

ISH4 Pt2

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One and this issue specific hearing is is resumed and

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what we'd now like to do is move on to agenda item 7 if we could which is a the the draught German consent order. But in particular, I think what we want to focus on in this one is, is the Draught marine licence. And but there are a couple of questions just around the the DC itself, but mainly related to some of the comments that that the MO have made.

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I think I think without the OM present it might be a little difficult for us to to make some real progress on this matter. But I think there's some comments and and some areas that we wish to explore particularly in relation to the the comments at the MO have received in sort of we've received a D1 from them. So I think it's sort of a sort of almost acting on behalf of the the MO, if you like and asking some questions and just seeking some some clarification. But we also sort of appreciate that that some of these may well have been covered in your sort of deal 2 submissions And so we've. So we've seen those as well. But I think it's just

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helpful for us to understand the detail and perhaps some of the background on on some of the comments that that you've made and in particular just to sort of help us identify where those areas of disagreement are and and really sort of what the likelihood is and where you are we sort of discussions in terms of looking to resolve those. So I think that's that's the focus of of what we're trying to to get within the that sort of the context of what sort of been submitted and supplied to us.

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So the first area that we'd like to focus on and I think Miss Metcalf mentioned in the opening session that there was some matters that we're gonna leave to these and these are the ones that we want to sort of discuss really and it sort of relates to to Article 46 of of the DC. So that's our, that's our starting point. And and and in terms of what what we've got from the Mr is that they seem to have some issues particularly the wording of paragraph 12 and and their comments seem to be seeking a removal. And also possibly the inclusion of some additional wording

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at the end of the article which I think they've replicated in their the L1 submissions which is EI 179. And like I said probably my normal starting point would be to ask the MO to explain what they are. But given given we haven't got them, I think it's probably the applicant if they can sort of explain where they are with those discussions. Yeah. So if I can start by saying in terms of discussion, I suspect that this is one of those issues that will have to be left ultimately to yourselves to recommend

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on and and ultimately for the Secretary of State to take a view. We doubt we're going to reach common ground with the MO on this matter unless they change their position. I wouldn't want to assume that they're going to do that in order to

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explain this issue from our perspective. At least I wonder whether it might help if I start by just explaining

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the the the way that the particular part of Article 46 is now to work as a result of the changes. So you'll have and and this will cover off also the the hopefully the discussion about the amended wording. So paragraph 10 of Article 46 has been changed in order to exclude the Dean Marine Licence from

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its provisions. So Article 10 provides a general ability for the undertaker to transfer and the benefit of parts of the DCO and to any person. And be you'll see that that is subject in any event to paragraph 11 which accepts a certain important and parts of the DCO

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from the scope of paragraph 10. So the effect of the changes is effectively to take the DE Marine licence out of that part of the transfer provision Altogether.

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Then you have a paragraph 12 inserted. What paragraph 12 does is to enable instead the benefit of the DE Marine licence to be transferred to any person with the consent of the Secretary of State,

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the Secretary of State having to consult the MO before giving such consent.

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So effectively here the Secretary of State becomes the decision maker on any request to transfer the benefit of the dead Marine licence, but has to take the views of the MMO on board before doing so.

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Paragraph 13

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effectively is intended to allow for transfer also

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pursuant to the provisions of the 2009 Act. In other words, through the what would be the normal means if this was just a a marine licence grant to pursuant to that Act,

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so that either option is available. Obviously if one went down the route of paragraph 13 it would be an application to the MMO itself in the usual way and I should just identify that in the next iteration you get there'll be a further tweak representing a wording which is also found in other made DCO's to make clear that the prohibition that one

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mines in section 72, eight of the 2009 act on the transfer of dead marine licence of of marine licences, except by way of section 72 seven doesn't apply to transfers under the DC. That's just a tidying up

point, but I mention it while it's here. So that's how we have proposed that a transfer of the dead marine licence should be able to be affected through the Secretary of State, or alternatively if the applicant chooses, through an application to the M1

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of 2009 Act. The MO's position as set out in Reg 107.9 is that the Secretary of State should have no role in the transfer of the dead marine licence in DCO, which the Secretary of State has made

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effectively seems to be their position. The Secretary of State is not properly placed to have that role even where any decision is informed by consultation with the MO, and that the MP should have exclusive control in such matters. And so it effectively does not wish there to be any opportunity for any other party to approve a transfer. And what that would mean as we've set out in our

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response deadline 2 and that's at Rep 2012 in response to what the MO has said about written question one 18316. It would mean unlike the rest of the DCO,

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the Secretary of State would have no involvement in any decision to transfer the benefit of the DML. And there would have to be an application to the MO and there would be no opportunity to appeal to the Secretary of State

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if there is either a refusal or a failure to determine such an application.

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It would also mean that transfer of the DCO as a whole, if that was required at any stage in the future, would be in the hands of two different decision makers.

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And even if the Secretary of State concluded that it was appropriate for the DCO to be transferred,

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the MO could withhold consent for the transfer of the DML.

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And we say an outcome along those lines would clearly be contrary to the public interest. And we don't think it would be appropriate to build the risk of such incoherence into this statutory instrument.

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And

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we, we have identified in our deadline to written submissions and why we don't think that's appropriate. We've also provided 5 recent examples, drawn from 2019 to 2022 of previous occasions

where the Secretary of State has rejected the MO's views on this point and has included provision along the lines that we are seeking in a maid development consent order.

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From the developers perspective, the benefit

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of the provision that's made in the draught Article 46 is that it requires only a letter of approval from the Secretary of State,

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who we say is best placed to make a judgement on whether a transfer would be appropriate in the public interest. And we say the Secretary of State is no less well placed in respect of the De Marine licence than in respect of other elements of the Development Consent Order. And and it's worth just

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standing back and considering that point. It is the Secretary of State, informed by your report and recommendations, who is called upon to make a decision as to whether a DE Marine licence should be granted in the first place,

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having taken account of all of the potential implications and if so, on what terms.

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And so any suggestion that the Secretary of State is not competent to decide whether that should be transferred to another person seems to me to have no basis at all. Secretary of State can make a view on that issue just as much as Secretary of State can make a view on whether it's appropriate to grant my clients the Dean Marine licence licence in the first place.

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And so the process that is set up by Article 4612 is straightforward, it's time efficient and there are no gaps or deficiencies of that process in terms of protection of the public interest. And we haven't seen anything in the submissions that have been made by the MO so far that would suggest otherwise

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that there are any gaps or or or any failure to protect the public interest or to justify a different view being taken by the Secretary of State in this case

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to the one that has been taken in the other cases to which we have referred. So as matters stand, we think that we're right on this. We haven't seen anything from the MO to persuade us that we're wrong

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and therefore we suspect that this is a matter that will ultimately be left to

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your recommendation and then the Secretary of States judgement.

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Thank you that that's sort of helpful to to clarify that position and and that sort of final

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sort of sentence sort of answers my next question in terms of sort of what would happen if things aren't resolved. But it's quite clear from from what you've said what your position is. I think like I said at the start that is it's hard for us to sort of make great progress at the moment without without the the Mr here but to hear you're sort of position is helpful. It's also helpful to understand where we need to be sort of concentrating and where that might sort of focus our attention over the coming the coming months. But in terms of discussions with the M, is this something that you are still looking to at least engage with them to see whether either a resolution can be achieved,

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bought that can be persuaded in whichever way you choose?

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And

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Sir, would Philpot, Casey on behalf of the applicant. Although there is ongoing detailed discussion with the MO on this and and and a variety of other matters, our understanding of their of their position on this matter is that it is a consistent line that they take in these examinations. And so although we would obviously be delighted if they are persuaded by our case, we suspect that that they may ultimately

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retain the position that they have. And and therefore that's why we technically it's likely that this will be a matter where a judgement will have to be formed and and that they clearly appreciate that if they wish to maintain that position they need to put forward alternative wording that could be incorporated into the DCO. And we can comment on that

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ourselves so that the Secretary of State and and indeed you and your colleagues will be able to take a view as to what form of DCO ought to be

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put in place if the order is to be made.

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That's enormously helpful. That's that. That's, yes, that's fine. Thank you.

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I don't think there's much more we can do on on 46 at at this stage. So I think that that that's been

helpful to at least sort of go through those. I think I think the next element that we sort of want to to look at is again same sort of process if you like

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and his schedule 17 with this sort of just sort of seeing sort of the the position in terms of of where you are with those and and and I think again looking at the the reps that we've got from from the MOD they they've got some issues with schedule 17 and are seeking sort of remembrance particularly the interpretation under the relevant authority to to exclude them. But they're also seems to be sort of two, two other matters that they should have have sort of concerns about One is the time frame for the determination of complex matters And the other one is

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in their view it creates a new sort of enhanced appeals process which might mean that it's different from other approved and and that sort of summarising what what they've said to us. But they've also referred us to Annex B of the PINS guidance note 11 which I think deals with various sort of other other bodies and and that sort of things and and they've identified that as as they sort of consider the schedule something is inconsistent with with what's written down in there. So it will be helpful to sort of I suppose my question is a similar one.

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Where are you with the discussions and that sort of things but also what is your response to to to them that their comments about the the compliance or non compliance with the guidance and Hereward Phillpott KC on behalf of the applicants.

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Again just by way of overview, I suspect that this is 1 where again you will be ultimately required to take a view and to make a recommendation to the Secretary of State. Having heard both sides, it is an issue which has come up in other examinations and as with the Article 46 point, there is a consistent view taken by the MMO on this matter and therefore we suspect that ultimately they will

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and stick to their guns. And we have provided a a response at deadline two. It's in the same place as I mentioned before. So it's in our response to what the MO said on written question 1:18, 3/16

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and it's Rep 2012.

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And if I just explain how we see it,

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Schedule 17,

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the procedure regarding certain approvals provides for a standardised procedure for discharging requirements and also DML conditions under the DCO. And the approach that is set out in Schedule 17

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and the structure that it takes and the time scales that it provides for obtaining approvals that are required after the DCO is being granted,

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it reflects similar provisions in many made Development Consent orders. And the reason that Schedule 17 and its equivalent in other DC OS is there is it's. It's long been recognised that those who are implementing urgently needed nationally significant infrastructure projects must have a predictable and efficient system

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for obtaining the approval of outstanding matters and dealing with any disputes that may emerge. As to the merits

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of such matters.

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And you'll be aware that this is an area that's not covered directly by the Planning Act itself. To the Planning Act is silent as to

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how

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both requirements and conditions on de marine licences are to be discharged and therefore it becomes a matter for each individual development Consent Order to make appropriate provision and there's therefore discretion on the part of the Secretary of State in how that is dealt with.

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The guidance note does not stipulate

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that only the MO may have the ultimate say on the discharge of conditions.

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It it does anticipate, as indeed does the draught DCO, that the MMO would be the past to who many application is made. But in any event that would simply be guidance

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and the guidance has to be applied on a case by case basis, taking regard of the circumstances of each case and the arguments that are presented. But the guidance does not stipulate an answer to this particular matter.

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Now, returning to the underlying public interest justification for having a predictable and efficient system that Schedule 17 provides, that underlying public interest justification is no different

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whether one is concerned with the discharge of requirements

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or conditions on the Dean Marine Licence.

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Both are constraints

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upon implementation set by the same bespoke statutory instrument,

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and the subject matter and implications of those constraints are not inherently different simply because of which side of the jurisdictional line they happen to fall.

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And returning to the point that I made in the context of the transfer,

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the examination and determination of the application for the Development Consent order.

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Established by the 2008 Act shows that Parliament has recognised that the Secretary of State

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and those appointed by the Secretary of State to examine and make recommendations on the making of a DCO, including a dead marine licence,

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are qualified, suitably qualified to sit in the shoes of the MO

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in deciding whether or not to grant a Dean Marine licence and if so, on what terms. There's nothing inherently more or less complex about the matters that are covered by Dee marine licences and their conditions to DCO requirements

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simply because of the jurisdictional line. And that's reflected in the fact that sometimes the constraints are mirror images of one another.

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Where the same document, for example the Construction Environmental Management Plan, needs to be approved both pursuant to a requirement, in this case requirement 6 and a DE Marine Licence

condition condition 8. And as will be familiar to you and your colleagues, complex issues, including technical issues, arise on dry land just as much as they arise at sea. And Parliament has long recognised

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that the Secretary of State and those appointed by the Secretary of State to make decisions on his or her behalf, are sure to be qualified to deal with technical matters. Complex matters, including those that require expertise and technical appraisal.

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The the effect of what the MMO is seeking, by contrast,

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would be to carve out the de marine licence conditions from that process. And as a result,

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there would be, first of all no time scales for determination of any of the applications for approval under a deep marine licence condition,

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no time scale

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within which any such decision has to be made

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and secondly, no opportunity to appeal

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in the event of either non determination or a dispute as to the merits

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or adequacy of the material submitted.

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What we are pointed to instead is an internal MO complaints procedure and the availability of judicial review. But plainly neither of those options can provide for those two gaps in the process that they aren't. They are not a time scale for determination, nor are they an appeal on the merits.

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The the MO makes comparison with the position under the 2009 Act,

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but with respect that comparison is misconceived

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because Parliament has legislated so that nationally significant infrastructure infrastructure projects do not have to obtain marine licences under that legislation

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and they can instead obtain A deemed marine licence as part of a single statutory instrument, IE the Development Consent Order.

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In other words, Parliament has decided it would not be in the public interest for such schemes to have to be subject to the provisions of the 2009 Act. Instead we have the streamlined One Stop Shop system that has been established to enable the more rapid authorization and implementation of such projects.

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Now this is an issue that has arisen in other examinations and although we recognise the decisions in other examinations are not precedents, in the same way that decisions of the Court are precedents and we've sought to draw attention to those who are helpful. It's also, of course, therefore open to you and your colleagues and the Secretary of State in this case to reach a different view to that which has been taken in other cases, having considered the facts and arguments that have presented

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to you

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now, in the

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deadline, 2 submissions that have been put on, on behalf of the applicant, they identify the Thames Tideway Tunnel Development Consent Order as one where the discharge of dead marine licence conditions was dealt with in the way that we propose. And on the other side, in order to assist you and your colleagues. And I draw attention to the fact that in the Sizewell C Development Consent Order, the issue was decided the other way,

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so in favour of the MMO.

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And we will supply the relevant extracts from the decision documents and also the submissions that were put in in relation to that at deadline 3. So you can consider those and you can see the reasoning. But

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because you haven't had a chance to see those in advance, I'll just deal with it at a high level so you can understand what we will say about those. And when you read those documents, we anticipate you'll see that the reasons that were given in the examining authorities report and the decision letter

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don't adequately engage with all of the arguments deployed, and they don't therefore provide a particularly satisfactory precedent for the consideration of the matter in this case. Now

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that much we say is apparent not just from the relative brevity of the examining authorities reasoning and the absence of engagement with key issues that were raised in submissions, but also as you'll see when you look at those two documents, there is a difference of view that emerged between the examining Authority and the Secretary of State

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Said the examining authority in its report accepted the applicant argument there that a time scale for determination was needed. So they recognised that that that was appropriate to build in a timescale within which the decision should be made,

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but they rejected the applicant's proposals for an appeal mechanism.

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What they didn't do,

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as you'll see, is properly grappled then with the implications of the fact that that rendered the timescale entirely useless because one couldn't then

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appeal if there was no decision in time. And that they recognised that they hadn't

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dealt with that obvious problem and they left-handed it over to the Secretary of State. The Secretary of State in in very brief reasoning, then just remove the time scale

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for determination without engaging, let alone seeking to address the difficulties that inevitably arise if you don't have a time scale or explaining how they would be overcome.

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And the Secretary of states, for a brief reasoning, doesn't seek to say that those difficulties wouldn't arise or that they didn't matter.

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Nor did they seek to explain why an independent inspector appointed by the Secretary of State wouldn't be able to determine any disputes in this context in the same way that they do in many other contexts all the time.

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So I I that that's by way of a brief overview. I don't want to go into too much more detail than you've seen it yourself. You can then ask questions on it. But in short, for those reasons, what we'll be saying

is that decision doesn't provide an adequate basis on which to resolve the issue in this case. And we draw attention to it because we think that that's fair and appropriate,

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but ultimately it still falls to you and your colleagues then the Secretary of State to form a view on the competing arguments now in the

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instant case. So returning to the facts of this case, there is, as you'll have appreciated, a particular urgency in the delivery of the infrastructure as explained in the deadline two response to the MO and that means that the implementation

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needs to follow rapidly. For many, decision to grant consent and that specific factual matrix strengthens what we say is the already powerful public interest justification for putting in place a predictable and efficient system for obtaining the approval of outstanding matters, dealing with any disputes that arise on the merits. It also highlights

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the harm

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that could easily arise to the public interest in that early delivery in the absence of such a process. So that's why we haven't agreed with the MO suggestion that the discharge of Dean Marine licence conditions should be excluded from the scope of Schedule 17. So I pause there. That's that's the the main point of substance. They've also raised a point about schedule 17/5, which I can deal with separately, but I've just pause there in case there's any

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questions you had on that overview.

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Thank you for that.

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I don't think there are any questions at this stage. I think

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I'm gonna reserve those until we've seen your submissions at DL3. I think I think that would be

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and a slightly better way for for us to do it because we can then see both sides and and I think that's helpful to get that. So

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I don't think I'm gonna post the questions that are sort of rattling around in my brain until I've had a chance to sort of digest all of that I think and then we can perhaps it's probably better posed in

writing because then we can also invite the MO to comment at the same time so we can get a a better sort of understanding of the positions. But I think it it's certainly helpful to see how

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or or what you're considering may well be the situation by the end of the examination again. So yeah Ohh stood but it would be helpful if you could just explain paragraph 5 because that yes that's that's the next one I was just gonna go and ask for sort of a clarification on so. So that is the the MO has raised a concern about paragraph 5. In their Rep 1079 document, paragraph 3.23, they say it could cause confusion and ambiguity which may undermine its regulatory role

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at that. That concern we say is not well founded. If if one if I can just direct your attention

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to paragraph 5 so that this is headed anticipatory steps towards compliance with any requirement and that heading ought to give the clue as a starting point as to why this shouldn't affect the MO at all. Because it is very specific that it is dealing with compliance with provisions of Schedule 2 requirements. So the starting point is that it's not of any relevance to the conditions in the DE Marine licence,

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but just so that you understand what paragraph 5 is intended to do. It's a common provision found in other DCOS, and what it what it does is simply to make clear that the relevant planning authority

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in dealing with an application to discharge a requirement is able to take into account and matters which have been dealt with in advance by the undertaker. So in the usual way, as one would expect, where there is a an urgent need for the infrastructure, developers will often seek to prepare the ground for rapid discharge by engaging with the authority,

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providing with them with information and and seeking to ensure that when the DCO is granted and they can then formally make an application for discharge, the ground has been well prepared. And it simply makes clear that if in those circumstances the authority takes account of those steps towards compliance and that would be lawful.

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And so it is. It's not only sensible and well

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precedented, it's really just for the avoidance of doubt that something which is eminently sensible and reasonable is legitimately to be taken into account where appropriate by the authority.

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So even if it applied to the MMO, wouldn't be a problem. But as it happens, it's quite clear that it doesn't.

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Thank you for that clarification.

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In terms of precedence, do we have those, have they been submitted to us as areas where they already precedent?

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We'll we'll check the expansion memorandum and deal with that in a post hearing note if we we made we suspect we have that probably best to check that helpful. Thank you.

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I think

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that probably deals with the questions on on schedule 17 that that that I have and and probably hopefully sort of takes us on to the next item on the agenda which is actually that relationship between the the sort of DML conditions and and the CDC requirements and and

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and I suppose the purpose of of putting this on here is to sort of help us understand how they work together and to sort of get an idea of documentation and and and and those sorts of things. So we've already sort of mentioned the the, the Kemp and the fact that it's sort of repeated in in condition 8 and and DC requirements 6 which both require I require its submission. And we also know that in sort of paragraph two of condition eight in the DML, it does make provision for a single document or two documents to to be prepared. So,

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so we accept that. And I suppose really sort of the the question I've got is probably perhaps sort of A2 parter if you like really sort of a general overview of the relationship between conditions per se, not just necessarily the the camp itself, but how the how the conditions and requirements sort of work together and dovetail together. But also and then in particular in relation to the camp because that's clearly been sort of identified how you see those two and what you're sort of thought processes of those two documents or one document and where you are in that process. And Harry would Philpott Casey on behalf of the applicant

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and just as a preliminary point on this and it may it may be slightly anticipating item 4 on this agenda but just just to deal with it in advance like well I've I've sort of noted on my sort of love the 26th may well cross over at this point. So by all means, if it does I I was going, I was going to deal with that at the outset because what I assume has been picked up in in item 4 is that there is

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a mismatch at the moment between part three of the DE Marine licence procedure for the discharge of conditions and Schedule 17. And that that is a it's a fair cop. That is an inconsistency and the reason that that has arisen is essentially because the drafting of the dead marine licence follows the MO's preference. But if

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our case in relation to Schedule 17 and its scope is accepted, then Part three would fall away with it. And So what we are proposing to do is provide a drafting at the next deadline which would show the alternative drafting that would be appropriate depending on which way that issue is resolved. So just try and pick that up and deal with that right at the outset.

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Umm

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by way of the explanation of the the relationship between the two and it it might help just to

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stand back and and note that the entire the entirety of the DCO, including the deem marine licence and its conditions is is under the jurisdiction of the Secretary of State in this. In this process it is equivalent to a full marine licence granted under the 2009 Act. But as a matter of law, it's also part of the Development Consent Order, and that's statutory instrument and for the purposes of drafting

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and dividing responsibility for controls between the requirements and the de marine licence. Effectively the approaches to follow the demarcation of jurisdiction that would arise without the DCI in place in terms of the MMO's and jurisdiction.

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And so um,

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where matters are above mean high water springs, they're regulated by requirements and discharged by the relevant planning authority.

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Where they are below, they are regulated by demon marine licence conditions and discharged by the MO. And just just to understand how that works in terms of the drafting it, it's helpful to look at schedule 2 in the requirements.

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And if we take UH requirements six as the first example of this approach, what you'll see is you go through the requirements is that where requirements engage with work number one part of which of course is in the UK marine area,

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the the part of which is not the the requirement distinguishes

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in the way that is found in this first part of requirement 6. So requirement 6/1 no works forming part of work #1 outside of the UK marine area may be commenced. And so in in respect of each requirement either it's clear from the requirement itself that it doesn't touch work number one, in

which case it doesn't need that form of words. Where it does, it makes clear that that that that is in relation to areas

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outside of the UK marine area and UK marine area is a defined term in Article two of the Draught Development Consent Order has the meaning given to it in Section 42 of the 2009 Act, so it imports that definition. So the definition in itself is straightforward and you will see that formulation and found, for example requirement 7 no part of the authorised project outside of the UK

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marine area and similarly in requirement 11.

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And 12:00 and also a 13 and then also 16. So those are

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requirements that engage work number one, either explicitly or implicitly, but they make clear that that's where they draw the line And so anything which forms part of work number one and is inside the UK marine area is then picked up in the deep marine licence conditions.

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And so there are provisions to make clear

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where for example there is a

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no relevance to the the other area of jurisdiction. So for example, if we go back to requirement 7 at no party authorised project outside of the UK marine area may be commenced until the construction construction Traffic Management plan for that part has been submitted and approved by the relevant planning authority. That that effectively makes clear that that is

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there's no equivalent condition in the dead marine licence because the construction Traffic Management plan is wholly within the control of the relevant planning authority. And there are also provisions that deal with areas where consistency may be appropriate. As you picked up in your introduction, Sir, condition and eight, two of the dead marine licence allows for the Kemp for both the relevant

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the marine licence condition and also the Schedule 2 requirement to be the same document. But the way we envisage that happening is that there are likely to be at least

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three different camps. There will be a camp for the marine works there there. There will also be one for the land side works, but because they can be dealt with

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in parts,

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so the way that requirement work as six works is that it allows a construction environmental management plan for that part of the works. So as you understand the land side works are intended to be undertaken in phases. So it's likely that there would be a an initial construction environmental management plan for the first part of the land side works

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and then another one in due course for later phases, hence at least three in in total. And we suspect that that is likely to be the preference of the individual bodies that there would be separate versions. But appropriately the DC at least makes provision for the possibility that they may be comprised in a single document if that's thought appropriate.

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So that that was what I was proposing to say at this stage about if that helps.

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Yeah, that that that's helpful. Thank you.

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I've just got one question just on the the UK marine area and the definition and it might be me. I can see it in certainly in part one, but I can't see it defined in Schedule 2 under the requirements.

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Should it or does it need to be? I suppose it's my my question.

43:32
Sorry. I think you'll need we'll need your microphone. And sorry, I yeah, I do apologise, Harry would Philpott Casey on behalf of the applicant. It's identified in Article 2 as I drew attention to. And that definition is introduced by the words of part one of Article 2 in this order. Unless the context requires otherwise and then it sets it out. And of course, that then carries through

44:00
to every part of the DC including a Schedule 2. It's simply that in schedule two, there are certain terms which have their own definition in that schedule. And because UK marine area is not included there, the Article 2 definition carries through that that that's helpful and I'm sure we'll come back to that time

44:26
Schedule 2 requirements and the interpretations at some stage tomorrow I suspect. And thank you for that that clarification that that that's helpful.

44:33
And

44:35

I think probably the only question sort of in my mind is, is how do matters such as

44:48

working hours, lighting, noise that would occur within that within the UK in terms of on the how would they controlled and they because they're quite clearly controlled within the the requirements in terms of hours of working for example. So, so how are they then sort of transposed in terms of what happens within the deemed marine licence.

45:18

So the suggestion that's been made to me is whether if the, if there are particular issues that you want to understand, whereabouts they're dealt with in the DML conditions that we could provide you with a note if we take a list now of which ones you you're you're seeking and then we can identify where they are

45:39

dealt with in the Dean Marine licence. Otherwise it might just be a process. Yeah. No that where is it? Yes. Yes. Yeah. No that that makes sense. I think think relates to anything

45:49

around construction activities as suspects. So it's sort of you know working hours and

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any sort of issues with regards to construction lighting that may well be done and we have sort of briefly touched on on noise but it it's how all that sort of it's mainly to do with the construction aspect which I imagine is probably quite broad and isn't giving you a specific list. But that's I think the areas that we are just sort of looking at sort of how that that that works and how that that they are then carried forward or ensured that they are then within the deadline licence I think. And so Hereward Phillipott Casey on behalf of the applicant, I I suspect that that

46:25

is a combination of specific conditions and the construction environmental management plan that would need to be approved under condition 14. And so if we provide you with a note which specifies where they're all found for the purposes of the marine area and that will probably be more useful and more reliable than my attempting to do the exercise on the hoof. No, that's fine because we can then if there's any particular questions given the timescale, we can then sort of put those in

46:56

the real questions and and and qualification if we need to and we we can provide that at the at deadline three as part of our post hearing notes.

47:07

Yeah, that's helpful. Thank you very much.

47:16

I think again that probably deals with

47:21

that sort of italic 3 on the agenda and that sort of helpful to to sort of go through that. And I think some of the aspects of

47:30

Condition 26 we we've dealt with so that that's sort of the the paragraph three there And

47:36

but one of the questions sort of I had again it's sort of the the relationship between what's in the DM and what's in the DC any particular Article 63 which requires which which gives that sort of sign off. And we had the discussion last at the last hearing with regards to that deals with in writing and all those sort of questions that we have then. And so the question is again how does Article 63 interrelate or does it interrelate with the DML and and and the schedule 17 as well.

48:10

Bear with me one second. By taking Mr

48:26

Article 63 one, it is framed in terms of a request, an application to, made to, or request made of

48:37

any authority, body or person pursuant to any of the provisions of this Order, so that,

48:45

in its breadth, embraces also the de Marine licence, certainly, as we intended to operate with Schedule 17, applying to discharge of requirements.

49:01

The point

49:11

and we're we're just checking whether there is an equivalent provision to Article 63. Two B in the DE marine licence and Article 63. To be you'll recall, is the constraint on the ability to approve matters pursuant to requirements if they would give rise to any material in your material. Different significant effects

49:41

and say we will just check to ensure that there's an equivalent in relation to the Dean Marine licence. If not, we can pick that up with the MO in terms of any drafting that's required.

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50:14

And so my attention in that contest has been drawn to Part 2 of the Dean Marine Licence

50:24

and paragraph 6. Under the heading General you'll see that paragraph sub paragraphs one and two are effectively equivalent in effect to to Article 63 and to be in respect of the Dead Marine licence. So that hopefully ties off that at that point.

50:59

Yes. Thank you. Thank you for

51:07

so

51:10

the other sort of question that that that comes to my mind in terms of that relationship there between 63 and and and the opening sort of paragraph that the that you read to us 63 one

51:22

are we content that 63 one and schedule 17

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do the same thing and and work hand in hand together and there's no other cause we've identified that sort of one

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sort of error or sort of duplication if you like or or or issue that's come up on on the 26

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are we sure there's no other sort of issues that sort of mean that they don't work together as they're intended to. And again that's probably a a difficult and unfair question to ask but it might be more a case of I pose the question and and it's something to check into And and just give us that assurance that that 63 works as it should do given the, the, the, the potential presence of schedule 17. We will check that Schedule 17 is introduced by and and and and is made effectively pursuant to

52:10

Article 63. So one sees that that that if one turns to Schedule 17 in the top right hand corner that it is,

52:19

it is introduced as it were by Article 63. So certainly, yeah, 63 four is the I'm reminded is that the the relevant sub paragraph of Article 63 which introduces

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Schedule 17. And so

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it would be clear from that, if nothing else, that Article 63 One

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applies to Schedule 17,

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right?

53:06

We when we look at the alternative forms of drafting

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that would apply depending on which way the Secretary of State ultimately resolves the issue over Schedule 17 and deem marine licence conditions, we can look to see whether there are any consequential changes that might be needed to pick that up. In terms of the dead marine licence itself and any process that it sets out. I think that would be helpful and perhaps my question was slightly woefully and I was more it's more to do with the process if you like to make sure that the process that's set out in 63 dovetails

53:43

in the process that's in in 17 and I say there may be some consequential changes so that that's that's the purpose of what we're sort of trying to trying to get to. You like to make sure they they do work as as they're intended and and so we will we will check that but as I said it, it may be that in providing the alternative drafting for the alternative outcome there may be some further drafting which is needed to clarify that position. The Dean Marine licence, where it's relatively straightforward if the deem marine licence conditions are subject to

54:15

Schedule 17 because of the way that they're introduced by Article 63. But that would not be the case potentially if

54:24

if there is a separate process provided for the DML and or at least it may not be clear that that's the process and we can consider the drafting accordingly.

54:35

Thank you. Yeah, that's that. That's a useful way forward.

54:42

I think that probably deals with all the questions that that I had

54:49

on item number 7. And I don't think while you were doing, I was checking the panel, I thought we got any any further questions on on that. And so I think that deals with with item 7. And I think we've probably do have a handful of action notes that I think particularly from that session and others. So if it's OK, I think what we'll do is we'll do what we did before. We'll take a a short break that just allows us just to check and make sure that we we've captured what we think we've captured and then come back and and and run through those. So I think we can probably do it in perhaps, well, perhaps we give ourselves sort of 20 minutes.

55:20

So it's it's just after 12:15 at the moment. Perhaps we'll come back at 12:35 and don't do that. So this hearing is adjourned till 12:35.

55:29