,

1872

01:50:41.495 --> 01:50:43.125

there is a difference between us.

1873

01:50:43.125 --> 01:50:46.725

So as you all gather, um, uh, we

1874

01:50:46.965 --> 01:50:47.965

provided a draft, uh,

1875

01:50:48.225 --> 01:50:50.685

an alternative draft has been sent back to us.

1876

01:50:50.745 --> 01:50:53.645

We have not actually responded on that to a certain extent.

1877

01:50:54.095 --> 01:50:56.085

We're being driven by other factors

1878

01:50:56.305 --> 01:50:59.365

and when we know the direction we're going with regard

1879

01:50:59.365 --> 01:51:03.245

to the other factors, we will then be able to sit down

1880

01:51:03.505 --> 01:51:06.565

and talk, I hope constructively about

1881

01:51:06.565 --> 01:51:07.605

the protective provision.

1882

01:51:07.605 --> 01:51:10.445

But I'm not actually sure we're actually there yet, sir,

1883

01:51:15.005 --> 01:51:17.965

I, I hesitate to point out David Alvin prior to

1884

01:51:17.965 --> 01:51:22.365

that there was agreement on the 28th September to, uh,

1885

01:51:22.495 --> 01:51:26.085

protective provisions in substantially the form in our

1886

01:51:26.085 --> 01:51:27.405

earlier representations.

1887

01:51:28.185 --> 01:51:30.525

As I say, we haven't, as Mr. Green would've said though,

1888

01:51:30.525 --> 01:51:33.005

we haven't had any uh, further response.

1889

01:51:39.985 --> 01:51:41.245

I'm gonna ask another question then.

1890

01:51:41.815 --> 01:51:44.045

Given, given what we've just heard about protective

1891

01:51:44.045 --> 01:51:48.845

provisions, what merit might there be in us having

1892

01:51:48.965 --> 01:51:50.205

a discussion this afternoon

1893

01:51:50.455 --> 01:51:54.125

after our adjournment, Mr.

1894

01:51:54.185 --> 01:51:55.185

Row

1895

01:51:55.505 --> 01:51:59.845

Robbie, CLDN, uh, so far as CLD N's concerned?

1896

01:51:59.905 --> 01:52:02.605

Uh, I I I'm not sure there would be much merit

1897

01:52:02.605 --> 01:52:06.405

because we, uh, as I said yesterday or the day

1898

01:52:06.405 --> 01:52:09.845

before, we wrote to Mr.

1899

01:52:09.845 --> 01:52:12.965

Greenwood with our submissions in relation

1900

01:52:12.965 --> 01:52:15.365

to protective provisions six weeks ago at deadline

1901

01:52:15.365 --> 01:52:16.605

four on the 9th of October.

1902

01:52:17.185 --> 01:52:20.245

And I'm pleased to hear that we're gonna get a response

1903

01:52:20.385 --> 01:52:21.485
to tonight to that letter.

1904

01:52:22.345 --> 01:52:25.485
Um, and therefore I think until we've had that

1905

01:52:25.485 --> 01:52:27.725
and considered it with CRDN, uh,

1906

01:52:28.235 --> 01:52:32.125
there's not much I'm gonna be able to say, uh, either to Mr.

1907

01:52:32.125 --> 01:52:34.645
Greenwood and his clients in a meeting this afternoon

1908

01:52:35.545 --> 01:52:38.845
or indeed to you beyond repeating what we set a deadline

1909

01:52:38.845 --> 01:52:40.605
for in our, in our, in our representation.

1910

01:52:40.825 --> 01:52:43.925
So I, I think, um, I appreciate the opportunity

1911

01:52:43.945 --> 01:52:46.285
to have a discussion with you about protective provisions

1912

01:52:46.285 --> 01:52:48.325
and we can answer any questions you may have, of course.

1913

01:52:48.425 --> 01:52:51.245
But, um, in terms of really getting into the nitty gritty,

1914

01:52:51.305 --> 01:52:53.245
it might not be the best use of time.

1915

01:52:57.115 --> 01:53:01.105
Thank you. Angus Orca,

1916

01:53:01.145 --> 01:53:03.105

d ft s um, same here.

1917

01:53:03.465 --> 01:53:04.625

Although as Mr.

1918

01:53:04.625 --> 01:53:08.625

Greenwood said, he, it will, we do already have the response

1919

01:53:09.205 --> 01:53:11.745

as of nine 30 yesterday morning,

1920

01:53:12.525 --> 01:53:14.905

and I did say as soon as possible, not Friday.

1921

01:53:15.495 --> 01:53:17.625

It's not going to be Friday. That is not possible.

1922

01:53:18.285 --> 01:53:20.745

Um, obviously we've been busy the last two

1923

01:53:20.745 --> 01:53:21.865

days sitting here.

1924

01:53:22.365 --> 01:53:25.785

Um, so I don't think it's, it'll be fruitful to go through.

1925

01:53:25.965 --> 01:53:29.745

So I, I think then what we will do is we will adjourn, um,

1926

01:53:31.575 --> 01:53:34.945

that will at least naile the, the Harbor Masters,

1927

01:53:35.075 --> 01:53:36.185

sorry, Ms. Hutton, sorry,

1928

01:53:36.205 --> 01:53:37.705

Um, Victoria den for the Harbor Master.

1929

01:53:38.605 --> 01:53:41.185

I'm not intending to throw a span in the works, sir, but Oh,

1930

01:53:41.225 --> 01:53:42.225

Why not?

1931

01:53:43.245 --> 01:53:46.905

We, um, we will put in written representations on IOT's

1932

01:53:46.905 --> 01:53:50.105

protective provisions because there is a proposal, um,

1933

01:53:50.295 --> 01:53:51.465

that works one, two

1934

01:53:51.465 --> 01:53:54.145

and three not be constructed except in accordance

1935

01:53:54.145 --> 01:53:56.745

with such plans as may be approved in writing, but iot

1936

01:53:57.725 --> 01:54:00.185

and uh, clearly there's a risk of conflict

1937

01:54:00.225 --> 01:54:03.185

with the protected provisions for the conservancy

1938

01:54:04.725 --> 01:54:07.545

and uh, we would resist that short point.

1939

01:54:07.855 --> 01:54:11.585

Okay. But yeah, I think, um,

1940

01:54:13.955 --> 01:54:16.905

we'll resuming, 'cause it sounds like we won't be here

1941

01:54:16.925 --> 01:54:18.705

for much longer after the resumption,

1942

01:54:19.245 --> 01:54:23.745

but if we adjourn till quarter past four, um,

1943

01:54:24.925 --> 01:54:27.705

and then we'll it sounds like we might have a very quick

1944

01:54:27.705 --> 01:54:31.065

sprint through, um, some of the issues

1945

01:54:31.175 --> 01:54:32.545

with protective provisions that

1946

01:54:33.485 --> 01:54:35.105

at least I can put some flags down.

1947

01:54:35.525 --> 01:54:38.945

Um, that might, might help oil, some wheels

1948

01:54:38.945 --> 01:54:41.785

to get things moving where they need possibly to get moving.

1949

01:54:42.525 --> 01:54:45.225

Um, does that, does that sound reasonable

1950

01:54:45.225 --> 01:54:46.545

that we adjourn to quarter plus

1951

01:54:46.545 --> 01:54:49.985

Four, 10 plus four perhaps temps 10 plus four.

1952

01:54:50.925 --> 01:54:55.065

10 plus one, Four. Four? Yep.

1953

01:54:59.055 --> 01:55:02.745

Okay. Ur then to 10 past four. Thank you, sir. Thank you.