

## ISH8 Pt2

0:01

Time is 11:30 and this issue specific hearings resume. So welcome back. Everybody catches step. Yes, I think you can hear as Mr Philpott, can't you? Yeah, just to make sure that so yes, I can. Excellent that that's good. Thank you. So I think we're now on to an item number 5 on the agenda, which is designed landscape and visual effects. I'll hand over to Miss Metcalfe on this one.

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Thank you, Mr. Hunter.

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So we're now on to agenda item 5, Design landscape and visual effects. Question one is to the applicant within the design code document that was provided at deadline 4, which is Rep 4046. Paragraph two, point 1.2 includes a list of buildings that would be subject to the design code. However, this list doesn't include any

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buildings that are in Work Area 3. Given that Work Area 3 includes a Welfare building and process instrumentation building, which building types included within that list for work areas seven? Could you explain why the buildings at work area three are not included? Thank you.

1:12

Thank you, Madam. I'm going to hand over an amendment to Mr Tymon Robson from Air Products to answer that question. I, I wonder if you forgive me if I could just before I ask him to deal with it, if I can just provide you with a reference that arose out of the discussion we had just before the break in relation to Natural England. Because in the break, I've been provided with a reference that relates to the issue raised by Any

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34 and the Blair stack issue.

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And I, I, I thought it might be helpful while it's still fresh in our minds to supply you with that, If I, if I can be forgiven for interposing it here. Because the, the, the question, one of the questions that arose was as to whether this has been dealt with already and also what's coming at deadline 5. And during the break, it was explained to me that the issue is in fact addressed in Rep for zero 14

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and and in the Pedia version, it's page 221. That's PDF page number paragraph 4.7, point 24. And what is going to be supplied at deadline 5 is a technical note with more detail on that matter. So it is covered in the material that went in a deadline for and what you're getting at deadline 5 is a technical note with more detail as opposed to the issue not having been

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testicles. So I apologise for taking that out of turn, but I thought it might be helpful to give you those references. And before we get too far away from other gender item. Thank you, Mr Philpott. I've made

a note of that. That is useful. Thank you. So I'll now pass on to Mr Robson to deal with the question you've got about Item 5A.

3:13

Hi, good morning. Timing Robson speaking for the applicant.

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Umm

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in in terms of the the written question

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that examining Authority asked DAS 2.1, it was requested for additional information related to the peripheral support buildings that would be the public facing elements of the proposal.

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And in in considering the buildings to be covered by the design code

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products considered the illustrative layouts AP013 as extracted in the design code.

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Let's Figure 2.3 of Rep four O 4/6 and also the buildings identified in the DCO Schedule one Rep 4004.

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And I will

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explain

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the the buildings that were considered to be covered within the design code,

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particularly the larger buildings immediately adjacent to the King's Rd on the West side

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and the other buildings which are smaller and dictated more by their process duties and set back into the basin, into the facility amongst the project structures have not been considered. And I'll explain that a little clearer now, particularly in relation to into Work 3.

4:45  
Umm,

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just as uh.

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4:51  
In terms of the buildings that were

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not covered by

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the design code, that are

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operational buildings for operator use, albeit not normally manned. One of those buildings is the work and wealth at Work, the welfare and operations buildings located in Area 3.

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And the reason that particular building was not covered by the design code

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is it's generally a much smaller building. In this case that building is approximately 10 metres by 5 metres

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and it's set back considerably from the edge of the road, so behind the security fence,

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and it's also located closer to the operational structures, in this case the ammonia tank itself, which at 70 metres diameter and 40 metres high is a considerable structure.

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And so for those reasons, the Welfare and operations building located in works three was not considered to be a public facing building.

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And so we haven't included it within the

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within the design code.

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The design code also

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did not cover a number of operational buildings, typically including either machinery or other process equipment

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on either of the sites, and that would include

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things like the process instrumentation, building, electrical substations, Power Distribution centres.

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And the reason for that is because

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their operational buildings containing process and electrical equipment and they're not, not occupied by by people.

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By by way of clarification,

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there are a couple of buildings that are covered by the design code which are titled Process Control Buildings,

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uh, both in work seven and in work 5.

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By a process control building,

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you're talking about the building from which the process is controlled. So it will be a room with operators with control screens from where the process can be controlled. The process instrumentation building which you referred to in your question

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is a building containing process instruments. It's not a building which is occupied or has the ability to be occupied.

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Um, and it's its form is dictated by its process. Use

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and

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from that point of view it wasn't considered

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to be a public facing building and therefore we didn't include it

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in the design code.

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That there are process instrumentation buildings located throughout the process facility and work 3/5 and seven.

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Thank you, Mr Tim, and I think that covers it. Thank you,

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So still on the design code document, paragraph 3 point 5.3 quotes from the design NE links document which states that to help break down the the massing of industrial units, it's recommended for buildings to use different materials to better articulate the form of elevations and roof profiles,

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notwithstanding the need for blast proof and toxic safe havens. Could you understand? Could you please explain why a single material and colour has been chosen for the exterior of every building

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and indicate how variation could be included to provide some interest and meet the requirements of the design the Nelk design documents. Thank you.

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Timon Robson speaking for the applicant

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with within the design code, the indicative details of the buildings are have indicated, as you correctly point out a single colour.

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9:47

Umm,

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but elsewhere within the

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the building, the the design code and referencing the

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designed NE Lincolnshire Places and Spaces Renaissance document, we have noted that the colour palette should reflect the contextual environment.

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And in within that document it has stated that all new industrial buildings should be light grey in in colour to reduce the impact.

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However,

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we have noted

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that the external colour of the building should be something that's reviewed and agreed with Nelk as part of the discharge of requirement for

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UM.

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And we have also noted that the scope to develop the external appearance of the building in terms of colour and finish as well as potentially through the addition of non structural cladding.

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And so the question of variation in colour which you referred to in your question is something that can be discussed and agreed with Nelk as part of the discharge of requirement for.

11:14

Thank you. Mr Robson. Just actually on that final point, I have one last question in response to written question two DS 2.1 on the design code, it was it was said that it would be referenced in the draught DCO in recommendation for and Schedule 15. This wasn't done in the version submitted at deadline 54. So I want to please could you make a note

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to ensure that it is updated in deadline 5

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time in Robson speaking for the applicant? Yes, we will ensure that that requirement is updated at deadline 5.

11:59

Thank you. Mr Robson. Mr Limmer from NE Lincolnshire Council, do you have any comments on the design code document that you've seen or on any of the discussions that we've just had? Thank you.

12:14

Thank you. Richard Lamont NE Links Council. No, no, no comments to make on that. And thank you. I think we're quite happy that we'll be able to have that input through the discharge of requirement for. Thank you.

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Thank you, Mr Limmer.

12:31

Moving on now to Question 2, which is again directed to the applicant. I wanted to ask about the long sections provided at deadline three Rep 3065 and then were updated at deadline 4 Rep 4047.

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It's fully appreciated that these aren't scale drawings. However, from undertaking some basic measurements in respective height ratios, I found that the other developments had generally been exaggerated in relation to the IGET scheme. For example, on I D1, which is a section taken through the IGET site, the South Humber Power station has a 102 metre stack depicted in yellow and the velocities, Sustainable Transport Fuels has a 77 metre gasification

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building depicted in green. These developments are over 2 kilometres away from the IGET site as shown on this section, yet it depicted as far more prominent, still dwarfing the massing of the eye get structures.

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I don't feel comfortable relying on these as reasonable depictions of relative mass things in long views, and I'd like you to revisit these before deadline 5 to give a greater degree of accuracy. Do you have any sort of comments or questions on what I've just said and would you be able to have a look at those before Deadline 5 then? Thank you,

14:00

Madam. Yes, I'm going to ask Mr. Lewis in a moment just to explain that the nature of these images, what they are and indeed what they are not intended to represent and, and the way you've articulated your concern is anticipated and has been anticipated in preparation for this. So I, I hope that what Mr. Lewis has to say will provide some comfort and then we can consider in the light of that discussion and what if anything more you might

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find help folks. I'll pass on to Mr. Lewis to do with this.

14:37

Hello Madam Alan Lewis, the applicant. I think it might be worth sharing the relevant document, which is Rep four O 47,

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which shows the lines of view submitted with these illustrations. So the action point at IH4 was to submit analysis of the designs associated with extant planning permissions to understand how the proposed development relates in terms of scale and massing. So obviously what we've done is this plan is absolutely crucial to the to the long sections that follow. This plan shows the locations of those other major developments in the area,

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but also the scale and plight and massing. And there are additional details within Rep originally within Rep three O 65 and also within Rep O 47, which independently of this this image and the subsequent long sections provides all the context to to understand the the, the, the, the the size and the and the massing of those individual developments in their own right. So even without the long views, you can take your own views as to the,

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as to the size and nature of the mass of that individual development.

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Important to say, and I, I suppose this is obvious from the chronology of, of the work, but the long sections haven't been used for LBIA purposes and should not be regarded as representative of any particular view. So whilst we've called them long sections, I rather suspect that is is an unfortunate phrasing. They're, they're, they're more strictly elevations. They're very definitely not

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cross sections. And of course, perhaps as you spotted in asking the for the additional ID line, which we've represented here as ID 5, these are not cross sections. They're, they're, they're elevations, they're effectively lines of view. So if you imagine a broad camera on that line of view looking in the direction of the arrow, it is the the images that follow bringing in all of those developments.

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But the critical point as you've, as you've identified that the developments further away from the line of view are not scaled for distance. So that's an absolutely important thing to understand. And these aren't meant to be quasi photomontages. So what they what they do is they provide a representation of the parameters associated with that consent in the same line, the same line of view. They're effectively lined up in

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one plane. So you've got the eye get development on the same plane as those other those other developments. They're brought forward onto the the view line. They're not scaled for distance. Absolutely crucial to understand that if these were true cross sections, you could imagine there'd be some bias in the selection of these locations. So for example, if I look at I D1, which is the the



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sorry, we could just scroll back up to the to the figure

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Izzy one rich 1 SW to North East that intersects a large number of the developments, including the IGET project lengthways.

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But clearly, you know, if that was a

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a cross section, you could argue that that's been chosen to intersect the maximum number of developments. But as a line of view, you also get the additional developments in the background. So for example, the energy recovery facilities to the SW including the one in the dark green.

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Specifically in regards to whether we're able to amend the scale of the, the, the, the, the size of the, the, the polygons. If we, if we now do Scroll down to the the images themselves,

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I I'm reliably assured by my graphics team that this this has all been run by a computer programmer. We can provide a note on how these images are prepared, but those images are representative of the size of those consented of those consented developments. But as I said, in in in line with the, the iget development in the same line of view, they're not, they'll say not scaled back for distance. So the sizes should be appropriate.

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I will investigate specifically the heights of the, of the, the, the, the chimneys, the stacks associated with these because obviously they provide a, an important reference point, but they, these, these images haven't been done by hand. They've been done by software. So I'm, I'm very confident they're correct. But I can provide the, the methodology that, that, that, that underpins all of this, if that if that's helpful to you, Madam.

19:40

Thank you, Mr. Lewis. I think I think it's that clarification that's absolutely necessary that they aren't true sections. They aren't trying to be photomontages of, of that perspective and that they are in a plane. Because I think for for any interested parties looking at them, they may see them as as wire frames which which then gives a false impression of those sizes.

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So I think certainly a, a, a better explanation of how they've been produced, their purpose and that they aren't to be relied on as LV IA sections or photomontage type images would certainly be very useful.

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Appreciating that they are in a plane rather than trying to be perspectives. I'm not sure that there's

going to be much benefit in actually revisiting them. Obviously it would be useful just to to have a, a, a check on them before deadline 5. But if they're not going to be

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true photomontage type sections, then it may just be that we require that explanation of of their purpose, how they've been arrived at, and the fact that they are in plain rather than perspective. That will be useful just to,

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to, to identify what, what they are for. Thank you. We'll, we'll, we'll take that away. We'll, we'll provide a, a note that makes their nature and their status as clear. They're just two points. I just wanted to touch on this.

21:25

As I understand it, what they allow both yourselves and any members of the public who are interested in the scale of these buildings to see is how their general scale relates to the scale of other developments that have been approved in the area. Not by way of understanding the visual impact from particular views, but just generally, whether these are of a scale

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that is compatible with the scale of other things that have been produced or or approved in the area. But the second point is this.

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As I understand it,

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what you don't have in those images, which you would have it in a photo montage, is the existing development.

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And so they're not seeking to be representative of how something will look in looking context because otherwise you would include the existing development as well as that which has been approved. But it's clear that the nature and purpose of producing those images needs to be more clearly explained so that there's no room for misunderstanding. We'll take that away and we'll deal with that deadline.

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I think that's the key point that we've we've reached on on that question. Thank you.

22:46

Turning now to Question 3, which is directed to NE Lincolnshire Council and it's regarding the additional viewpoint that was requested by you from the Lincolnshire Walls and was submitted at Rep 4038.

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I just wanted to ask Mr Lima, do you agree with the conclusions that the overall composition of views is unlikely to be changed both in winter and summer? And also, do you require any further

information or any additional viewpoints to be considered in relation to this viewpoint that's been identified? Thank you

23:24

thank you Richard Lemon NE Lincolnshire Council thank you for that. No, I think we're happy with the with what's been provided on this point. And I think from our perspective, it was important to sort of have that note of views from the world as an area of outstanding natural beauty stroke national landscape and there. So for us, we feel this this is sufficient and and does what we we were requesting. Thank you.

23:52

Thank you, Mr Limmer, and apologies I didn't come back to you on the previous point about the long sections. Do you have any? Did you have any comments on the discussion we've just had about the long sections?

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I think in regards to the long sections,

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I think it'd be particularly to look at the scale that N Beck energy is given there just in terms of my knowledge that that looks to be

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not quite representative. And so I think that that particular part of the image needs to be looked at.

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Sorry about that my managed to turn my microphone off. Thank you Mr Lima for that. So turning back to the applicants just on the previous question then if you could include looking at North Beck Emerge energy in terms of the scale as well, that would be useful to to bring that particular point out.

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Yes. And then also I'm sorry, I'm swapping about back onto Question 3. Did you have any comments on the additional views from the Lincolnshire worlds

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dealing with those in turn? We will of course pick up the point that Mister Lema has identified. We'll check that and report on that as part of our deadline. Five. No great about being raised and then surprised. The second question is concerned. No, we don't have any further comments in relation to the image that we've supplied to now we've got. We're glad to hear that they regard the disobedient.

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Thank you, Mr Philpott.

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So finally to question 4, which is directed to the applicant in the outline Decommissioning Environmental Plan, Management Plan App 222. Table 6 provides information on the landscape and visual impact and notes that value trees, woodland, existing vegetation and other landscape features

would be protected from decommissioning works and retained wherever possible in accordance with the British standard. It goes on to say that any arboricultural impact assessment

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would be required prior to decommissioning to identify which trees or vegetation are to be kept and protected during decommissioning and which could be removed. Is it the intention that any planting or other landscape features that are a result of mitigation or enhancement on the IGET scheme would be included within the additional assessments?

26:37

Ask a question for the applicant. Thank you.

26:41

Thank you. And Madam, I'm going to hand over to Mr. Lewis to respond to this.

26:50

Helen Lewis again for the applicant. So in relation to the the footprint of the development itself and obviously that's covered by the the O lamp and the planting therein. I don't have a reference to hand, but we will provide the the reference for the OEM.

27:08

Obviously table six of the of, of the, of the, of the ODEM provides the wording that you've described. And we can expect that the dent which is prepared at the time of decommissioning will include include a similar commitment. And the local authority would approve and discharge this requirement only when they were satisfied that measures to protect the value of trees, woodland and existing vegetation are included. So that's the security in in the future

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that this will will be delivered. And yes, I can confirm it is those those elements of habitat defined within the OLEM. Of course, other items of mitigation such as the Manby St woodland, they're controlled by the requirements. So they've got their own their own processes associated with them. So the ODEM simply refers to the, the, the area here within, within the proposed order limits.

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One clarification that we do have here is that we will amend the, the O Demp wording, the meaning to us of other landscape features in this context, which is a little bit unclear. And we're, we're unclear ourselves as to what that might relate to. So we will amend that in an amended version of the ODEM if that helps.

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Is that helpful? Any other follow on questions, Madam to to that summary?

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Thank you, Mr. Lewis. I think it was just really whether it can be clarified within the O demp that that the any, any

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additional planting that that's part of this budget scheme either through mitigation or enhancement is

actually included. And whether that can just be as a note within that Table 6, just to say, just to clarify that that it is actually included and not excluded specifically.

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Thank you, Alan Lewis.

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This is for the applicant. Yes, of course, Madam. What we'll do, I think is we'll add a reference to the OEM and the examination reference actually into Table 6 to, to, to tie it all together, if that, if that makes sense. That seems to make sense to me, but I can't think of a reason why it doesn't make sense. So we'll we'll do that that, that would be perfect. Yes, thank you. Thank you. Mr. Lewis,

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Just quickly to Mr Limmer, are there any comments on that from NE Lincolnshire? Thank you.

29:41

Richard Lemon, NE Lincolnshire Council, no comments to make on that, so thank you.

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Thank you very much. That concludes agenda item 5. So I'll now pass on to Mr Sheikh for agenda item 6. Thank you.

29:59

Thank you, Mr Metcalfe. So we are now on agenda item 6, which is major accidents and hazards.

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I appreciate some of the following questions may already have been answered in previous responses, but if you could just bear with me as I feel they're necessary to help the examining authority arrive at a particular point of understanding.

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So I've got three questions and they're all linked and they follow on from each other. So the first of which is

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to the applicant, taking worst case scenarios into consideration,

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has the applicant identified mitigation measures that would be required for off-site premises in order to comply with relevant legislation and or the principles of a lab?

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Over to the applicant.

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Thank you, Sir. Harry, was Bill fault KC on behalf of the applicant and I'm going to ask Mr Robertson to lead in relation to this matter.

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Good morning, Timon Robson speaking for the applicant.

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31:01

By way of context, I think it would be useful if I gave a brief summary of the process by which the risk mitigation measures are identified and secured through the parallel regime established under the Coma Regulations.

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So under the Coma regulations, Air Products as the operator must submit a safety report to the competent authority, which in this case is the HSC acting jointly with the Environment Agency,

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those prior to construction and prior to the start of commissioning and operations as explained in the issue specific hearing, 7 Rep three O 7 three. And under these regulations their products cannot start operations until the safety report is agreed with the competent authority. And this ensures that relevant matters relating to safety must have been addressed to the competent authorities  
Satisfaction through

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the parallel regime. So, the safety report will demonstrate that all measures necessary have been implemented

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to prevent, control and mitigate the hazards posed by the IGET facility, IE to demonstrate the risks are as low as reasonably practical or a lot. This demonstration is developed by employing a range of structured and comprehensive hazard identification exercises

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and both qualitative and quantitative risk analysis.

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The quantitative risk analysis shall include calculation of the extent of the worst case hazards and the potentially affected populations. Based on these results, potential risk reduction measures are then identified and subsequently subsequently evaluated collaboratively with third parties as necessary

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in terms of their cost versus risk reduction benefit.

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I think it's useful to note that the underlying principle of a lot and underpinning the legislation

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is that risk, risk, risk mitigation measures must be implemented unless the cost of their implementation is grossly disproportionate to the risk reduction benefit

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and thereby creates a bias for implementation of risk reduction measures. And this principle of gross disproportionality is set out in the HSC Principles and Guidelines documents and in the HSE document titled Guidance on a Lark Decisions in Coma.

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And robust justification must be provided by the operator wherever the decision has been made not to implement a potential risk reduction measure.

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If I come to the specific question raised

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to support the current phase of the design, their products has engaged Dexcom Limited as our process safety consultant to develop the Coma safety Reports and the associated studies

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and its support of the development of the safety report. Consequence modelling has been performed using industry recognised and validated software for a broad range of scenarios including the lower likelihood yet worst case scenarios.

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The consequence modelling has been performed to fully understand the extent and the severity of the off site hazards posed by the hydrogen production facility

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and this is then to be used as the basis for detailed evaluation of any potential mitigation measures that may be required for off-site premises.

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So as part of that preparation,

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all of that work gets done is carrying out a detailed a lot review of potential impacts on the off-site premises.

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And this work will involve the consequence modelling of the worst case toxic hazards, occupied building risk assessments, escape, evacuation and rescue analysis

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and a risk reduction measures review or a LARP workshop.

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Following this review, risk mitigation measures on site, but also potentially off site, will be agreed and subsequently implemented.

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This work is currently ongoing with Dexcom.

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But just to note that prior to the conclusion of the ALARM study work related to the IO T operators site or the APT site,

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their products have proactively and preemptively identified some key mitigation measures to be implemented within the APT premises.

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And so the detailed elapsed study being conducted by GEX Econ

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will consider whether any measures over and above the measures preemptively agreed will be necessary.

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And as per the update issued to the examining authority yesterday and this morning, our products are close to an agreement with the IoT operators setting out how these mitigation measures will be implemented.

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Thank you. Mr. Robinson, I think you've sort of answered the the second point I had on this, which was what, what relevant legislation would secure these mitigation measures. So just to confirm, the work in terms of risk reduction measures being identified through QR analysis and also consequence modelling is yet to be fully completed.

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But when that is completed, should there be any mitigation measures required off site, you will engage

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along with operators who may be affected, such as IoT to ensure how those mitigation measures are implemented.

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Would that be correct?

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Simon Robson speaking for the applicant? Yes, that that is, is correct that the process will be that in satisfying the competent authority that the mitigation measures are required, Air Products would



engage off-site third party premises through a separate agreement to enable those mitigation measures to be implemented.

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Thank you. So just to confirm the the final point I have on this agenda item which is in terms of responsibility, who does that lie with in for implementing these mitigation measures? Is it

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3 solely with with the with yourselves as the applicant? Or is it the the owner or the operator of the offsite premise?

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Timon Robson, speaking for the applicant.

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I think the responsibility for the implementation of the risk mitigation measures actually follows a tiered response. Firstly, the competent authority is responsible for ensuring that the coma process itself is followed,

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and the competent authority must decide on receipt of the safety report whether to allow operations to proceed or to prohibit them.

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The second tier, the operator, which in this case is Air Products, as the owner of the risk and the operator of the facility, Air Products are responsible for ensuring that the measures are implemented so the facility can operate in accordance with the law.

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And this may be done

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either directly by Air Products under a separate agreement with the third party to allow access to the land,

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or by the third party themselves, again under a separate agreement with their products. And and whilst not expressly stated,

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as our products are responsible for the implementation of the risk mitigation measures, Air Products expect to be responsible for the costs associated with the implementation of off-site measures.

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Uh,

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and

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as we mentioned before, our products are in the final stages of discussions with their with APT to sign an agreement in relation to these works. And we will then proceed to develop a further detailed scope of implementation agreement under the terms of the umbrella agreement

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in in terms of the tiered approach for responsibility, the third tier is the third party themselves.

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Air Products have overall responsibility for the implementation of these measures in the context of ensuring that their facility can operate

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UMM.

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However, as important as employers, third party businesses have duties as to the health and safety of their employees,

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that their employees at work under the health and safety legislation

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and also businesses who are regulated under the comma regulations are also subject to more stringent requirements of that legislation.

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And so the third party businesses should therefore facilitate implementation of measures designed to ensure the safety of their own employees.

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So if I, if I may just add a couple of points to that. And the, the the 1st is that we're very conscious obviously that the IT operators for the reasons that they've explained are not here. And clearly although it's anticipated by both sides, it will shortly conclude agreement. They have perfectly reasonably reserved their ability to make representations about whether anything needs to be in the DCOM

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to deal with this if agreement is not reached. And so I, I'm very conscious that it wouldn't therefore be appropriate unless you'd find it helpful

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for me to make extensive submissions about that matter in their absence, in circumstances where it's hoped that the issue will fall away. In any event, they've reserved the ability to make representations on that in writing. It may be in due course. I would suggest unless you find it helpful. But we do the same and we deal with that if, if it comes to it. But obviously as you will have seen from the submissions that we've made already,

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including in Rep 2009, which was our response to the IT operators deadline One

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submissions. And we've consistently made clear

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that as Mr Robson has explained, the relevant safety measures will need to be set out in the safety reports submitted pursuant to, They will need to be addressed through that system of regulation. And therefore our position as we've already explained is that you don't need to deal with it and by duplication through the TCO regime. So whilst we're seeking to resolve matters upfront with the IT operators because it's the best both parties

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less interests to do that for the reasons that Mister Robson has summarised. You understand, I'm, I'm sure our position in relation to the question of principle,

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but unless you find it helpful for me to go into those matters in more detail at this stage, I would suggest that it would be better that that's dealt with in lighting if needed.

43:51

That's the first point. And the second point is this. If you were, your colleagues would find it helpful and we thought it might also be worth just providing you a deadline five with a short written note that summarises how the comma regulations in particular operate in this respect. Just working through the integral individual regulations so that the examining authority and any interested parties can understand that separate system of regulation by way of a,

44:22

an accessible overview. We thought that might be helpful.

44:27

Thank you, Mr Philpott. Thank you, Mr. Robinson. That no, that would be extremely helpful. Yes. So would I think it would be useful if you could provide that breakdown of the comma regulations and, and how they tie in with the with the operations. And also I think we can assume that the other relevant legislation such as the coma regulations will be enforced appropriately. And therefore, yes, we do need to seek to avoid duplications in terms of conditions and the DCO as well.

44:54

So that that concludes item, agenda item four. I've got no further questions on that. So do any of the

parties online have any comments that we shouldn't they make on what we've just heard from the applicant?

45:10

I can't see any hands.

45:13

Sorry, no, no comments to make from NE Lincolnshire Council.

45:17

Thank you. Thank you, Mr Lehman. Which case that concludes item Agenda 6 and I will now hand over to Mr. Hunter.

45:26

Thank you, Mr Sheikh. Yeah. That moves on to item number seven, which is the Draught Development Consent order.

45:34

And really what what I think we're looking for on this one is similar to what we've done before. I'm over progress update on on some of the matters that I think we've set out there in the agenda. But just within that context, you're probably aware from the timetable that on the 17th of July, there's the opportunity for the XA to issue our proposed changes to the the Draught development Consent Order. So any updates that you can give in terms of think changes that might be sort of forthcoming, we can then sort of feed into that document that we'll be looking to to produce and so turn into the agenda. The first question relates to to a number of articles,

46:06

most of which we have discussed the previous issue specific hearings.

46:11

And what I suggest is that I'm, I'm not going to take each one individually, but I think we can sort of lump all all three of them together. So rather than sort of bouncing backwards and forwards, I think we can sort of take them all all together. But just before I do just a bit of sort of sort of context in terms of an update on sort of what sort of stuff we're we're looking to sort of hear from in particular. And I think perhaps sort of once the applicant has sort of run through will then sort of check whether any sort of comments from any of these sort of interested parties who are sort of have joined us because I think the Environment Agency has sort of subsequently.

46:42

So they're now online. So you sort of hear if they've got any, any particular comments. So, so it's starting to sort of work through those Article 3 and it is something we're that happened sort of discussions between the applicants and the Environment Agency on. And I think this is potentially something that may well be resting within protective provisions, but it helpful to, to get an update on that. And

47:04

Article 9 was something that we have discussed and I think it was raised originally by by Nelk, but we know there's been no subsequent changes to Article 9. No, it may well be that that's because there are

no changes and it's been agreed and dealt with elsewhere. But it would just be helpful to sort of have that, that clarified. And then finally Article 46, again, we're aware of the, the position of yourselves and the, the MO and the likely position by the end of the examination, but we're also conscious that they will be an ongoing discussions between the parties as well. So it be useful to sort of

47:35

an update on on those as well and also anything else in the the recently submitted DC that you wish to sort of update us on or draw our attention to.

47:44

Thank you, Sir. Harry Woodcock, Kings Council on behalf of the applicant. So I'll, I'll, I'll run through them all in turn. Obviously, if you've got any questions, do please feel free to interrupt me as we're going along. I'm starting with Article 3 in the disapplication of legislative provisions and North East Lindsey drainage border deal with first. So this is Articles 318, O3 1C and it deals with consents under the Land Drainage Act 1991 and bylaws

48:15

under the Water Resources Act 1991 and the Land Drainage Act 1991. And those consents are to be superseded by protected provisions in favour of the Northeast Nancy Drainage Board, which are in Schedule 14, Part 9. And my understanding is that the draught protective provisions are close to agreement.

48:38

There are constructive discussions that are ongoing in relation to a single outstanding issue which is in relation to compensation.

48:51

Charles Russell Speeches emailed the North East Lindsey Drainage Board on this point on the 25th of June and the expectation is that this will be resolved by the end of the examination.

49:05

So that that's the up to date position in relation to that part of Article 3.

49:11

And then next Milk and the Environment Agency, that this is Milk in its position as lead local flood authority. And this is Article 31D

49:26

and it relates to the disapplication of the consent that is required for the carrying out of a relevant flood risk activity under the Environmental Permitting Regulations 2016. That would be replaced by protective provisions for the Environment Agency Schedule 14 Part 2 and for Malcolm's role as lead local flood authority, which is scheduled 14 past six and taking those in turn

49:57

nelk the protective provisions are agreed. That is recorded in the statement of Common Ground Rep for Zero 21 and the version of the development job development consent order that you'll receive at deadline five will include the updated agreed protective provisions with milk.

50:21

And so far as the Environment Agency is concerned, I understand that very constructive negotiations are ongoing on the protective provisions and also on the associated flood defence agreement. And I understand that the parties are confident that agreement will be reached on the outstanding matters before the end of the examination.

50:46

And next, the statutory Conservancy and navigation authority. This is Article 32, the three local acts that apply to marine works in the River Humber and the Humber Estuary. That would be replaced by protective provisions in favour of the statutory Conservancy. Those are in Schedule 14 Part One. And those are all agreed as recorded in the statement of common ground with the Harbour Master Humber

51:16

that's ripped 4025. So that that's by way of the update in relation to Article 3,

51:25

Article 9, which is the power to alter the layout et cetera of streets. And Nelk has provided a list of queries on certain powers in the DC O to carry out works to the highway. And an associated British Ports has provided a written response to Nelk

51:47

on each query. And that's been accompanied by a legal note that was prepared by Charles Ross's speech leased, which explains the power sought in the DC O and their effect.

52:01

My understanding is that this response is currently being considered by NELK highly authority and that it will revert to ABP to discuss any further questions it may have. And as a result of that consideration,

52:19

I also understand that both parties are working constructively to resolve the outstanding points and it's expected those will be resolved by agreement before the end of the examination. So that's my understanding where we are with Article 9 and Article 46, the benefit of the order as we've anticipated and and has been flagged up in our representations and before it has not been possible

52:49

to reach agreement with the MO on the ability for the Secretary of State to approve the transfer of the benefit of the Dean Marine licence.

52:59

And this will therefore be a matter that the Secretary of State will need to determine having regard to the arguments that are advanced by both parties and the examining authorities recommendation in the light of those arguments. As you'll have seen the MO Putin representations at deadline four that Red Bull Zero 52 in which it's has set out its case as to why this ought not to be allowed.

53:26

We have considered those representations and the applicants position is that it certainly regards them as unpersuasive

53:35

and also that they are clearly influenced by what we believe is a misunderstanding on the part of the MO as to the effect of Article 46. We also think they don't properly grapple with and address the reasons that have been given for seeking this provision. So the applicants previously expressed position has not changed as a result of considering those representations and that position is safe

54:06

have been set up primarily in two places Rep to zero 12 which was our comments on the MO deadline one submissions in respect of written question one 18316 and also in the summary of the oral submissions that we provided is issue specific hearing for which is Rep 3070. What we intend to do is to provide a full written response to the specific points that have now been made on

54:38

half of the MMO and in their deadline for representations. And we were first proposed to do that at deadline 5.

54:48

I was not proposing to go through those points. Now in the absence of the MO, I can provide a brief oral summary if it's helpful, but given it will be receiving them in full at deadline five, I mean your hands as to whether that's a good use of time.

55:05

I think I'm, I'm happy to wait till till deadline 5. And like you say, without the MO in in the room. And I think it's probably best to sort of leave these two to a written submission as as you've set out. So yeah, thank you. Thank you for that. Was there anything else on the DC that you wish to draw attention to

55:22

if I stop if the discussion? No, nothing specific. So I'm happy to deal with any questions there maybe.

55:28

Thank you for that. And OK, perhaps if I can turn to to Northeast Lincolnshire 1st to see whether you've got any comments on what has just been outlined by the applicants.

55:41

Thank you, Sir. Richard Lemon NE Lincs Council. No, no comments to make there. There's obviously those ongoing discussions in regard to Article 9 between our Highways team and the applicant.

55:55

That's very good. Thank you. OK, thank you very much, Mr Lemon. And I think we've got the Environment Agency as well who've who've joined us as well. And and where there's anything in particular that you wish to to comment on at this stage in terms of of what you just heard?

56:11

Good morning, Sir. Annette Hewitson for the Environment Agency. No, we concur with what the applicant said. There have been some very positive discussions regarding the protective provisions

and the legal agreement and we do hope to be in a position to agree to the disapplication under Article 3 before the end of the examination. Closes. Thank you, Sir. Thank you for that update that, that's useful.

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I think that sort of deals with item one

56:39

on this matter. So that that's fine. Thank you. Thank you for that.

56:43

The next one is the Early Works application

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and we've seen the the the document that you've submitted in terms of the early works application note, which I think is Rep 4043.

56:58

I think it might well be helpful if we could ask the applicant just to sort of explain the strategy and provide some justification in terms of the need for the applications. And and in particular as well, if you could sort of explain how any approvals given under the the TCP A regime fit in with the development control regime as well

57:15

that he has and that Harry would fill Clock Kings Council on behalf of the applicant. What I'm going to do Sir, is I'm going to ask Time and Robson to summarise and that the purpose of the early works applications. And then I'll add some further comments of my own, which will explain how they fit in to the decision making process and for the DCO application and hopefully that

57:46

will provide and the information you're seeking

57:53

because it's noon time and Robson speaking for the applicant.

57:58

As we've outlined in the early works application note which you referenced 4043, our products have submitted 2 early works applications under the Town and Country Planning Act.

58:12

I'll, I'll give a quick overview of what those are. Application one which was submitted on the 22nd of March 2024 and validated on the 28th of March 2024, seeks approval for the carrying out of test piling works on the West side which is work seven under the DCO and on the east side which is worked 3.

58:39

The test pile results will enable the detailed design of the permanent piling to be completed and the



pile type and piling method statements to be confirmed, and this will put the project in a position to commence

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permanent piling earlier within the overall schedule.

59:03

Application #2 which was submitted by our products on the 23rd of May 2024 and validated on the 14th of June 2024, seeks approval for Works on Work 7 the website and Works 3 E site

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uh, for a number of general early works activity. The the most

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pretty good of which is the land levelling and backfilling works,

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but also included in that list is

59:38

some relocation of drainage ditches which currently run across the West site so they would be filled and diverted around the perimeter. It includes for temporary fencing, vegetation and tree removal, the creation of two entrances off the A1173.

1:00:01

And preparation of temporary car parking and compound areas.

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So these are generic site preparation activities, which will allow other projects, specific activities approved under the DCO such as permanent piling to commence earlier than would otherwise be the case and thereby improving the overall schedule.

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There are essentially 2 reasons why our products have submitted separate town and country planning applications for these various early works.

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The first is schedule improvement,

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which is bringing forward

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the date at which we can first receive ammonia and commence production of hydrogen.

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And the second reason is one of schedule risk mitigation and I'll elaborate on those two reasons in terms of scheduled improvement as outlined in the early works application note 4043.

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In a best case scenario, with AD CEO in place in quarter 1/20/25,

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the hundreds of production facility forming part of the project could be operational in quarter 3/20/27.

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This is some months after the inbound ammonia from the Middle East is scheduled to be available in Europe,

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which which is due it's expected in March 2027.

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And so, as noted in in paragraph 8.38.36 of the Explanatory Memorandum Rep 3007,

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given the urgent imperative of delivering this end zip. In that context,

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the applicants and their products are considering all appropriate ways of maintaining an expeditious construction programme to ensure that hydrogen production facility could be operational as soon as possible.

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So, so in regard to these specific

1:02:10

applications, uh, that the permanent piling

1:02:16

is a long and critical path activity for the construction phase of the project. And so by conducting the test piling under an early works planning application, the detailed design of the permanent piling and the procurement of permanent piling materials

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can they completed sooner, enabling those permanent piling works to commence earlier

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under the appropriate approvals

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and full

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application #2. By conducting the ground preparation works under

1:02:55

an early works planning application, as we mentioned before, other critical path activities and particularly the permanent piling can start sooner than currently planned without disruption and delay caused by the ground preparation works and associated truck movements.

1:03:16

Umm

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in terms of overall durations allowing time for discharge of pre commencement requirements.

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If Graham preparation works can start under the Town and Country Planning application and around mid to end of October 2024

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instead of under the DCO in say mid March 2025. This could translate into a four to five month schedule improvement in that in that critical path activity which

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would in itself translate into a an improvement in the overall date of first receipt of ammonia.

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If I move to the second reason, the schedule risk mitigation,

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so the commencement of the project construction phase is dependent on a number of activities,

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approval of the DCO if successful,

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the second being that there should be no judicial review of that decision.

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And the third activity is that we need to discharge our pre commencement requirements

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and and all of those

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activities which I've mentioned have

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inherent schedule risk associated with them.

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The the the digit decision could be delayed, we could have a judicial review or there could be delay in getting our requirements discharged. So if application #2 is successful

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on the ground preparation works, This schedule risk

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could be in part mitigated by allowing work to continue on the ground preparation works whilst the DCO pre commencement requirements for example, are waiting formal approval.

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And so if I may add then some further comments by way of how these systems, these systems are operate together. The Town and Country Planning Act System Planning Act and system and applications of the sort that have been made in this case to knelt and this position in this position as local planning authority are commonplace in nationally significant infrastructure projects. And that they reflect in part

1:06:00

the fact that the legislation allows developers to use either the Town and Country Premier 1990 or the Planning Act 2008 or both to authorise associated development. And we've we've given 2 examples at appendix two of the note to which Mr Robson has referred. But there's another example which I might just draw to your attention, which is in the

1:06:31

new nuclear power station at Hinkley Point C. Now in that case, there was a planning permission for extensive early earthworks on the main site in order to prepare development platforms, and that did a great deal. But it stopped short of the point of construction of the nuclear power station, which is the type of development that is the NSIP, therefore could not be authorised under the Town and Country Planning Act.

1:07:01

In addition, there was a Harbour Empowerment Order that authorised the early construction of an aggregate jetty out into the Bristol Channel for the import of the aggregates that would be needed to construct the power station if in due course it was consented.

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And there was also a Transport and Works Act order that authorised the compulsory acquisition, or the compulsory purchase in that case of land needed to facilitate the delivery of that jetty.

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A more can see if one looks at the Hinkley Point CDCOS made that Article 4 explains the effect of the order on the site preparation permission. An article 52 explains the effect of the order on the

temporary jetty harbour empowerment. Now the an important distinction between that case and the one that we've got here is that the site to which the applications relate in this case

1:08:06

is it is one that is allocated

1:08:08

in the development plan for development of a an industrial character, which would be the sort of development that could be facilitated by the site preparation works that are being proposed here. For the reasons that have been explained in the document, they'd also be helpful in preparing the site for that sort of development if the DCO scheme were for whatever reason not to be approved or implemented.

1:08:39

Whereas

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or the Hinckley Point C scheme, clearly if the nuclear power station wasn't going to go ahead, there wouldn't be any other form of development taking place. So those those were much more extreme example where what would otherwise be unallocated Greenfield sites were developed.

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But if, in any particular case, the use of the Town and Country Planning Act to authorise early works enables urgently needed infrastructure to be in place and operating more quickly, that is strongly in the public interest.

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That the decision as to whether the benefits associated with the early works applications outweigh any adverse impacts that they may have

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is a matter to be determined by the local planning authority

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in determining those applications. Considering the public interest as it does in the usual way,

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And therefore, so far as the examining authority and Secretary of State are concerned, it you don't need for many viewers to the merits of what's proposed in the early works applications because neither you or the Secretary of State are called upon to make a decision in relation to them.

1:09:58

Equally and for the same reasons, it's not necessary for either yourselves or the Secretary of State to form any of you as to the desirability or otherwise of early works applications being submitted because you're not called upon to determine that. You just have to determine the application that's in front of you. But what we've done in the note in Section 6-7 and eight is to identify what we believe are the implications of this process

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of the early works applications. And so there are three that we've identified. The 1st is in relation to DCO drafting

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and we will be adding provisions to make clear and to govern the relationship between the development consent granted by the DCO and any planning permissions that may be granted for the same development. And there are good precedents that have been established in previously made DCO that address this issue. And we've set out the proposed drafting in Appendix 4 to the note. And so it will be necessary for yourselves and the Secretary of State to consider that drafting

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and to form a view as to whether it's effective to achieve the intended aims. So that is something where this process has a has to consider the implications of those applications. Secondly, in relation to environmental information,

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when the Secretary of State comes to undertake the exercise required by Regulation 21 of the EIA regulations, it will be necessary to examine the environmental information that's contained in Appendix 3 to the note as well as that which has been previously supplied. And that reflects the fact that when one looks at the project as a whole, it is possible that some of the works that form part of the project may be undertaken

1:12:00

earlier than if they've been authorised only by the DCOM. Now, for the reasons that the name explains the assessment and it is that the residual likely significant effects are not changed as a result of the early works applications. But nevertheless, you will need to consider that that material and the soundness of that conclusion.

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And then finally that the only other thing is in relation to updates.

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Clearly we will provide you with the the up to date position and as it stands by the end of the examination. But it may also be that the Secretary of State may wish to receive an update as to the position in terms of early works applications ahead of the decision on the DCO application, just to understand whether anything material has changed.

1:12:58

But as I've indicated, it's important to keep in mind that no planning permissions will be granted in this case unless the local planning authority considers that that is appropriate in the public interest, having regard and amongst other things, to the relationship between the specific works that are proposed and the wider project. That's the position now, but it will also remain the case throughout the decision making

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process on this application and indeed beyond,

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because there would be nothing to stop applications for planning condition being submitted after the grant of the DCO

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and, and, and, and it's not necessary to try and anticipate what all of those might be, because the role of deciding whether any such application should be approved

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is for the local planning authority. What is relevant to considering this stage is the DCO drafting that would operate so as to regulate the relationship between any such permissions and the development consent order is granted. That is important. That needs to be considered,

1:14:09

but the determination of those applications by Nell doesn't involve anything out of the ordinary in terms of the assessment of the proposals against policy and the exercise of planning judgement. And in the usual way, the Secretary of State will assume that NELK will put its role as local planning authority effectively and lawfully

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so. Wanted to add those further points.

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Thank you. I think those, those further points were sort of helpful and I've been ticking off a number of questions that I had as you sort of answered those certs. So thank you for that. And

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just one sort of follow-up question really might be helpful to help us understand this. So the relationship between planning conditions in the DCR requirements and I think there may be an issue in terms of biodiversity net gain and if you could just sort of explain how that is proposed to be addressed. So,

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so this is dealt with in the the the change document, but biodiversity net gain is not obviously a requirement for the purposes of the DCO, but it is triggered by some of the applications.

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And where is the the general and position would be that once work starts under the DCO and one triggers the change from relying on the Planning Commission to relying on the DCO

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that those conditions which are to be if, if planning permission is imposed, imposed on the planning permission would fall away and the position will be governed by the DCO. An exception has been made in relation to biodiversity net gain,

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so that although that would continue to be something regulated under the planning permission, we

wouldn't be importing biodiversity net gain as a requirement into the DCOM for the reasons we've explained. And biodiversity net gain that is to be delivered, pursued panic mission would still be delivered. And that's why that has been carved out in that way, so that when the local planning authority is deciding whether or not to grant planning permission and it decides that

1:16:28

that would be appropriate, subject to ensuring that biodiversity net gain is delivered, it can do that confident in the knowledge that the CEO does not seek to do away with it in the event that the DCO is granted.

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I I think that that's explained in more detail in the note, but that's the essence of it.

1:16:51

Yeah, that that's fine. That's helpful. I think it was the question was really helped my understanding and I think that that was how I thought it was going to work. So that that's helpful. Thank you.

1:17:02

One other question as well that sort of crops up is that there was reference to to piling in, in that the the submissions we heard from Mr Robson, is there any sort of crossover between the application one and the proposed further change application that we've heard? Are they intended to inform

1:17:19

what's happening or are they sort of completely separate?

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I'll pass on to Mr Robson to answer that because that's a question of fact which I think he's best placed to answer. Thanks

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Time in Robson speaking for the applicant

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yes to answer that question. The two are related in that the test piling to be conducted under

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Town and Country Planning Application One

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is essentially a survey of ground conditions.

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The results of the test piling

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will determine the design and the method of the permanent piling to be used for development of the project.



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So the outcome of the test piling under the early works planning application will feed into the design, the method statement, the decision on piling type to be used for the permanent pilot.

1:18:26

OK, thank you. Yeah, I think that that clarifies that and there's nothing nothing further on that. That was that's just helpful to to understand the those links. And just before we move off early works application, I just wanted to see whether there was any comments from Northeast Lincolnshire.

1:18:46

Thank you, Richard Limo NE Lincs Council. No Sir, no comments to make on that. That was a useful sort of explanatory discussion there. So thank you.

1:19:03

Thank you. I think that that deals with that early works application. So that that's helpful. Thank you very much. And moving on to the the third matter on, on this, it's to do with again protective provisions and very similar to the the articles that we dealt with at the start of this. It's really just to sort of help us understand where you are with a particular number of those protected provisions. Hopefully you you updated someone to the articles, which was appreciated.

1:19:28

Thank you. But I think there are three that that we've identified that might just need a little bit of clarification to help us. First is, is the Network Rail and where we are because I think there was a an issue in terms of our potential lift and shift clause that's in there. The second one was CDL killing home I think somewhere originally proposed, but we don't seem to have any at this stage. So it was a question of whether we are expecting any or whether they've fallen away through the process. And then the final one was the electronic communications code

1:19:58

network operators. Again, I'm guessing that there's no comments, but we've not seen any comments from anybody. So I'm guessing they are agreed as they are, but it's just a a helpful update if you could.

1:20:07

Yes, Sir. I'll I'll take those in turn. Harry would Philpot Casey on behalf of the applicant. So far as Network Rail is is concerned, as you'll have seen from our response to second round questions Gen 2.2 which is Rep 4047 and its pages 8 to 9. And the position with Network Rail is that the current draught protective provisions

1:20:38

prevent the exercise of compulsory acquisition and over Network Rails land without Network Rails consent.

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That Network Rail's position to date is that any form of easement that is to be granted on a voluntary basis and therefore its consent to the exercise of powers of compulsory acquisition, acquisition being used would be subject to lift and shift provisions. We've explained the concerns that we have in respect of those and why are those suggested

1:21:19

provisions would not be acceptable in response to that written question. That remains controversial and it is considered unlikely that agreement will be reached on that matter. Accordingly, that it will then be necessary for an ABP to rely on the use of compulsory acquisition powers over Network Rail's land to implement the scheme rather than achieving this through a negotiated land agreement as had been hoped.

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What we're proposing to do is provide a deadline 5A written explanation of the position that has been reached and what we say and the DCO should contain by way protected provisions and to ensure there's no serious detriment Network rails undertaking as a result of the use of those powers. And but I should emphasise that almost all of the protected provisions are fully agreed. The only difference will be the

1:22:20

requirement for consent from Network Rail to the use of the compulsory acquisition powers. And as you might anticipate, what we will do in our Deadline 5 submission is not only explaining the difficulties to which that would give rise, but would also make reference to the guidance in paragraph 12 of the guidance, which is directly relevant to the position that we then find ourselves in and the decision that will have to be made.

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We anticipate that Network Rail will set out its position in writing and it will then be for yourselves and the Secretary of State to determine pattern. So that's where we are on that Network Rail

1:23:02

and secondly CLDN killing home and a an entirely positive position that I can report in relation to this item. Protective provisions have been agreed and our understanding is that those agreed protective provisions are sufficient to address and the interested parties outstanding concerns. We expect to be able to provide an updated statement of common ground deadline

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at 5:00 that would confirm the position. And the parties have agreed that the protective provisions in their now agreed form will be included on the face of the draught TCO Act deadline 5. And just to note in advance, they will appear in square brackets and on that version. But that is simply pending completion of various internal administrative steps the parties need to go through to formally confirm their position

1:24:05

and that those square brackets will then be removed once those steps have been taken. And and there's no difficulty anticipated in that being done before the end of the examination. So when you see them in square brackets at deadline five, that's why. And it's not shouldn't be a cause for concern. It's, it's what the parties are are anticipating at this stage confident that those matters should be resolved in good time before the end of the examination.

1:24:38

So that's the second item. And so far as the third item is concerned, I can deal with this very briefly. It remains the case that none of the relevant operators have engaged or made any submissions about

the draught protected provisions. That's not unusual, reflects that there are well established means of protecting their position through protective provisions and therefore so far as the applicants are concerned the form of these protective provisions is final and understood to be uncontroversial.

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Thank you that that's helpful to get that update.

1:25:19

I have nothing further on, on, on this matter, but just before we close, is anybody else who'd like to sort of raise any points or anything? We've heard

1:25:30

I'm not seeing any hands up. So thank you for that. I think that that brings the end Item 7 and item 8 is procedural decisions and review of actions and next steps. I think we've probably identified some, but I don't think it's going to take us a great deal of time to go through those. So what I'm going to suggest is that if it's OK, maybe we could take a, a short sort of 10 minute break. We can then sort of go through those, come back and then we can then sort of wrap up the hearing before lunch rather than breaking for lunch and coming back perhaps for what might be sort of five or 10 minutes.

1:26:01

So if we sort of break now, perhaps till, well, let's just give ourselves just under 15 minutes. If we come back at 1:10. And then we can just sort of quickly go through the actions and then and then wrap up the last few items on the the agenda. So this hearing is adjourned till 1:10.

1:26:19

Thank you.