

ISH6 Pt1

0:01

Good morning, everybody

0:03

and it's now 10:00 and it's time for this hearing to begin. So just like to welcome you all to this issue specific hearing for the application made by Associated British Port for an order granting development consent for Immingham Green Energy Terminal.

0:16

Just before we move on, can I just confirm whether the live stream and the recording of the event has commenced?

0:26

I can confirm that the live stream and recording has commenced. Thank you, fabulous. Thank you very much for that. My name is Adrian Hunter and I've been appointed by the Secretary of State to be the lead member of the panel to examine this application just before I run through some housekeeping and friendly matters. Just gonna ask the other members of the panel if they could just introduce themselves, please.

0:47

Good morning, everyone. I'm Karen Taylor, and I have also been appointed by the Secretary of State as a member of this examining authority.

0:58

Good morning. My name is Catherine Mccafe, and I've also been appointed by the Secretary of State as a member of this examining authority.

1:07

Good morning. My name is Liam Paige and I've also been appointed by the Secretary of State as a member of this examining authority.

1:16

Good morning. My name is Mukhtar Sheikh and I have also been appointed by the Secretary of State as a member of this examining authority.

1:24

Thank you and together we constitute the examining authority for this application and just wanna now deal with a few housekeeping matters for those attending in person. If I could just a reminder to turn off all devices to silent and no fire drill is proposed as the last couple of days last couple of weeks, sorry. And the meeting room, meeting places on the on the lawn at the front

1:46

and just like to ask those present them. Just bear with me for the next few minutes just while I run through a few introductory matters that you may well have heard. But for the benefit of anybody joining online or people who previously haven't joined us. And this meeting will follow the agenda

published on the National Infrastructure Planning website on the 2nd of April. The examination library reference for that was EV9001 and it would be helpful if you do have a copy of this in front of you. The agenda is for guidance only and we may well add other considerations or issues as we progress. We will conclude the hearing as soon as all relevant

2:17

contributions have been made and all questions asked and responded to. But the discussions can't be concluded then it may be necessary for us to prioritise matters and refer other matters to further written questions. Likewise if you cannot answer the questions being asked or require time to get the information requested then please indicate that you do wish to respond in writing.

2:36

It is our intention to take a number of breaks throughout the day. We'll aim for a mid morning break about 11:30 and aim to have a break for lunch about 1:00 PM and if needed we will have a mid afternoon break. And just for the applicants benefit the council on here but they have requested that we might carry some of the items over to after lunch. So I think they're interested in item six and seven and what we've said is that I think we're going to let them know when we've finished item 3 then they're going to see where they can sort of get here. But we've said we may not be able to carry them over depending on how quick the discussions go. So just for just for your information,

3:09

we do decide to sort of take a a slightly longer lunch break. If we get to that point then it'll be to allow the council to sort of participate this afternoon. But we'll we'll keep you sort of advised and and we'll sort of discuss that as we progress through.

3:21

And my final point on the agenda relates to post hearing actions and should they arise during this hearing, we will be noting the hearing actions as they emerge. And prior to the close of the meeting, we intend to go through the entire list of hearing actions which will then be issued as soon as practicable following the close of today's hearing.

3:37

Today's hearing is being undertaken in a hybrid way, meaning some of you are present in the hearing venue and some of you are joining us virtually via Microsoft Teams. For those watching the live stream can also advise that when we do have a break in proceedings, we will have to stop the live stream in order to give us clear recording files. As a result, at the point at which we recommenced the meeting and restart the live stream, you will need to refresh the browser page to review the restarted stream

4:03

and just the purpose of identification on the recording and ease of reference as well. Could I just ask that at every point you speak you please give your name and who you represent?

4:12

Just before I move on to some issues on data protection, can I just see what Eddie's got any questions on, on that sort of process that I've just outlined

4:19

now. OK and just moving then onto onto data protection, Just like to make you aware that this event is both is being both live streamed and recorded. The digital recordings that we make are

retained and published and their former public record that can contain your personal information to which the General Data Protection Regulation applies. The planning inspectors practise is to retain and publish recordings for a period of five years from the Secretary of State's decision on the Development Consent Order.

4:48

Consequently, if you participate in today's issue specific hearing, it is important that you understand that you'll be recorded and that you therefore consent to retention and publication of the digital recording.

4:59

It is very unlikely that we will ask you to put sensitive personal information into the public domain. It would actually encourage you not to do that. However, if for some reason you feel that it is necessary for you to refer to sensitive personal information, we encourage you to speak to the case team. In the first instance, we would then explore whether this information provided in a written format which can then be adequately redacted before it is published.

5:22

Just moving on to sort of explain the purpose of today's issue specific hearing and this issue specific hearing is being held to explore a number of matters in respect of land side and strategic matters.

5:33

Our purpose is to examine the information submitted by the applicant and also by interested parties. So as a result, I'd like to reassure you that we are familiar with the documents that you've already, that you've already sent in. So in answering a question, you do not need to repeat in lens something that's already been submitted, but if you could refer to the Examination Pins library reference that would be enormously helpful to us.

5:53

Just before I move on to introductions, can I just check whether anybody has any comments or questions on the on the procedure for today?

6:01

No, I'm not seeing any hands up. So just moving that onto 2 introductions if I could and and if I could start with the applicant, please. Good morning, Sir. My name is Hereward Phillipot Kings Council. I'm instructed jointly by Bryan Cave, Leighton Paisner on behalf of the applicant Associated British Ports and Charles Russell Speechly is on behalf of Air Products and I anticipate calling at five additional speakers during the course of the hearing,

6:31

three of whom will be familiar to you. 2 will be new and so with the new speakers will obviously provide their credentials at deadline. 3. So I have Mr Philip Rowell from Adams Hendry Consulting Limited. We'll deal with planning matters and and then I have a new speaker, Doctor William Barrett who's a technical director of environmental assessment at acom. So he's a new speaker in place of Alan Lewis, who you've heard from before, who's not available this week.

7:05

You'll also hear from Mr Tymon Robson from Air Products and Mr Simon Tucker from DTA Transport

Planning Consultants. And then the final speaker, also a new speaker is Mr Ian Davies, who's a Technical director in Carbon and ESG at acom.

7:26

Thank you for those introductions that that's helpful and

7:30

in terms of other organisations that I've explained now. OK and and and and what we're looking to do on that one and Immingham oil terminal operators, I think we're due to attend but haven't logged on as yet again if they should they join if you could let us know that would be that would be great. And then the only other person I have on my list is Anglian Water. Mr Mr Sweetland. Good to see you in person, Mr Sweetland.

7:51

Good morning, panel doll, Sweetland. So I'm here for Anglian Water today, mainly for the climate change issue and any other questions you may wish to ask. Good morning. Thank you very much. And I think that's everybody on my list. But just to confirm, there's nobody else in the room or online who's registered to speak or wishes to speak.

8:10

No, I'm not seeing anything to that's that's great. Thank you. And OK. Well, I think that probably concludes the procedural matters for items one and two on the agenda. And now I'd hand over to Mr Page, who's going to take us through item number 3.

8:27

Thank you, Mr. Hunter. So moving on to agenda item 3 on strategic matters and starting with the first point regarding Section 24, two of the PLAN Act 2008.

8:40

I think in relation to Section 24, three C of the Act, we are clear that there would be up to 292 ships with sufficient capacity to transport the relevant quantity of material per year, IE more than 5 million tonnes. We're also clear that the land side infrastructure relating to ammonia storage and hydrogen production in conjunction with the jetty and topside infrastructure would create the handling capability to embark or disembark

9:11

ammonia cargo pursuant to the operative wording of Section 24 two B of the Act and therefore contribute to the relevant quantity of material and the Section 24 three C of the Acts.

9:26

However, it is unclear whether the proposed development is currently applied for would alter the existing harbour facilities to create additional handling capability to embark or disembark carbon dioxide in order to reach the relevant quantity of material per year.

9:45

For example, based on our current understanding of the evidence, the proposed development cannot receive carbon dioxide because there is a need for future consents to deliver the necessary support in infrastructure. IE it is not clear the proposed development would amount to the alteration of harbour

facilities to the extent that the facilities would be capable of, and I think this wording is critical, handling the embarking or disembarking of the relevant quantity of material per year.

10:16

Put another way, whilst 280 ships carrying carbon dioxide could theoretically arrive at the proposed Developments jetty,

10:24

the harbour facility, as altered would not be capable of embarking or disembarking the cargo because the necessary supporting infrastructure is not being directed delivered by the proposed development.

10:36

Therefore, it is not clear from our perspective that the proposed development would be capable of handling the relevant quantity of material per year.

10:47

In this context, please can the Applicant clarify how the proposed development has consented, would satisfy section 24 Two B of the Act

10:57

and if it cannot, provide full details of the further infrastructure that would be required under other separate consents in order to do so. Over to the applicant for their response. Please

11:09

thank you Sir Harry Wood, Phil Park, Kings Council on behalf of the applicant. So the answer I'm going to give will take a little while to set out. You will have of course a full written account of this to come in deadline 3, but I'll try and take it slowly so that you can follow and if there are any questions I'll try and deal with them now.

11:35

So our position on this issue just to start with is set out in particular in three documents. I'll just give you those references. So the planning statement, that's a PP226, section 1.3, the explanatory memorandum that's Rep 1004, paragraphs 213 to two point 15.4, and the response to written question 1.2, point 1.2, which is Rep one O 2/3.

12:07

We also address these matters in oral submissions at issue specific hearing one, although looking back at the written summary it doesn't appear that all of the relevant submissions were captured in the summary provided a deadline one, so that will be supplemented by what you get at deadline 3.

12:24

So against that background the position is as follows and I'll try and take this in what I hope is a logical order. The proposed alteration to the Harbour facility comprises work number one in schedule one to the development consent order, namely the Jetty. Together with this integral land side access ramps and top side loading and unloading infrastructure pipes, pipelines and utilities and associated works and that's referred to in the application documents as the terminal.

12:58

The remainder that is Works #2 to 10 are associated development for the reasons explained during issue specific hearing. One

13:09

and the terminal constitutes the ENSIP under sections 14 One J, 24 Two and 24 three C of the Planning Act 2008.

13:22

So 14 One Jay, is the construction or alteration of harbour facilities.

13:29

Section 24 to Alteration of harbour facilities is within section 14. One J. Only if the alteration will be wholly in England, or in waters adjacent to England, and the effect of the alteration

13:46

will be to increase by at least the relevant quantity, the quantity of material, the embarkation or disembarkation, disembarkation, of which the facilities are capable of handling, and under 24. Three C The jetty is a facility for cargo ships and thus the relevant quantity is 5 million tonnes, and the capacity of the jetty is in the order of 11,000,000 tonnes of liquid bulk cargo and therefore well in excess of the relevant

14:18

quantity.

14:20

And the Planning Act 2008 is concerned with the capacity of the harbour facilities

14:28

that are constructed or altered, I in this case, the capacity of the jetty.

14:35

The Act sets a threshold which is intended to ensure that where such harbour facilities are constructed or altered

14:44

such that the effect is expected to be, and I emphasise those words, to increase by at least the relevant quantity per year the quantity of material the embarkation or disembarkation of which the harbour facilities are capable of handling. Any application for approval of such development must be made under the Planning Act. The focus therefore is necessarily on the expected effect of the proposed alteration of the harbour facilities

15:15

on the jet, on the capacity of the harbour facilities overall to embark and disembark material. And there is a decision of the High Court which provides some assistance on the approach to this issue, albeit it was concerned with an increase in the capacity of a different type of infrastructure named the airports. And the case is are a crown on the application of Ross versus Secretary of State for Transport. That's 2020 EW HC226 Admin

15:47

and will supply you with a copy of that judgement as an appendix to the written summary of all submissions at deadline three. Can I can I just jump in there? Sorry Mr Philpott. So is that High Court decision,

16:00

does it obviously is very specific wording in the context of this proposed development in terms of handling capability,

16:09

embarking and disembarking cargoes, that's very specific. Is, is this High Court decision relevant to those specific terms or is it just a capacity issue? Because I think we're clear on the capacity of the jetty, but we're not clear on the handling capability and the ability to embark and disembark. I understand that the case is concerned and I'll explain its relevance to to this particular proposal and the question that you have raised. The case is concerned with the wording in relation to

16:42

airports. Different formulation, but in terms of how you make a judgement

16:49

it is important to understand it and that's why I propose to just just set it out and I'll deal with it hopefully reasonably succinctly with that in mind. But the case concerned a challenge to a decision on an application for Planning Commission for Development at Stansted Airport which would have increased the capacity from 35,000,000 passengers a year to 43,000,000 passengers a year. And the claimant in that case argue that the application should have been treated as an end zip

17:17

because it was said it would be technically possible for the airport to handle an even greater number of passengers, thus exceeding the N SIP threshold. And the judge held the claimants approach was wrong and rejected the challenge. For present purposes, the key findings are in paragraph 101

17:34

and they are as follows. The application of the threshold requires a judgement to be made by the decision maker.

17:42

The judgement is to be formed by asking what increase in capacity could realistically be achieved, not what might technically or rather arithmetically be possible. It requires an analysis based on how the infrastructure is likely to perform and what is likely in practise. The use of the word expected, which also appears in section 24 two imports, the requirement for the for an assessment which is grounded in the reality of the capacity which might be achieved

18:12

and that word expected. I'm going to come back to it because that is a an important it applies in both cases. So applying that approach to the facts of this case, the issue is what increasing capacity might the jetty

18:27

realistically be expected to achieve during its lifetime, on the evidence before the Secretary of State. So the focus is on the jetty because that is the alteration of the harbour facilities

18:40

and it's not therefore the associated development and the capacity of the associated development. That is an issue. And it would plainly be wrong to seek to answer the question by reference to the associated development that's being provided to support the use of the jetty by its first customer

19:00

rather than the capacity of the jetty itself which is intended and expected to be a multi user facility.

19:07

That's to look at the issue through the wrong end of the telescope

19:11

and to consider the capacity of the associated development, which is only to meet the requirements of the first user, the first expected user of the jetty, and not the expected capacity created by the jetty itself.

19:25

And the point can be illustrated by examining contemplating a scenario in which a associated British ports, instead of bringing forward this application, made a commercial decision to bring forward proposals for an identical jetty speculatively,

19:43

in advance of and separately from any associated development to cater for a specific customer. So I just want to explore that scenario and to to put some flesh on that scenario as the policy on need in section three of the National Ports National, the the Ports National Policy statement makes clear.

20:05

Creating capacity to cater for the demand port operators expect to arise. Paragraphs 331 and 347 taking their own commercial view and their own commercial risks in a market LED approach. Responding to changes that may occur, That's paragraph 341 and creating spare capacity to assure resilience 3415349 is appropriate and important in the public interest. In other words, the capacity that will be created

20:38

by such a speculative development, rather than one that included the specific associated development needed by the 1st customer, would in principle be supported by the National Policy Statement.

20:50

In that situation, IE without specific proposals for the land side associated development for a particular customer, it couldn't properly be argued that the jetty was not expected to give rise to any increase in the quantity of material the harbour facilities were capable of handling.

21:08

That would not only be wholly unrealistic and artificial, and contrary to the clear expectations of the National policy Statement, it would also suggest there's a substantial loophole in the legislation which simply doesn't exist.

21:21

There would be nothing to prevent an application being made for a jetty in those circumstances. It's that somehow one would ignore its capacity and treat it as not nationally significant and then bring forward the associated development which is not harbour facilities and hey presto, you end up with all the capacity created and you've avoided the scrutiny under the Planning Act.

21:42

And so that that that would be a, sorry, can I just come in Of course, Miss Philpott, just to explore that a bit further. I mean,

21:50

so say you've delivered the jetty and say that was just dealt with under the Town and Country Planning Act 1990,

21:58

not an end zip.

22:00

And then you say that would be a loophole

22:04

to undermine the the, the, the regime.

22:08

But then surely delivering land side infrastructure to then enable

22:16

the handling capabilities to embark or disembark more than 5 million tonnes would then in itself be the alteration and then be the end SIP for the purposes of the NSIP regime. So I'm not clear how that would be a loophole. So the answer to that is that those would not be hard facilities, It's not the creation or alteration of harbour facilities.

22:38

So if if let's say for example that you provided A jetty or taken out of the jetty context just some key but provided no other facilities for it, but then entirely outside the harbour. And as you know within the outer limits who were outside the harbour, you provided facilities where you could store and process cargo. Those would not be harbour facilities.

23:05

So you the the harbour facilities are those things which is the jetty and that's why I started off by explaining

23:13

the division between the alteration of the harbour facilities which is the jetty and the associated development which is everything landside and is not alteration of harbour facilities which is where we started off with issues specific hearing one explaining that division.

23:29

So if you came forward with the jetty

23:32

and you didn't come forward with any associated development, if you looked at the jet and ask yourself the question, what is that expected? Expected

23:40

to achieve in terms of the increase in the capacity of the harbour facilities overall. So the port of Immingham,

23:47

you wouldn't say nil

23:49

because that would be totally artificial, totally unrealistic. And if you then came forward with something outside the port which enabled that capacity to be utilised,

24:01

that would not be an end zip. It would not be the alteration of harbour facilities. So you would create an it would be to assume that there was a loophole. There is no loophole

24:11

because if you bring forward the the jetty facilities or some other alteration to the harbour facilities which creates that capacity and you then on a piece meal basis bring forward associated development that allows you to realise the capacity that you've created in terms of the harbour facilities. The initial creation of the harbour facilities and that additional capacity it's expected to create over its lifetime

24:39

is the NCIB. And so in this case we have a first user that happens to be that the commercial decision has been made to bring forward this jetty with the first user, but it is the first user. That capacity of the associated development is geared towards that first users

25:01

use of some of the capacity that is created.

25:05

But you can't ignore the remainder of the capacity that is created. And it is not only expected that that is that that capacity will be utilised. But as you heard in the first issue specific hearing, the commercial decision of Associated British Ports to bring it forward at this time is influenced by the commercial reality that a second user is in the wings.

25:30

And therefore asking yourself the question that the legislation raises, what increase in capacity might be expected from this.

25:43

The the answer is that it is expected to increase by at least the relevant quantity. And we know it's more than that because it's it's approximately 11,000,000 tonnes.

25:56

The quantity of material, the embarkation disembarkation, of which the facilities, in this case the Port of Immune, is capable of handling, because that's the commercial motivation for doing it

26:06

and the Act and the system does not, does not. Um,

26:10

expect, or indeed allow the decision maker to ignore that reality.

26:15

And it's the. That's why I emphasise the word expect

26:20

and in this case it's particularly important therefore to look at the capacity of the jetty

26:27

and look at what is expected over its lifetime. Bearing in mind that this is not a a question which is just answered on how is it going to be used on day one or how could it be used on day one. What's expected, over the

26:42

many decades at least, that this jetty is expected to be in operation and is that capacity

26:50

above the 5 million tonnes. And it plainly is on on the evidence

26:54

and the that is reflected

26:59

in the design of the jetty

27:02

and the top side infrastructure that forms part of it. All of that is geared towards providing the capacity for the jetty to cater for that level of traffic and that level of throughput in terms of the liquid bulk that can be transported across it. And

27:23

whilst that estimate of 11,000,000 tonnes is is not precise, it's clearly more than double the relevant

quantity. And once you look at the uncontroverted evidence of the applicant, the experienced sport operator, this additional capacity is expected to be used during the jetty's lifetime, indeed relatively short term. It's expected that that this would be used. So the evidence shows when you approach it from the right legal perspective,

27:55

which is to look at the capacity of the jetty as the alteration of the harbour facilities, it's expected to increase by at least the relevant quantity per year, the quantity of material, the embarkation of disembarkation of which

28:10

the port of immune is capable of handling. That's the expectation and

28:15

that the evidence shows that there is at the very least a realistic expectation that all of that capacity or at least more than the relevant quantity will be used.

28:28

So that's, that's the approach and we say when when you look at it through the

28:32

the right end of the telescope, it's quite clear that this is precisely the sort of facility that the act is contemplating and seeking to catch

28:43

And and the application being made under the planning Act is just a reflection of that and commercial and practical reality.

28:54

Thank you for that Mister Philpott. So I think it's quite clear that

29:01

how you define what harbour facility is, is the crux of essentially

29:09

solving this question in my mind.

29:13

So I think it would be helpful in your

29:18

post here in note to just outline in your existing submissions

29:24

where you've done that, you know where you've addressed the fact that the jetty is the harbour facility and the harbour facility does not extend to the land side

29:34

infrastructure. I think there's a lot to digest there. We'll probably have more questions on it

29:42

will take what you've said away

29:45

and then sort of digest it in the background and probably come back at our next round of written questions. I think so, yes, thank. Thank you. Well, we'll make sure we do that. And at Howard Philpott, sorry on behalf of the applicant that the other point which I would just emphasise here by way hopefully of reassurance is that the division that's been taken in this case as between the harbour facilities and the associated development is not unique to this application. It's also

30:17

consistent with the way that that division was defined and ultimately accepted in the Tilbury 2 application where there was a distinction made between

30:29

the

30:30

A port elements, the the the harbour facilities as the N SIP and the and storage and processing which was the associate development in in that case. So we we can provide the relevant references to that as well in our written name,

30:52

that'd be very helpful. Thank you very much. Just wondering if anybody on the panel has any questions,

31:01

any interested parties in the room, any questions online? I don't think so.

31:08

Thank you for the applicant for those submissions and I will move on to the second point

31:15

of agenda item 3, regarding Client Earth and Scarisbrick Judgments.

31:23

So the Client Earth Judgement paragraph 66 establishes that the weight to be given to need in a particular case is not immutably fixed. There must be proportionate to a project's actual contribution to satisfying the need for the relevant type of infrastructure.

31:40

The Scarisbrick Judgement paragraph 31 establishes the weight to be given to considerations.

Including the need identified in policy will always be a matter of planning judgement and should be given the weight it is due,

31:54

considering both the client Earth and Scarsbrook judgments. In this context, is it open to the examining authority to exercise planning judgement about what weight should be given in favour of the proposed development, depending on the nature and scale of its contribution to satisfying the national need for additional port capacity?

32:16

Over to the applicant for their response. Please thank you Sir. Howard Philpott, Kings Council on behalf of the applicants and

32:26

the client. Earth Judgments, both First Instance and at Court of Appeal are in front of the examination in Appendix 2 to Rep 1023 at Scarisbrick is referred to in those judgments. But I don't believe we've yet supplied a copy of the Court of Appeals judgement in that case and so we'll do that at deadline 3. But I think for the purposes of of today I'll provide the references and then they can be looked at when you've got a copy of the judgement.

32:56

So whilst the existence of the need and the public interest importance of meeting that need is determined by the national policy statement, the decision maker may exercise planning judgement in determining what weight to give to the benefits of an individual projects contribution to meeting the need. And that is the approach taken in Client Earth and Scarisbrick. And it's reflected in the application documents in this case, which identify and explain the public interest benefits

33:28

associated with the contribution that would be made by this development, so that they may be reflected in the way that's attached to the benefits it would deliver. If I just give some examples of that, the planning statement that's a P226, Sections 5.35 point 6 and 7.3 the responses to the first written questions. So Rep 1023 response to questions 1.2 point 1.4

34:00

been

34:01

1.2 point 1.16 and 1.2 point 1.18.

34:08

Rep 1024 Response to Question 1.3.2.12

34:14

Rep 1027 Response to Question 1.6, Point 1.3 The summaries of oral submissions. Rep 1064 and Rep 1066, and also the Statement of Reasons, Section 6. That's a S008. It is necessary, however, to set out some important matters that are relevant to understanding what's said in those due judgments and its implications for the assessment and determination of this application,

34:47

and more generally, to the exercise of planning judgement in this matter.

34:53

In addition, I would invite the panel to refer back to the response that we gave in Rep 1023 to written question 1.1.1.14 for context. But I don't propose to repeat that response here and just before I start on this list. So one of the points that I'll be dealing with in this is the way that in your opening you characterise the effect of the Client Earth decision at paragraph 66,

35:25

which reasons I would explain is not quite right when you're seeking to apply that judgement to this case under a different national policy statement. But I'll explain why that is the case. So, starting starting with the first of the points that I want to make under this general category, the courts made it clear that it would be inappropriate and indeed unlawful to seek to use the section 1047 balancing exercise

35:57

as a vehicle for questioning the need for the specific development proposed.

36:04

That would be to question the merits of the National Policy Statement and or to avoid the effect of the highly structured Decision making Framework section set by section 104. And you can see that in the Client Earth Judgement at first instance, paragraph 107,

36:26

The second point which flows on from the first, is that the starting point for determining the weight that should be attached must be the relevant national policy Statement. And it's therefore necessary both to consider what's said in that national policy statement and to be alive to the wording of the equivalent text in the different national policy statements that were an issue in those two cases when reading them and contemplating their application to the position here And

36:57

that in client Earth. And this is coming back to the point I was leading to in terms of the opening comments, the Court of Appeal was concerned with the former. That's the 2011 version of MPs M1, and in particular what was said at paragraph 323. And I'll just remind you of that. So that said, the IPCC should therefore give substantial weight to considerations of need. The weight which is attributed to considerations of need in any given case

37:30

should be proportionate to the anticipated extent of a project's actual contribution to satisfying the need for a particular type of infrastructure. And the text of that former policy is set out in the Court of Appeals judgement at paragraph 16, and its significance to the consideration of the issues by the court in that case can be seen in paragraph 64 to 74. And in particular I draw attention to paragraph 69 where the Court said this

38:03

one must be careful not to read across unjustifiably from the courts interpretation of a different policy

in another national policy statement. But there is, in my view, a parallel between the policies we're considering here and those considered by this Court in Scarisbrick.

38:22

Among the policies considered in that case was 1, indicating that a need for the relevant infrastructure should be taken as demonstrated, and a presumption in favour of consent being granted. From these policies. There arose in this course view a general assumption of need for such facilities, which applies to every project capable of meeting the identified need, regardless of the scale, capacity and location of the development proposed.

38:53

A difference between that case and this is that the policies there that's in Scarisbrick did not indicate the level of weight to be given to need in decision making. Here they do, and that's the end of the the paragraph. And that final point about the level of weight was a reference to the statement in paragraph 323 of the MPs, which I've just read out.

39:19

It's also important that when one looks at the new version of MSN one

39:25

that includes text in paragraph 3, point 2.8, that is plainly intended to in to address the implications of the courts interpretation in the Client Earth case of that part of the former policy which required the extent of the weight attributed to be proportionate to the anticipated extent of a project's actual contribution to satisfying the need for a particular type of infrastructure. And that's dealt within the judgement in the Court of Appeal in Client Earth of paragraph

39:57

68 and serious you'll be familiar the in the new EN1 whilst paragraph 3, point 2.7 repeats the point that the Secretary of State has determined that the substantial weight should be given to this need when considering applications for development consent under the Planning Act 2008.

40:17

Paragraph 328 says the Secretary of State is not required to consider separately the specific contribution of any individual project to satisfying the need established in this MPs. And it's apparent from that change that the government does not consider that decision makers ought to be considering the specific contribution of an individual project to satisfying the established need as a matter of course.

40:43

And the National Policy Statement for Ports contains no policy

40:49

akin to that found in the former MPs EN 1323, that the weight to be attributed to considerations of need in any given case should be proportionate to the anticipated extent of project's actual contribution to satisfying the need for a particular type of infrastructure.

41:08

It's also worth noting that in Client Earth, where there was such a policy,

41:14

that is the decision maker

41:18

that the Court of Appeal rather nevertheless found the decision making was not obliged

41:24

to adopt A quantitative approach to such an assessment. And that's paragraph 66 to 67 of the Court of Appeal's judgement. But the National Policy Statement for Ports does mandate that the decision makers should give substantial weight to the positive impacts associated with economic development, and that's 435.

41:45

And coming then on to what else there is in the National Policy Statement for ports which is which is relevant to this,

41:53

it's important to note that the National Policy Statement for Ports explains that paragraph 3416 that the need is compelling

42:02

and that paragraph 352 provides the following guidance to the decision maker.

42:08

Given the level and urgency of need for infrastructure of the types covered as set out above, the IPC should start with a presumption in favour of granting consent to applications for ports development.

42:22

So, in other words, the public interest in meeting the need is such that, in respect of any port development to which the NPS applies,

42:32

the contribution it makes to meeting the need is of such importance in terms of public benefit, that the starting presumption is that consent should be granted. And the obvious implications of that statement of policy for the weight to be attached to considerations of need can be seen by what was said and by the first by the Secretary of State and then by the Court of Appeal in the Scarisbrick case

42:57

where the policy was expressed in very similar terms. And one can see the text of what was paragraph 412 of the hazardous waste NPS in the Court of Appeals judgement at 17,

43:12

and what the Court of Appeals said about that which is relevant here was that paragraph 62 where they said this.

43:19

In paragraph 418, the examining authorities said they gave considerable weight to the need for the application project,

43:28

by which, as is clear from the context, they meant the national need for such projects established in the MPs.

43:35

In paragraph 12 of his decision letter, the Secretary of State agreed

43:40

he was entitled to give that way that need the weight he did. This was a matter of planning judgement for him, subject only to challenge on public law grounds to assess the weight to be given to the need for the project under the policy. In Section 3, one of the MPS's considerations was not irrational. To give considerable weight to a need established in a statement of planning policy is not, on the face of it, a surprising planning judgement, let alone an unreasonable one. Indeed, it was consistent with the policy presumption

44:11

in paragraph 412 of the MPs. The presumption in favour of granting consent to applications for hazardous waste sites which clearly meet the need for such infrastructure in these MPs. So here as there, the policy presumption applies to any project which contributes to meeting the need. And that's unsurprising, because any nationally significant infrastructure project to which the NPS applies will be providing a level of additional capacity that Parliament

44:43

was deemed to be nationally significant.

44:46

So when regard is had to all that the National Policy Statement for Ports says about the public interest importance of meeting the compelling need for additional ports infrastructure to increase the UK's capacity to import and export. It's hardly surprising that any nationally significant contribution to meeting the need is considered to be of such public interest benefit that there should be a presumption in favour of granting consent. And so the weight that attaches to this factor by the decision maker must take

45:18

account of and reflect that policy context. And finally, here, of course, the applicant has gone further than simply relying on that presumption and has adduced evidence as to the need for and benefits of this specific development

45:35

over and above what's already established by the national policy Statement. And that could only serve to increase the already substantial weight that should be attached to a development that makes a nationally significant contribution to meeting the established need. And there are no other factors that would apply here that would justify any material reduction in the weight that should be attached to the benefits associated with that contribution. So that's what I was going to say on that.

46:02

That's very helpful. Thank you very much, Mr Philpott.

46:07

Does anyone else in the room have any

46:10

thing to say on that? Anyone online?

46:14

Anyone on the panel? So I think that

46:18

draws to a conclusion that point in the agenda.

46:23

So now I'll move on to the third and final point of agenda item 3 and securing the benefits.

46:33

So in the applicant submission reference Rep 1-023Q1216,

46:42

it is stated that there is no legal requirement that benefits which are to be considered and given weight by the decision maker

46:49

need to be somehow legally secured. I also note the applicant submission reference Rep 1-024Q1331, that the market demand for low carbon hydrogen is such that this in itself is sufficient to incentivize adherence to the relevant standards.

47:11

However, given the potential for change in market forces, it is not clear whether this approach creates sufficient certainty that the hydrogen would be delivered in accordance with the relevant standards.

47:23

Furthermore, given the complexity of calculating and tracking carbon emissions through the supply chain, does not clear how the Local Planning Authority would monitor compliance with the relevant standards to ensure the examined benefits are realised.

47:38

As such,

47:40

is it open to the Examining Authority to include requirements in the Draught Development Consent Order to secure compliance with the relevant standards

47:49

if it is deemed necessary, in the interests of achieving certainty that the proposed development would be delivered and operate in accordance with what has been examined

47:58

over to the Applicant for their response? Please

48:02

thank you Sir. I'll deal with this if I may, in terms of the general approach. In terms of the specific question about the standards that apply to hydrogen are are. I'll see in a moment whether Mr Tymon Robson can deal with that, but it may be that we need to come back to that with a written note. I suppose we hadn't anticipated dealing with that specific point, but if I start with the generality of it at issue specific hearing one,

48:34

I referred to the substation action case

48:39

and we supplied a copy of that at deadline one in Appendix 2 to Rep 1023. But I note that I don't believe we specifically gave the reference to that case in the answer to the written questions that are identified. We didn't link those two things, but just to

49:02

reassure you that that is already in the in the examination library. But what the judge said in that case,

49:12

that that underlies the point that I've made in oral submissions in the first week and then we've made in response to those questions, is to be found at Paragraph 161, where the judge said furthermore, as a general principle,

49:27

there is no legal requirement that all benefits which are given weight in the planning balance must be formally secured in order to be treated as material considerations. In this case, the decision to give weight in the planning balance of the generating capacity was a matter of judgement for the defendant. And that approach is entirely orthodox and it's reflected in the approach that's taken to benefits associated with planning applications and DC applications more generally.

49:59

And just to give a couple of examples to illustrate that, that actually it's an entirely unsurprising approach

50:07

if you had significant weight attributed to the economic benefits associated with the job creation that's predicted to occur during the operational stage of a development, for example, which is a common thing. There is no practise of or need for the imposition of a planning condition or a requirement to ensure a minimum number of people are employed on site at all times.

50:34

The same would be true if one were looking at, say, a visitor attraction,

50:39

the economic benefits associated with the additional visitors and spending that's likely to be drawn to an area as a result of new developments, such as that you. One would not expect that to be accompanied by a condition or requirement to ensure a minimum number of people actually visit, or that they spend a certain amount if they do. That does not, of course, render those benefits immaterial considerations, nor does it prevent substantial weight being given to them. So the principle that's enunciated

51:12

in that case,

51:17

the general principle is entirely unsurprising and it reflects the way that decision making tends to be taken in this country that that position is to be distinguished

51:29

from taking into account mitigation measures

51:33

which are relied on in the EIA to address like significant adverse effects. And and it's in those cases where you have different legal considerations because of the particular requirements of the regulations and the case law that's associated with them. And that's why if you've made an assessment on the assumption that a particular mitigation measure will be applied, then it is general that less that's secured through some other

51:59

process of regulation that you would impose a security mechanism. But that can't be read across

52:05

to the quite different legal question of taking account of benefits as a material planning consideration

52:12

kind of just cut in there. So I understand the general principles that you don't need to secure every single benefit under a proposed development. But I think in the case of the low carbon hydrogen standards, it's quite clearly a significant component of the proposed development. And is it not in the public interest that that is secured

52:35

to make sure that the planning balance that we undertake when we offset the benefits against the adverse impacts in duers for the life of the proposed development and don't fall away. What I'm going to do, if I may, I'm going to ask Mr Robson just to provide an overview in terms of how that works in practise. And then in the light of that if I may, I deserve the opportunity to comment further on that and particular questions

53:04

time in Robson's hair products speaking for the applicant.

53:08

Yes, I think, I think in general we will have to revert to a written response to you on this question as as overview. We have in previous hearings explained the functionality of the low carbon hydrogen standard and the RTF O the renewable transport fuel obligations and we have explained how those two standards and obligations create the market for low carbon hydrogen

53:40

and how through that Air Products have their own

53:47

commercial incentive which drives our requirement to comply with those. I think that's been previously set out that we have inherent within those two standards the need to make in order that the whole scheme is is commercially viable to achieve compliance with those standards.

54:12

But to to respond to your question further, I think we would need to fully understand the question and and provide an answer in written form.

54:22

I'll just interject that. So I think the the crux of the question is whether that market appetite for low carbon hydrogen provides sufficient certainty.

54:33

You know how how is that controlled? Because as far as I can see from the evidence you know there, there isn't any security there in terms of that certainty.

54:45

You know,

54:46

obviously the proposed development has emerged in response to a demand,

54:52

you know for low carbon hydrogen.

54:56

Is there anything to say that market forces change, market demand changes in the future, you know the, the products that the proposed development deals with changes. You know, is there a market for other forms of hydrogen in the UK, you know, not least low carbon grey hydrogen, there's lot, there's lots of questions essentially about unpredictable market conditions, whether it's satisfactory to allow you know the market demand to dictate what the proposed development produces and how we go about controlling that. And I appreciate, you know, it's important to

55:30

retain a degree of flexibility, you know, for the proposed development, but then it's also important to get a degree of certainty for the outcomes too. So that's kind of where we're coming from with the question. So Harry would Philpot on behalf of the applicant will, we'll provide you with a note which deals with this matter in more detail, but I'd just make a number of observations at this point. The 1st, as I've said, is a matter of principle. You're entitled, and the Secretary of State is entitled, to attach such weight

56:01

as it is judged appropriate to the benefit of the import of the particular product, and without that being legally secured

56:14

as as a matter of principle. It is not necessary for there to be a securing mechanism in order to underpin any particular planning judgement about where the wait is pitched. Pure matter of planning judgement is not a is not a legal requirement.

56:31

Secondly, and related to that, if having heard the evidence as to what is likely, and in the absence in particular of any evidence, that suggests that in future markets, incentives or other incentives that are available to the government are likely to disincentivize

56:53

the sort of matters which are currently anticipated to improve over time In terms of the sustainability of this particular product, in the absence of any evidence to the contrary, it would be entirely unsurprising to give weight to those matters and to treat those matters as significant when forming a planning judgement.

57:15

That's just a normal exercise of pay adjustment, just as it would be if you were faced with evidence of the anticipated demand, anticipated spending patterns for visitors to a proposed visitor attraction. You wouldn't need to secure those matters. It's the same principle. The other matter which needs to be taken into account here in terms of context and which we'll look at and address in the note is the existence of any other mechanisms available

57:47

to the government in order to regulate such matters. Because as you'll be familiar in terms of a number of items, so take example operational emissions from various types of infrastructure, the government seeks to deal with those in a different basis. So one has to have regard to that and we'll we'll provide you with more detail on that in the note. But then finally,

58:14

in terms of the ultimate judgement that would have to be applied in deciding whether or not to, say, impose a requirement

58:24

stipulating some particular standard or or or level of achievement of sustainability this particular product,

58:33

it would be necessary to go through each of the policy requirements for imposing a requirement.

58:42

And one of those, critically, would be is it necessary. That would require a consideration of how the planning balance would be struck. In the absence of certainty as to that matter,

58:55

there is nothing in policy which would support the refusal of a development consent,

59:05

even if, even if the product that was going to be imported did not have those characteristics, it happens to provide a particular benefit. But unless the planning balance would be in favour of refusal, without that which would be contrary, I suggest to the policy the presumption and all of the evidence,

59:28

then there would be no necessity for imposing the the requirement in the 1st place. The other element which one would need to consider

59:36

is. Would such a requirement be capable of being put together in a way which was enforceable?

59:47

Precise

59:50

and reasonable in all other respects

59:54

and when one has regard to the evidence that was given in the first week of hearings as to the nature of this process, I would suggest that it is very unlikely that any requirement that could be imposed here would meet those tests.

1:00:12

It wouldn't be necessary. It's very unlikely to be enforceable, but we'll consider those matters in more detail in the written note. But I thought it might be helpful to have those initial submissions at this stage just by way of

1:00:26

management of expectations as to what we might come back with.

1:00:31

Thank you for that. Very helpful. Thank you.

1:00:35

I don't think I have any further on that point. Is there anyone else in the room online? I don't think so.

1:00:43

Any members of the panel? No. OK. I'll move on then.

1:00:49

So that brings the end of

1:00:53

agenda item 3

1:00:56

and moving on to agenda item 4 on climate change and starting with the first point on the treatment of downstream and upstream effects.

1:01:07

So in the applicants response to our first written questions, they answered two separate questions, one on downstream effects reference Rep 1-024Q1312 and one on greenhouse gas emissions from the beginning of the supply chain reference Rep 1-024Q1325 which they aptly referred to as upstream effects. It would be helpful for the applicant to explain

1:01:39

through the why downstream effects, IE emission savings from hydrogen use at the end of the supply chain should be included in the ES, but that upstream effects, IE emissions costs from ammonia production at the beginning of the supply chain, should be excluded from the ES. Based on the existing evidence, both seem very similar in terms of indirect effects when assessed against the principles set out in the Finch judgement. For example, the proposed development would generate demand for a certain amount

1:02:12

with ammonia production, and therefore a proportion of the upstream emissions costs derived from ammonia production would be an indirect effect of the proposed development.

1:02:23

Furthermore, the proposed development would seem to create a certain amount of hydrogen for use in the transport industrial sector and therefore a proportion of the downstream emissions savings would be an indirect effect of the proposed development.

1:02:39

In this context, it is not clear why downstream and upstream effects should be treated differently.

1:02:45

I think as a point of clarification before handing over to the applicant for their response, it's noted reference in their written submissions to the case of Together against Sizewell C Limited. However, insofar as I'm aware, that case related to the issue of salami slicing EIA projects, which is not necessarily relevant to the crux of the question here. Rather it is where the the downstream and upstream effects should both be regarded as indirect effects in accordance with the judgement in Finch.

1:03:16

Over to the applicant for their response. Please thank you Sir Howard Philpott Casey on behalf of the applicant. Now I do have as I said Mr Ian Davies here, but I suspect that if I start by responding on what are essentially legal issues,

1:03:34

if you've got further questions that relate to the assessment itself are passed on to Mr Davies. But I'll see how I get on 1st. So if I start with the downstream effects as you've indicated. So in response to written question 1312, we sought to summarise the case law in terms of downstream effects and the implications of Finch for the examination of this application and we provided the judgement in Finch

1:04:08

as Appendix 121

1:04:12

one onto but maybe O2 four. Sorry my note maybe may not be right, but we provided the judgement in Finch as part of the deadline one submissions. But the main points that are made is that a judgement is required as to whether indirect downstream effects are truly an effect of the proposed development.

1:04:33

And the hydrogen production facility that's proposed in this case produces low carbon hydrogen for direct use by consumers

1:04:44

without any subsequent refinement or other intermediate processes.

1:04:49

So the likely displacement of greenhouse gas emissions resulting from the use of that product is therefore an identifiable effect of this project.

1:04:59

And the likely facilitation of the storage of CO2 is also a likely significant effect of this project. But dealing primarily with the hydrogen matters. But then if one looks upstream, and here I'm dealing with the answer to written question 1325, so dealing with the emissions from the beginning of the supply chain, the key points that we make are that those emissions are not an effect of the project

1:05:31

for EI purposes in this case. And the relevance therefore of Sizewell C is that the court was considering how you decide what is the project

1:05:46

and in it deals with the approach to that question and the relevant factors. And and in this case, for the reasons that we've explained in response to the written question, the production of green ammonia in Saudi Arabia is clearly a separate project.

1:06:05

That production facility will serve a number of hydrogen production facilities and its continued development and operation is not dependent on this project in any way.

1:06:17

It's already been separately consented. There's no simultaneous determination. It's in separate ownership

1:06:26

than any upstream emissions from the production of the ammonia therefore form part of the baseline, and there is no evidence that would allow it to be concluded that that project will generate any lesser amount of green ammonia. If this project doesn't go ahead, it is intended to supply a number of hydrogen production facilities and the demand for hydrogen is dealt with in the evidence.

1:06:57

But if it doesn't come in here,

1:07:00

will come in, may well come in somewhere else. There's no evidence to suggest that any particular proportion of that production is dependent on this facility going ahead, and therefore it's properly treated as part of the baseline. Can I just jump in there? Sorry Mr Philpott. So does the same sort of logic not apply to the

1:07:24

to the downstream effects you see you would happen anyway. Um is the the UK's push towards net zero and the use of low carbon hydrogen carbon capture storage is the legislation and policy framework for that indicative of the fact that it would happen anyway. So why are we giving weight to the downstream benefits. It's kind of the same thing in my mind. So the the important distinction is comes back to the question of what is the project. This project I the thing that is

1:07:56

being consented here, and the product as it's been appropriately defined in the application material, will have an effect on the downstream use of hydrogen, and that is clearly an effect which needs to be taken into account.

1:08:16

If it's not produced here, it may be that other projects will come forward, but there is no certainty about that. And for each of those projects, they will need to account for their downstream effects. And the downstream effects of this project could not lawfully be ignored or treated in some different way in the expectation that if this project doesn't come forward, someone else might come along, something else might come along to fill the gap that would be unlawful. It would be to ignore a likely significant effect of this

1:08:49

project. It would therefore be contrary to the EIA regulations, and it would also be unlawful as a matter of public law.

1:08:58

The position is clearly different when you're dealing with the upstream effects, because those are effects of a separate project

1:09:10

which has been consented. It's consent, it's operation. Its future operation is not dependent in any way on this particular facility.

1:09:22

So to take that into those effects into account would be to go wrong in law, because it would be to treat the effects of a separate project as effects of this project

1:09:35

and so that they are clearly distinguishable.

1:09:40

And to conflate the two would be to would be to fail to apply the principles that have emerged from case law, which also reflect a the practical reality on the ground. That facility in Saudi Arabia is going ahead, if it's not imported here, may be imported somewhere else in Europe. They may take up the additional capacity, but there is no evidence that it will not operate at as expected capacity if the facility in the medium doesn't come forward.

1:10:13

Whereas it's quite clear that if the facility at IMIM comes forward, the downstream effects are likely to occur so they're properly taken into account.

1:10:23

And that's the distinction between the two.

1:10:34

Thank you, Mr for in terms of the project itself, so our understanding is it's for production of green hydrogen, which presumably means green ammonia coming in. So if that's the case, then surely for the projects of green ammonia, it must therefore take in upstream effects. Otherwise, how do you certify it being green ammonia as opposed to grey ammonia or any other ammonia produced another method?

1:10:59

Sorry, can I just add on to Mr Sheikh's question?

1:11:05

Presumably the audit process for the hydrogen standards takes into account the upstream emission costs, So that in itself is indicative of the fact that we need to be considering upstream emissions as a environmental effect.

1:11:21

And I come back to the basic point,

1:11:24

because the upstream effects are effects of a separate project which is happening. In any event,

1:11:31

it would be wrong to attribute those effects to this development.

1:11:35

This development will clearly give rise to downstream effects, but if whether it comes forward or not, those upstream effects will happen.

1:11:46

Those are not effects of the project, and and it is.

1:11:49

It is actually as simple as that. That's the distinction the court draws, because otherwise you're not looking at the environmental effects of the project for which development consent is sought. And as the case law makes clear, EIA is project centric. The information is meant to inform a decision about whether a particular project should go ahead. It's not to assess

1:12:13

the overall process of one part of the economy

1:12:18

is to look at a particular proposal and look at its effects and if other things are having separate effects, they are to be assessed when they come forward.

1:12:27

That's different if as in the case of the downstream effects here, these are foreseeable and anticipated unlikely effects of this particular development. And that's the distinction. And so that the that the relevance of the upstream effects to certification and it doesn't change that basic

1:12:48

position it it's just the operation of the law on EIA as it applies to this case. But in principle no different from applying to any other case where a substance is imported which is already being produced somewhere else. If it's a quarrying material from an existing quarry,

1:13:08

you don't take account of the effects of the quarry. That's a separately consented project. You look at the effects of the facility that's that's proposed to deal with its import and the same position arises here.

1:13:23

Thank you, Mr Philpott. I think you've explained your position very clearly.

1:13:29

Is there anything further from the panel? Any questions?

1:13:33

No.

1:13:34

Anyone else is. Is there anything else you want to say on that point because I appreciate you mentioned you might wanna pass over to your I I suspect Sir sorry Harry would fill put on behalf of the applicant. I suspect that the issue that is was clearly on the panel's mind is the legal point that I've addressed as opposed to the particular way it's been dealt with in the ES. So because we'll be touching on that same issue when we deal with the issue of whether you need to have a requirement

1:14:05

to deal with the regulation of the product, I suspect that there's nothing more I can usefully add at this stage that we can't happily pick up in that note

1:14:16

that that sounds acceptable. Thank you very much.

1:14:21

So there's no further questions from anyone else in the room online. I'll

1:14:27

I'll move on to the second point

1:14:32

of agenda, item 4, on the need for future consents and whether additional controls within the Draught Development Consent Order are necessary.

1:14:42

So the question is, how can we be certain that the infrastructure delivered by the proposed development could not be retrofitted to facilitate the handling of other liquid bulk cargoes in a manner that fell outside the scope and control of the express planning consent regime? For example, is it possible that some retrofit works might not fall within the definition of development and therefore might not be caught by the express Planning consent regime? Or, similarly, is it also possible that such works

1:15:14

could come forward under permitted development rights and therefore not require express express planning consent either?

1:15:21

As such, is it reasonable to conclude that additional controls within the Draught Development Consent Order are necessary in the interests of certainty about greenhouse gas emissions and environmental effects?

1:15:35

Over to the applicant for their response, please

1:15:40

thank you Sir Harry Would Philpott, Casey on behalf of the applicant. And in terms of questions of retrofitting, that's a matter requiring engineering evidence. I don't have Mr Varley who would normally turn to for those matters, but if I deal with the point in principle, and if I need to supply anything more than writing, I will.

1:16:05

The starting point, we say, is that the need for future consent land side consents to facilitate the import or export of other liquid bulks means that any such requirement would by definition, be unnecessary.

1:16:18

Advice #15 on drafting TCO's explains it. Requirements should be precise, enforceable, necessary, relevant to the development, relevant to planning, and reasonable In all other respects, that's paragraph 15/2.

1:16:32

But in terms of the approach, there's an important point of clarification. There is no legal or policy requirement to achieve certainty about environmental effects.

1:16:44

The legal requirements that spring from the Rochdale Line of Authority are not concerned with achieving certainty about environmental effects.

1:16:53

The key principle that emerges from those authorities is the need to ensure alignment between the parameters that have been used to define the proposed development in the EIA and the parameters used to define the scope of what is consented in the resulting decision document. And that is needed to assess address the flexibility inherent in the consent that is an outline or equivalent and to ensure the same degree of flexibility is taken into account in the EIA and the advice. Note 15 reflects those principles,

1:17:26

paragraph 17 one. But the actual environmental effects that may occur in practise may or may not be the same as in all respects as those predicted at the time the decision is made, not least because the receiving environment itself often changes over time and neither law nor policy requires that they must be. Sorry, can I just jump in there, Mr Philpott? I think the the point is certainty about the worst case scenario because obviously a lot of stock is put into the beneficial effects and

1:18:00

and sort of carbon offsetting. But if the cargo changes and then that greenhouse gas balance changes then obviously that changes the worst case scenario. So I think that's kind of the the, the thrust of the the question.

1:18:18

Yes, I understand that the the the distinction I'm seeking to draw is between the parameters that are

1:18:28

assumed within the EIA and others. What the EIA assumes that the development and that is going to be consented will be

1:18:39

and that which is identified as parameters in the DCO. And if there is alignment between what the EIA has assumed will be consented and what is consented. In between that you have a number of judgments that need to be made by the professionals who undertake the assessment in order to consider the likely significant effects of a development that meets those parameters.

1:19:11

That does not mean that every assumption that is taken by those who undertake the assessment must be secured,

1:19:24

that that's not the the the the principle, because otherwise you'd be seeking to secure all sorts of things which are unknowable and don't need to be secured. And so it it is not the case that just because a worst case analysis makes certain assumptions which are considered to be worse cases, that one necessarily has to secure all of those. It's a it's it's a more subtle approach than that. There are instances

1:19:52

where exceedance of a particular level of effect

1:19:56

would make the impacts of the development unacceptable, and in those situations requirements can be imposed and should be imposed to ensure that doesn't happen, and so for example if you had a predicted noise effect.

1:20:09

That is close to a level that would be unacceptable,

1:20:14

and you then identify that it would be necessary to ensure the level doesn't in fact exceed that which has been predicted, otherwise the development concept would otherwise have been refused. In those circumstances you might cap the level that the effect reaches by means of a requirement, but that would be in response to a particular identified potential unacceptable effect. And I'd take noise because obviously the policy identifies certain things which you should prevent and that

1:20:45

that a common category. But in the absence of some particular justification such as that,

1:20:52

it's neither necessary nor appropriate to impose a requirement to ensure the effects of the development don't exceed those which are assessed. So for example, if you had a predicted level of vehicular traffic going through a particular junction

1:21:11

which caused no issue,

1:21:13

and it would still cause no issue if it was beyond that, just the capacity of the junction is able to cope with whatever might reason to come out of that development. Even if the worst case proved to be an underestimate,

1:21:26

there would be no cap put on the level of traffic because there's no evidence that that's justified. Even though if greater traffic came forward that would mean you generated more than you'd assess. So you need something specific in order to make it necessary to put a limit in place and and

1:21:47

so in this case in terms of the way that the the assessment has been carried out

1:21:52

and the assessment of the light is significant effects of the use of the jetty has assumed A realistic worst case in terms of throughput and the associated vessel traffic.

1:22:03

And just as with the CO2, the use of the jetty for any other liquid bulk would require further land cycle consent that would only be possible following an assessment of their light significant environmental effects.

1:22:18

And so if the assumptions that are used for the purposes of generating A realistic worst case for the purposes of this development

1:22:27

are not the same as those that are identified as appropriate views and the subsequent assessment,

1:22:33

so different effects are identified at that stage, that's not in, that's entirely unproblematic because consent for that further development will only come forward if those effects are assessed and found to be acceptable and whichever room just to jump in as you go along. So I understand that, but the the point is

1:22:55

you know can some of those works come forward without express planning consent, can they come forward, you know if they don't meet the definition of development, can they come forward under permitted development rights. So you don't have those necessarily have the same level of express. So the consideration of the environmental effects, that's kind of the the crux of the question I think. So in terms of

1:23:20

landside development required to facilitate the import of a liquid bulk of whatever type, whether it's

CO2 or indeed anything else at the sitting here, it's hard to contemplate what that might be. If it doesn't involve some form of engineering operation.

1:23:40

I can take instructions as to what that might be, but. But

1:23:45

it would seem unlikely that there is, and I don't believe any has been suggested that there is some form of

1:23:54

works that could take place that wouldn't be development that would allow the for the import of some other liquid bulk so far as the permitted development rights are concerned, if the necessary development might otherwise be permitted development. The use of permitted development rights, of course, is constrained by reference to environmental impact and with very limited exceptions, none of which we believe apply here.

1:24:26

Development requiring EIA would not be permitted development because of Article 310 of the Permitted Development Order. And I I can ask if it's helpful for Mr Raul to provide further

1:24:41

submissions on the point of, you know, other routes to consent.

1:24:45

But the applicant's position is that whichever way you sought to do it, there would be an act of development. And in fact development gives rise to like significant effects that then it would be caught and there would have to be consent of some form for it.

1:25:02

That's helpful. Thank you very much.

1:25:08

I think that's that's all I need to hear for now

1:25:13

and we'll digest that and maybe come back with some more questions and our next round of questions.

1:25:22

So any of the panel have any further? If there's nothing

1:25:27

fears from anyone else in the room online, I'll move on to

1:25:32

the 3rd and final point of Agenda item 4 on the consistency in the ES in relation to liquid bulk cargoes that require additional consents.

1:25:45

So the applicant gives positive weight to carbon dioxide imports and Carbon Capture Storage in the US, even though additional consents are required for these imports and operations to be realised. As such,

1:25:59

the need for additional consents does not seem to be a barrier to consideration of potential effects in the US. Therefore, should the potential effects of other types of liquid bulk cargo also be given appropriate weight in the US despite the need for additional consents

1:26:17

Over to the applicant for their response, please thank you Sir Harry Would Philpott, Casey on behalf of the applicant. So there are two important preliminary points that I just want to make that the 1st is that there is a distinction between the environmental statement and documents such as the planning statement in terms of the issue of weight, which is the that the word used in the agenda item. The ES, of course, is a reporting of an impartial and objective

1:26:49

assessment of the facts and not an assessment of the weight

1:26:54

that is given to material considerations, positive or negative, whereas the planning statement does obviously undertake that exercise.

1:27:02

The second preliminary point is this, that in the climate change chapter of the environmental statement, the quantification

1:27:11

of the significant beneficial effect of the scheme in terms of greenhouse gas emissions is based solely on the hydrogen produced by the project, replacing the use of fossil fuels. So the quantified effect does not include anything from carbon, but the ES does appropriately note and take account of the potential for beneficial effects from the import of CO₂ on a qualitative basis.

1:27:37

That's done on the basis that the evidence shows use for CO₂ is likely,

1:27:42

and as a result, there's sufficient information to allow for at least that qualitative assessment to be undertaken. But not a quantitative assessment. Because even with that knowledge of a particular product and its commercial likelihood, there isn't seen to be enough information to allow for a reliable quantitative assessment. But when you look at the Greenhouse Gas emissions Assessment, it does include a quantitative assessment of the adverse effects

1:28:15

of the emissions from shipping associated with full use of the jetty.

1:28:20

And so the assessment is highly conservative in that respect. It accounts for, in its numerical analysis, the adverse effects and the quantitative assessment because it can do that using realistic parameters. But it doesn't do that in terms of the likely beneficial effects. It only notes those in a qualitative basis. It is fair to describe that as a highly conservative approach.

1:28:45

For other liquid bulks, there's no equivalent evidence as to the likely user for any particular product.

1:28:53

That would allow for a for different evidence based assumptions to be made when seeking to assess emissions from full use, or even

1:29:04

a qualitative assessment of downstream effects if that's appropriate for a particular product. Just don't have any particular product that that that could usually be attached to.

1:29:15

1:29:16

And and that's a distinction between the CO2 and other liquid bulks. With CO2, one of the the the the applicants done the best that can be reasonably done

1:29:30

quantitatively and qualitatively has done that on a highly conservative basis, but that information is just not available for other liquid bulks. The separate issue about the weight to be given to the potential for CO2 imports and exports and the planning balance that's addressed in the written responses provided at deadline one in Rep 1023 to the following first round questions. So 1.2.1.21.2.1.3,

1:30:02

1.2.1.61.2.1.8 and 1.2, point 1.10.

1:30:09

So if if you

1:30:12

find it helpful, I can ask Mr Raul to address the issue of the appropriate weight to attach to potential CO2 imports and exports in the planning balance and whether the same would apply to potential liquid bulk cargoes. That's a slightly different question than one you've articulated in the agenda item, but it seems to be related and so if that would be helpful, I'll ask him to deal with that matter. Yeah, that's sensible. Thank you.

1:30:43

Good morning. Philip Raul on behalf of the Applicant.

1:30:48

So in terms of the waiting exercise, so again reference and to be clear the waiting exercise I'm referring to is the the exercise under section 104 Seven of the Act which

1:30:59

and is considering whether the adverse impact of the proposed development would outweigh its benefits. I'm I'm going to explain the position as Mr Philpott just said first in terms of the carbon dioxide matters before then briefly commenting in terms of other potential liquid bulk products and cargoes. So

1:31:19

turning then to carbon dioxide matters and the the applicant's position is that it's appropriate for substantial weight to be given in the in the planning balance to the benefits of the project in terms of its potential for the handling of carbon dioxide. And as Mr Philpott just explained the reasons for this are we've we've set out in various answers to questions that we've given the 1st in respect to your first round questions and again Mr Philpotts already listed those. I won't go through them again but you you will get. You will get those

1:31:51

and in the night.

1:31:53

So, so in summary

1:31:57

we say substantial or the applicant says substantial weight should be given to the benefits associated with the potential of handling carbon dioxide because amongst

1:32:06

other things there is a very significant likelihood that this trade will happen.

1:32:12

I remind the panel of the position on the commercial negotiations which around the carbon dioxide element of the project, which was explained by Mr Simon Bird on behalf of the applicant at issue specific hearing one, and that's reported in document Rep 1.064.

1:32:33

In this respect, having regard to the position expressed in the national policy statement for ports, in terms of the importance the policy places on the commercial judgement of the ports industry,

1:32:46

I emphasise that it's the clear view of the applicant who obviously and clearly in this case can be taken to be the port industry, that there is a significant likelihood that this trade will occur and will happen.

1:32:59

The commercial view that they've reached is such that it has, for example, contributed to the decision that the applicant has made to submit the consent application and take the proposed development forward. So that's the first point. The second point is there is a very clear specific policy support for the type of carbon dioxide related development that we're talking about here.

1:33:20

Relevant policy explains that this type of development is amongst other things urgently needed.

1:33:27

And these are matters which, for example, we further explained in respect of the recently designated overarching national policy statement for energy EN one in the response to Question 12110

1:33:42

and that's that's founding document Rep 1023. So again there's very clear policy support, specific policy support for the type of development we're proposing.

1:33:53

And thirdly, just in terms of the summary, whilst further consents are clearly going to be required for appropriate land side infrastructure for carbon dioxide handling purposes and the applicants, high level analysis is that any such necessary consents for land side infrastructure that are needed for the handling of that product would be achievable and that there is considered to be no likely impediment in this regard. Now that's a summary of a bit more of a an explanation that I provided at issue

1:34:25

specific hearing one and that was in respect of agenda item 3, sub item 6 and the speakers notes which I gave there are provided in the appendix of the document Rep 1064. So in summary that's a summary of the position of why we say substantial weight can be, can be, can be given in the planning balance to the benefits associated with the handling carbon dioxide. So then having dealt with that, now turning very brief, sorry Mistral, can I just jump in there? Could you just for the benefit of my memory

1:34:58

just to go over again what actual additional land side infrastructure would be required to realise the carbon dioxide

1:35:09

processing? And

1:35:11

well obviously at this stage I think as we set out an issue specific hearing one and it

1:35:18

we can't be precise or in detail about what it is because there's no fixed project yet in that in that regard. But I think at issue specific hearing one you're you're probably talking about some form of initial storage element to store the carbon and then looking at the infrastructure to then move that carbon from there to wherever it wherever it needs to go. So you're probably in very broad high level

terms looking at some form of storage facility and then some sort of facility to then transport the carbon from there

1:35:50

to say for example that the the Viking pipeline for example. So some sort of pipeline connection there as well. So that in in in in in very broad terms is what what you I think you would be looking for. But again we can come back on that and perhaps clarify that a little bit more in writing for you. Yeah, that'd be helpful. Please continue.

1:36:11

So turning now to other potential liquid bulk cargoes and at the outset I I just would like to highlight for the avoidance of doubt that it's not currently and we make this clear it's not currently anticipated by the applicant that the jetty has applied for will be used for other liquid bulk cargoes. In the short term.

1:36:32

The remaining and if I can call it this the remaining non liquid ammonia capacity for the reasons which we've explained and is expected to be taken up by carbon dioxide. That's that is the position that's driving the commercial considerations and judgement of the applicant in respect of this project. And again a highlight the importance of the commercial judgement of the ports industry as as specified in the in in the ports policy. To the extent, however, that carbon dioxide does not take up all of the remaining

1:37:05

non liquid ammonia capacity, the ability for another liquid bulk product to take up any such remaining capacity would and having regard we say, to the policy contained within the National ports policy on the need for additional ports capacity, we say would clearly be a benefit for which appropriate weight should be given.

1:37:28

So briefly explaining that a little further,

1:37:33

the ability to use any such remaining spare capacity to handle another liquid bulk product would at the very least generate benefits in terms of effective competition within the ports industry and would also at the very least generate benefits in terms of a contribution to resilience. And flexibility matters which again I'm sure you're aware and you you've you've picked up the wording, they're all key aspects of the compelling need for a substantial additional port capacity which is identified and established within the in the ports policy. So drawing all of that to

1:38:05

together they we, we say the ability or I say the ability to use any such remaining spare capacity for another liquid bulk product is therefore clearly a benefit in the public interest to which appropriate weight should be given.

1:38:19

Such an opportunity is clearly a factor which increases the overall weight to be attached to the benefits of the new capacity that would be created by the project.

1:38:31

I know, leave it there.

1:38:34

Unless there of course there's any questions. Just

1:38:37

just one question from me. So there is potential for residual capacity for other liquid bulks.

1:38:44

So I understand you know the point about compelling needs in you know there's a general compelling need for

1:38:51

cargo etcetera.

1:38:54

I think what

1:38:56

unless clear on is how

1:38:58

that residual capacity

1:39:02

and the liquid bulk,

1:39:05

how that would be different in sort of the greenhouse gas assessment sort of terms, you know, so if it if it doesn't have the low carbon sort of credentials of the carbon dioxide of the, you know, the green ammonia, how does that change the greenhouse gas assessment. These are the sorts of things I'm trying to tease out with these questions. You know, are there unintended consequences that we need to be alive to and and control. So Howard Philpott and Casey on behalf of the applicant. So as I understand it and the reason I picked this up is because,

1:39:38

but Mr. Brown is dealing with is the question of weight in the planning balance as opposed to the way that this is treated in the EIA. And as I understand the point he's making is that that the expectation

1:39:55

and the likely outcome in terms of the use of the remaining capacity once the green ammonia element has been taken up is that that will be carbon CO2 import. But insofar as either that doesn't happen or it happens to an extent that allows in the future for some other liquid bulk to come in, in due course in planning terms, that's a good thing. That's a benefit. That's what the MPs says.

1:40:24

But so far as the EIA is concerned, it is dealing not only with what is likely, but also the constraints on what can realistically be assessed. And therefore, where there are constraints in terms of the assumptions that can be made about greenhouse gases, they have to be based on some sort of evidence and some sort of parameters and assumptions, in this case, as to what the remaining capacity will be used for.

1:40:57

As I've explained, it's been undertaken in in this case based on the only other liquid bulk for which there is particular evidence on which it's possible to make, therefore some assumptions.

1:41:10

But if you move from that to a situation of looking at other liquid bulks,

1:41:17

in a sense the the world is your oyster. How do you choose your parameters? How do you decide which assessment you should place and wait on reliance on for the purpose of decision making? Because ultimately the EIA is a tool to inform decision making and absent evidence of the likelihood of any other particular liquid bulk and therefore meaningful assumptions that can be made about it, the best that the applicant believes that can be done is to make a conservative assessment

1:41:45

that quantifies the adverse effects in a way which is conservative because one doesn't know what the what the other where the other liquid bolts might come from, but it's assumed they all come in. The capacity is all used by import, by ship

1:42:03

and doesn't seek to quantify the beneficial effects of the CO₂, recognising the uncertainties involved in that. But once you move beyond that, the utility for the purpose of decision making becomes I would submit very, very limited

1:42:19

that that's that's by way of the overall principle if if

1:42:23

to go further, I think I would need to take instructions from those of undertaking the assessment.

1:42:29

That's very helpful. Thank you both. So I think unless there's anything else from anyone else in the room online,

1:42:40

I'll bring a close to agenda item 4.

1:42:44

Also conscious of time that it's come up to 11:45. So I think

1:42:50

think take a break now and come back at come back at 12:00 so take a break now here is adjourned and come back at 12. Thank you.