

ISH5 Pt3

0:02

Welcome back everybody. Time is now 5 past two and this issue specific hearing is commenced.

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What now like to move on to the next part of the discussions on the DCR which in relation to Schedule 2 in particular, excuse me. And what I'd like to do is just start with one under the interpretations. And I think we almost sort of signposted this earlier that we'll be looking to sort of discuss the

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interpretation of the word commence which I think we've had discussions on before. And but also I know that there's been comments raised both by Nelk and also by the the Environment Agency as well And they've expanded on on some of their their sort of issues in terms of their their submissions. And

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also conscious that the applicant made a number of changes at DL1 in terms of their response to probably both our in questions and the discussions that we had as well at the at the last hearing. So from my perspective what I'm thinking is it might be easy to start with the applicant if they can sort of explain what changes they have made. And then perhaps once we've heard for those who might be there, I can sort of ask Nelk and how they sort of respond to those comments. And when they started to address issues, the Environment Agency again aren't here unfortunately.

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But if there's anything, any light you can shed in terms of the discussions you may have had or responses you may have had from the the Environment Agency on on the matter so you can hand over to to the applicant. Thanks. Thank you. Sir Harry would Philpott KC on behalf of the applicants. So if I start by just explaining the the changes made to the definition of commence in Schedule 2. So there are a number of

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changes. First of all the the first change to the text is to identify that in in some places this relates to part of the authorised project rather than all of it. So that's really just a clarification because we need to look at the requirements, some of them are relevant to a particular part. Second change is to remove archaeological investigations, which are indicated in the first week of hearings was a change that was forthcoming on the basis that those had already been made.

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And the third change is again one that I flagged earlier which is to exclude its its application in relation to work #9 for reasons that we also canvassed in the first week of hearings. So that the changes are are

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relatively modest in the sense that they are either to make it consistent with the way that the requirements work or there to deal with matters that we've flagged up before.

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We have of course provided

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a written justification of the way that commences defined. We did that in Rep 1039 in response to Britain question 118 two .5 which you will have seen. And we also provided a response at deadline 2IN Rep 2015 to certain issues that Milk had raised about this in their comments at Rep

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on Zero 79. And we explained in that first of all the exclusion of work #9 but also we reiterated 2 points. First of all, that any underground

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works are covered by requirement 15 and that was a point you may recall I made in the first week of hearings. I don't repeat it, but essentially that assist with any concerns that any excluded works might have ish might give rise to impacts in terms of contaminated land if they disturb

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contamination below ground. And the other point we made is that there are no other likely significant effects that are identified in the assessment or elsewhere that would justify control of these particular works that are excluded ahead of the approval of the camp, the CTMP and the drainage strategy. So by way of overview, that's where we are.

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I'm happy to

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hear any particular concerns or evidence that there may be that the exclusions go too far, but at the moment we think we've got it about right.

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And so just to if I may just add Hereward Phillpott again on behalf of the applicant. I'm reminded that in relation to the environment agencies concerns, I think they they had a concern about

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the investigation, the remedial work in respect of any contamination and that of course is caught by the contaminated land controls within requirement 15, which prevents any below ground works comprised in the identified work numbers being undertaken until a written remediation strategy has been submitted and approved following consultation with the Environment

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Agency. So we believe that that concern is actually addressed in that way. And so that was

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one second. So just I'll just check if there's anything else.

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And so therefore what I think the Environment Agency may have perceived as a a loophole isn't because of the all embracing a way in which requirement 15 is introduced.

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OK. Thank you for that clarification. In terms of the EA,

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you remind me I think that this feature in the statement of common ground with the Environment Agency. So in terms of progression with them not being here, the way we're going to see how this progresses is through the next iteration of the extent of common ground. So yes, that is that that is how it should be and I believe it will be dealt with and we are engaging constructively with the Environment Agency on these and other matters.

7:19

Thank you. Perhaps if I could turn to to Nelk in terms of the the comments that you raised and I think again they were probably in response to our own questions. I think just to get an understanding of of your position, whether the applicants changes have have addressed those, whether we've heard from the applicant sort of perhaps and deals with those concerns. If not where we are on on those and what exactly those concerns remain to be.

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Yeah, yes, Thank you. Richard Limo from NE Links Council. And

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I think we've had a chance to fully review those comments yet, but we're quite happy to sort of continue our discussions with the applicant to agree that final detail that goes into comments and or not commence. So fully anticipate being able to sort of come to an agreement on that.

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Thank you.

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OK, thank. Thank you. I think would be helpful to to sort of carry on with with those discussions.

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Just checking to make sure that there's

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any sort of further questions that I need to ask particularly for for Nell. I don't think there is. I think that's

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that's fine. Um,

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no, I think that that's fine. I think if those discussions then if there is anything else, I'm suspect we'll pick those up through written questions once we've once we've left those discussions sort of reach out reach conclusion. OK. Thank you.

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I think that probably deals with

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the first part of that in terms of one and I think I've moved now on to the next part which was

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requirements

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five. I think I've got a question on

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yeah. I think we may have briefly touched on on this

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in the previous discussions and at one of the issue. But it's the use of the word begin within there. And it was just to sort of seek clarification as to sort of what the definition of begin is in this context because I suspect it's different from what's identified in requirement to. But I think that's specifically set out in requirement to as to what begin means and then follow on is do we need a definition of what begin means in this context or is it or is it clear which I suppose will depend on your answer. Sir Harry would Philpott on behalf of the

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the applicant where the term begun is used in requirement 2. As you say that that is a a term which has a specific meaning in terms of the commencement of the authorised project, which stems from the definition in section 155 which

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definition is incorporated into the DCOM and by the words in parenthesis. But where the word begin is used in requirement 5/2, it is used in its ordinary English sense, so it is. It is not their used in the same

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technical way as it were, is that it's used in requirement 2 to define the life of the the consent,

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the word beginning. It doesn't, we say need to be defined in that context. It it's an ordinary word with

a well understood meaning which is apt to cover its use in this particular context and and so where one talks about the construction of no more than those identified parts of the development may begin. What it is saying is that the construction of those things may not start to happen,

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and until the thing which has identified as needing to be done beforehand has been done. So it's in its ordinary English usage. In that context,

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it's entirely appropriate and in terms of its enforceability, its precision and enforceability, which is really where that would

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go to the if the local planning authority is seeking to check

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whether or not there has been any infringement of this part of the requirement, it will be able to determine whether construction of additional units has begun by simply inspecting the site. It will see whether there are construction works. If there are construction works, then construction will have begun in that non-technical sense. And it's also relevant to note in this context that what we'll be dealing with here is parts of works number

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five or seven

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and therefore the necessary CMPC, TMP and drainage strategies for those later phases would need to have been approved beforehand

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in any event. So that provides further comfort that it would be clear whether or not you had done something which was contrary to this phasing requirement. And just by inspecting the site and seeing whether a construction has, has has started.

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OK, thank you. I don't think Neil could raise any particular issues around that, but I suspect having heard that that explanation it probably, I don't want to put words in your mouth. I'll ask you to comment.

12:58

Thank you. Richard Lima from NE Links Council. Yes, we're happy with that.

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Thank you.

13:07

And I think the next one I'd like to move on to is requirement #9, which is construction hours. And

again, I think this was a comment that knelt raised in terms of the the reference in three to 72 hours. But I'm thinking this may have been addressed and may the gender after may be overtaken by events I think. But if you could just clarify that be helpful.

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Yes, Harry, would Philpott Casey on behalf of the applicant, the applicant has as you've anticipated so already accepted the amendment of 72 hours to become 24 hours. We did that at deadline two and that set out in Rep 2015. So we have heard the concern and we've, we believe we've addressed it.

13:57

Thank you. Can I just ask just a clarification point for for my own information actually in terms of those construction hours,

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it includes all the work numbers but it excludes work number one. Now I'm guessing that's because they are dealt with via the DML, but if I could just clarify whether it is, but this this may form part of the note that we discussed yesterday. So, So yes, in the heroic 4 put on behalf of the applicant, yes in the generality. But in terms of the specifics, it probably would be best to deal with this in the note and we can make the give you chapter and verse on that point.

14:30

Thank you very much. Thanks.

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Think that's all the questions in terms of the specific requirements, but there was just one one more sort of just on sort of general drafting and sort of the convention which we have seen in terms of a number of the requirements have got a sort of a tail piece which is sort of an unless otherwise approved by the relevant planning authority. And I think that's in quite a quite a number of the requirements. And and I think from from what we've seen, we can understand that there's a need for that and the flexibility and the argument that you've put forward in, in that sense. But I think it would be helpful if we could ask you to

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justify and explain that particularly given the advice note guidance which sort of says that such tail pieces perhaps should be avoided and why in this instance we should be sort of departing from from the guidance

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Harwood Philpot on behalf of the applicant. So we say that the use of the tail pieces in the development consent order is consistent with the guidance on their use in Advice Note 15, because what they

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do in the way that they have been used is allow for amendment of details and mitigation measures that are approved after the DC has been granted. What they don't do is to allow for amendment of the parameters that are set by the DCO. In other words, they don't allow an amendment of the development that has been approved under the DCO itself, which is the particular concern that is raised

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in the advice note. So

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in the advice note which which deals with this,

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there are various, um

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points made in relation to this, but it paragraph 17.1 under good practise .1.

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It says if a requirement imposes an obligation on the applicant to seek approval of final details in a scheme, the requirement should not be drafted in a way which allows the discharging authority to dispense with the need for a scheme altogether.

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Neither should it enable the discharging authority to vary the scheme in writing such that the scheme then departs and the principles fixed by the application.

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It then goes on in 17.3

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to say that applicants should be aware that details fixed by the terms of the DCO can only be changed if authorised and following adherence with the prescribed approach explained in section 153 and Schedule 6 to the ACT. And then it goes on in 17.4 to explain what that means. Therefore, adding a tail piece

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providing for its own variations such as the one below would not be acceptable. And would not be acceptable because it might allow the discharging authority to approve a change to the scope of the authorised development applied for an examined, thus circumventing the statutory process. And then the example it gives is the authorised development must be carried out in accordance with the principles set out an application document X within the order limit unless otherwise approved in writing. And then it continues. On the other hand,

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a requirement might make the Development consent conditional on the discharging authority approving detailed aspects of the development in advance.

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Where the discharging authorities given power to approve such details, it will be acceptable to allow that body to approve a change to details that they had already approved. However, the process should not allow the discharging authority to approve details which are outside the parameters

authorised within any granted DCO. So what it's recognising is not that tail pieces are unacceptable per se,

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but that first of all, you can't use a tail piece to circumvent the statutory arrangements for making a change to an authorised Development

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Development Consent through a Development Consent Order. You can't avoid that. But secondly, you must make sure that you're not approving something that falls out with what was assessed.

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And so for our purposes, we we have included tail pieces where it allows amendment of details and mitigation measures, approved post development consent order, but it doesn't allow the development that's approved under the DCO itself to be changed. It's also important in this context

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to have regard to the constraint imposed by Article 63

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to be

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this is procedure regarding certain approvals, et cetera.

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And

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paragraph 2IN Article 63 says when any consent agreement or approval is required of or with the relevant planning authority pursuant to a requirement set out in Schedule Two, such consent agreement or approval must not be given if it would be give rise to any materially new or materially different significant effects on the environment that have not been assessed in the Environmental Statement or in any updated environmental information supplied under the 2017 Regulations. So that operates to constrain.

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The lawful scope of any approval under any requirement

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so that you can't take it outside the scope of that which has been assessed. And so as you've indicated, there are a number of tail pieces in number of requirements have tail pieces and each one falls into one or other of those categories.

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And finally I would note that the importance of a

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provision akin to what we've got in Article 63 Two B in making the use of tail pieces appropriate was an issue that was considered by the Examining Authority in the Sizewell C case and that is recorded in the Examining Authorities report in paragraphs 9.1 point 17 to 9.1 point 23.

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And there was a an equivalent provision in that case which they examined and found to be important in making the use of tailpieces acceptable and will supply the relevant extract and the relevant equivalent provision at deadline 3. So that is that's the generality of it. We we believe that what we have done is in accordance with the advice and the advice note and that in the approach we've taken, we've also

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avoided the mischief to which the various authorities

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that lie behind the advice note have directed attention. And so if there are any particular questions about particular examples of its use, I have to deal with them. But that's the generality of the position,

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sorry, we're just confirming between ourselves that I think that that that's a helpful sort of explanation and and I think once we see those examples again if there's further questions we can come back on and sort of ring questions on those. But I think it was more to do with the generality of it rather than any particular sort of specific instances in in any of the requirements.

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So thank you, Howard. Philpott, if there are any that you have any particular questions about, we'll obviously answer those as and when they arise.

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Thank you.

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That's the end of our questions on on Schedule 2. But before perhaps we sort of move on to the next part of the DC, I just want to check whether they'll have anything in particular that they wish to raise on, on Schedule 2 and the requirements in particular.

23:00

Thank you. Richard Lemon NE links council not at this stage. Thank you.

23:04

Thank you. And there's anybody online who wishes to to raise anything in particular in relation to Schedule 2,

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I'm not seeing any any hands up. So that's that's fine. Thank you. And

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if we can now move on to the next part which is the protective provisions and

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and we've sort of dealt with a couple of those earlier on. And and what I was going to suggest is that perhaps we sort of look through them just in in the order that are there in terms of the the order they appear in the actual DC itself in terms of the the protective provisions for the statutory conservation Conservancy and navigation authority for the Humber. And wondering whether the the Humber master is going to be in attendance on Thursday and it might be we can park that and there's sort of and any other matter if needs be. But I think you did say that you thought they were agreed anyway

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Harry would football on behalf of the applicant. Yes, I I I understand that the harbour Master Humber will be appearing to be represented at next week and they are agreed. Certainly, so far as we are aware, we're aware it's also recorded I believe in the statement of common ground that that they are agreed but

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the hub Master Humber will be represented separately as as appropriate and they'll be able to confirm the position when they appear before you. I think. I think that will be the the, the best way to sort of deal with that one.

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Then looking through the Environment Agency you've confirmed that they were they were sent out today. So I don't think any point in a sort of going going through those. We can wait for that response and it would then look at where we are in terms of the position with national sorry, Northern Power Grid.

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So yes, and Harry would Philpott on behalf of the applicant, so

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of markup of the proposed asset protection agreement and protective provisions were sent to the solicitors for Northern Power Grid on the 3rd of April.

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That that is an update from the position as reported at deadline one in the statutory undertakers tracker which is Rep 1041. And in terms of the time scales for resolving this, that's obviously now dependent initially on Northern Powergrid because we're awaiting their feedback on the material we provided them on the 3rd. But I'm told it's it's considered likely that

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protective provisions will be agreed and any differences resolved before the examination closes.

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Thank you that that's half of that. I think you're right what I should have copied. My question was if

you could give us that that last bit is the important bit is where you expect to be by the end of the examination as we as we work through. So thank you.

26:04

The next analysis is Anglian Water. I think we've got Anglian Water online. So it may well be that we can go to them as well. But if I can perhaps sort of start with the applicant in terms of what you consider the position is and then we'll we'll bring in Anglian Water once we've we've heard

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Harry was Philpot on behalf of the applicant. The the present position as I'm informed is that we're currently awaiting comments from Anglian Water on an amended proposed form of protective provisions that were provided on the 9th of February. Again, that's an update from the position at deadline one. So we're awaiting feedback, but so far as my instructions are concerned, we believe that

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that this is likely to be resolved ultimately before the examination closes. We don't see any obvious reason why we shouldn't be able to reach agreement, but we're obviously waiting for comments at the moment.

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Thank you. If I could go to to Mr Sweetland for anything that you wish to to add or a clarification of where we are.

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It's a fair summary from the council for the applicant. In terms of the position with Anglian Water. There are a number of points which we've raised UH, which don't directly relate potentially to the protective provisions, but a number of other matters which we are still considering with the applicant, for example in relation to sustainability over a water supply. And one of the points that was raised earlier by Mr Philpott relates to the requirements and for the drainage strategy. And there is a provision where they, the applicant could connect to the public sewer network. And one of the discussion points we're having with the agency is whether we would be

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to be a consultee on that requirement should there be indeed to connect to the public soon network in order to manage surface water. So that's one of the other points which we're discussing with the agencies and other party. So yeah, I would agree with Mr Philpott, there is nothing which we don't believe can be resolved before the end of the examination. Indeed, we're hopeful that we may get to a position where the statement come around. We can be agreed before the next deadline.

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Excellent. Thank you for that, that that's helpful. Is that a update?

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And I don't think there's anything else on Anglian Water there. I think move on to the next on my list is, is Network Rail

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Hereward Phillpot on behalf of the applicant. So far as Network Rail is concerned, there are a couple

of documents in play. So we are awaiting from Network Rail a proposed form of easement for the running of the pipeline.

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There were then markups of the proposed form of framework agreement, which is a requirement we were dealing with Network Rail and also the protective provisions those were provided to the solicitors for Network Rail on the 9th of February at Network Rail also require an asset protection agreement in their standard form. So again that's all by way of update from the position is set out at deadline one and we are therefore at the moment

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the network rails hands are not

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instructed on and on this occasion as to any particular

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reason to believe we won't reach agreement. But there are a number of documents in play and so we await to hear from Network Rail.

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OK, thank you again. I think without Network Rail's input, there's little little progress we can make on that other than that that's sort of update.

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And the next one, the list is NE Lincolnshire Council's Lead Flood Authority. But again, I think we dealt with that earlier on when we have the discussion. So I don't think we need to to do that again. And then there's just two more, first one being Cadent Gas,

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Howard Philpott on behalf of the applicant. So far as Cadent Gas is concerned, we provided amended protective provisions to the solicitors for Cadent on the 22nd of March 2024. So that's an update from where we were at deadline one. We are currently awaiting their feedback, but as with others, we consider this. It's likely that there will be resolution on this before the examination

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closes,

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thank you. And then then just finally the, the last one which I think is the operators of electronic communication codes networks, just to to wrap that list up,

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Howard Philpott on behalf of the applicant. So with those parties, that's Virgin Media Limited and BT Limited. The DCO includes protective provisions for electronic communications code networks in Part 8 of Schedule 14. To date, we have had no engagement from either of those

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companies. We haven't had any comments on the protective provisions that we've put in to the order. Those are based on the version that was included in the IRT Draught development consent order, which itself follows standard drafting for protective provisions for telecom operators. So there has been no response from them. But for the reasons I've indicated, we believe that no news is good news in this case.

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There are no outstanding issues that have been raised that need to be resolved and we believe that that standard drafting is appropriate in this case.

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Thank you that's that's useful. And and then I know we've had discussions around sort of two new areas of protective provisions, the first being for CLDN killing home and the other one being for North East Lindsey Drainage Board. And again just by waving updates of of where we are with with those and if they are proceeding as as protecting provisions

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Hereward Phillipot on behalf of the applicant CLDN killing home raised the issue of protective provisions in the first round hearings and they offered to provide those shortly after those hearings. We we in fact received them at 3:00 PM on Monday afternoon this week. So AP has started to assess them and we will be engaging with CLDN on the draught. We've received and will provide an update at deadline 3, but I'm not able to

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go further because they've only come to us quite quite recently.

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So far as any LDB is concerned, there is a draught in progress. It's not yet been shared with them, but we expect to provide a draught of protective provisions to enter any LDB during the course of this week.

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Again, that's just a helpful helpful update on on those and appreciate the position on on CLDN that's that's fine. OK.

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That brings to the end the questions that I had under this agenda item in terms of the Co and and various sort of schedules and articles and

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and all the other stuff. But just before I sort of move on to the next item, I just want to check where there's anybody in the room, which I suppose is only yourselves at the council or anybody online who's got anything that they wish to raise before we move on to the next item.

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No, I'm not seeing anything. OK. Well, I think that brings to the end, like I said, item 7,

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think we'll now move on to item make, which is the procedural decisions. And sorry, sorry, the procedural decisions, probably the wrong thing to say that that's of actions, which I think we've been gathering at the end, but we might need as normal just a little bit of time just to to check that we've got those. And what I suggest is that perhaps we take and perhaps we take 20 minutes and it comes back at 3:00 and to allow us time to go through that. So, yeah, so this hearing is adjourned till 3:00 PM. Thank you.