



Hearing Transcript

Project:	Outer Dowsing Offshore Wind Project
Hearing:	Issue Specific Hearing 5 (ISH5) Part 3
Date:	12 February 2025

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TRANSCRIPT_OUTERDOWSING_ISH5_SESSION3_12022025

Wed, Feb 12, 2025 4:43PM • 1:46:56

00:03

Good afternoon. Welcome back.

00:08

This issue specific hearing number five on onshore environmental matters is now resumed.

00:14

We'll come on now to Agenda Item 3.6

00:17

which is

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broadly entitled design now the examining authority notes that at deadline for the applicant submitted updated versions of its design principle statement, which is under examination Library Reference, rep 4077

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and its design approach document, which is rep 4075

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the examine the examining authority welcomes these submissions. However, due to the proximity and time the submission of these documents in this hearing, the examining authority will take further time to fully assess the updated information. As a result,

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I'll briefly cover the topic of design today, but may reserve further questions for the applicant until such time as

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the examining authority has assessed the updated information fully

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and in more detail,

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but coming now on to the topic of securing the quality of the design to be developed for the onshore substation, and I'll turn to Lincolnshire county council first of all

01:21

in its response to

01:24

these amino authorities, second round of written questions. EXQ two, DCO 1.2 which is examination, Library Reference. Rep 4107,

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the applicant notes that a further independent Design Review secured within requirement nine of the DCO

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via the design principles statement, is

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this route of securing the design review process satisfactory From the point of view of the local authority? I

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definitely holding as you can, to councilor say it. Thank you. In terms of a design review process, I think our comment certainly,

02:17

that you've referred to sir is aimed at

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concern or sort of question as to how post consent changes, or crystallizing of the of the design will be captured, and how we could feed into that process, post consent,

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I note that there's a proposal to include a design review process and but we probably just need to have a sit down and think about exactly how that might work in practice, a stage by stage, and whether that's apt to capture what we were concerned about.

02:58

Thank you. Miss Hall.

03:00

I find myself in these situations,

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always wondering if someone's been reading my I'm literally going to come on to that. So

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in terms of the principle of the question is, is the particular route? So essentially, as opposed to securing directly within requirement nine, that the

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the indiv, independent design review process via the design principle statement being secured which which is a certified document. Do you see any specific issues with that? Stephanie Hall, Lincoln County Council, said no. In terms of a matter of principle for securing a process we're content with that. Thank you. Coming on then to

03:46

to the start of the questions that you've alluded to already. How much involvement does Lincolnshire county council expect to have in the independent design review process?

04:02

So now? What? Bride Lancashire county council? I mean, we're aware that the applicant has put in place a design group, and we're part of that design group.

04:16

There's been, I think, one or two meetings of that so far, and I think there's further meetings proposed later, later this year, so we're certainly involved in terms of being part of that group. So that gives an opportunity to feed in our comments

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to that group.

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But

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I suppose it's really to understand, as Ms Hall has just said, about what the mechanism will be to

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for the findings of that group and how they will then be secured post consent. I think that's still an issue that we're still sort of trying to grapple with. So I think we're we're content that we've been a.

05:01

Are invited to be part of the process, but it's just how that process will then ultimately, whatever sort of recommendations come out of that are then secured.

05:14

Thank you. Can I come then to the applicant? Is there any further light you can shed on those questions at this point, sir, Harry wood, Phil Park Casey, on behalf of the applicant, well, we're we're pleased to see there's no difficulty in principle with independent Design Review being secured

05:32

via the design principle statement, which itself is obviously secured through requirement nine. And we say that must be right. It doesn't make any difference in law if you secure it in that way. The Independent design review, of course, as the name suggests, is independent.

05:53

It is an input to the design, but it can't, of course, determine the design, and it must remain open both to the applicant but also to the discharging authority to disagree with the conclusions of that design independent design review process, and one can readily anticipate. And there are examples of this in practice where design review, independent design review panels at the detailed design stage make recommendations which are impossible to comply with consistent with the terms of the DCO, because they may not fully appreciate the legal constraints that are imposed

06:38

through it in those circumstances, and indeed in circumstances where an applicant just disagrees with the conclusion of the independent Design Review Panel, it must remain open to an applicant to take those inputs into account, but not necessarily to agree with all of them.

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It's then for the discharging body. In this case, Lincolnshire county council, in consultation with the relevant planning authority

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to decide and make up its own mind about the acceptability of the design, having regard to all material considerations which would include the conclusions of the independent design review, and they would have to form their own view about that.

07:24

I don't anticipate that any of those

07:28

principle points would be or could be disputed, but obviously remain to be seen in so far as there's any question about precisely how one ensures that the output of the design review panel is made known to the discharging authority, or we may be back into similar territory to the discussion we had earlier about ensuring that the input received from local landowners is made known to the relevant discharging authority where relevant, and that's a matter either of detailed drafting or not, depending on what view you take. But I hope in terms of the general principle of how it must work, and the ability either of the applicant or the discharging authority to take a different view to the independent Design View panel, I don't think that could be controversial.

08:23

Thank you, Mr. Philpott,

08:26

and I don't think it is. You've described a design review process fairly, fairly well,

08:33

coming back to the local authority, in terms of the design review panel itself.

08:42

So does, or would the local authority sit on that panel?

08:51

Stephanie hallingacha, County Council? So yes, we, I think we, we think we are on the panel. Yes,

08:57

can the applicant confirm whether that's the case? Yes, that's my understanding.

09:04

Thank you. Coming on then to the applicants,

09:09

what did the same, the same response that I mentioned before. In response to ex, Q, 2d, CO, 1.2

09:15

the applicant noted that a further external, independent review of the onshore substation design will be undertaken as part of the detailed design process.

09:26

Is, is my reading and understanding of that correct that the applicant is proposing one external design review during its entire design development process for the onshore substation?

09:42

I

09:46

Harry with thought, but on behalf of the applicant, what I understand so it's as many as are required during the process. So if one is sufficient, well, then it would be one. But I don't think that it is intended to be the.

10:00

Descriptive in that way.

10:04

Could I ask you, you will, you will presumably confirm this in your written summary of the case today. But my understanding,

10:13

on the face of the wording of a further external, independent Design Review suggests that there's just one,

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so we can take that away and make sure the wording reflects what's intended. Thank you. That's that's very helpful.

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Lincolnshire county council, anything that you would wish to add on that?

10:32

No. Thank you, sir. Thank you.

10:40

Coming on, then to the applicant's response to

10:44

our further, the examining authority's further written questions. Esq two, des 1.3,

10:51

the applicant clarified that if consensus granted, the design of the onshore substation would be carried out by a nominated specialist contractor.

11:01

Could the applicant expand a little further on on the that procurement process, just giving a little more detail on how it's intended to function, please.

11:17

So the indications I'm getting are that we were better off taking that away and coming back to you in writing so that we can give you a proper account of the procurement process, I don't think we've got that to hand. Okay, that's that's fine, just to guide that response a little further in that case, my my questions at this stage really are does, again, in terms of the wording, as on the face of the wording within the response, does the applicant mean contractor, or does it mean consultant?

11:53

Roach? On behalf of the applicant, this will mean subject to our procurement strategy, it's going to be a better vote. So fundamentally, it's going to be a contractor with regards to progressing to a detailed engineering design.

12:07

So that suggests something akin to a design and build routes. Would that be broadly Correct? That would be our objective? Yes. Okay.

12:22

Except, accepting that, I suppose, or actually not accepting that, leading on from that, then is that, because

12:29

the applicant's intention would be to appoint one contractor for

12:35

both the delivery of the onshore substation and associated works, whether that's the entirety of the cable cord or not, but, but essentially, one contractor that has a responsibility for more than just the delivery of the onshore substation.

12:51

Garrett Rocher, we have the applicant. We're reviewing our contract strategy, and we will do if it's okay, we will respond to you in relation to the actual question.

13:00

Okay, thank you again. To guide that response a little further, the examining authority would

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would like to know why, if it is essentially a design and build route, why it is felt that that route is the most appropriate for the development of an integrated, site specific, coordinated design solution for the substation structures,

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and leading on from that, from from our discussions, or what we observed Yesterday during the company site inspection,

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if,

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if consents are granted, the applicant chooses to develop its substation structures using gas insulated technologies. One one of the buildings on site would be 100 meters by 50 meters by approximately 17 meters above datum level.

13:58

What? What would the applicants brief be to its nominated contractor when commissioning the design of such a building.

14:11

Yeah, Garret Roach, on behalf of the applicant, subject to the final approval and the DCO or designer will be, basically, it will be embodied the requirements as set out under the DCO will be part of the design brief with our potential contractor, and they'll be basically designing subject to technology selection in line with regards to all of the associated constraints and requirements As set out.

14:38

Thank you coming or leaning towards the requirements within the NPS, within policy for for good design, I think in your response, I'd like the applicant to touch on how it's brief to the contractor and its design team, how it will as.

15:00

Ensure that the NPS requirements

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are met through its brief, because that is the start of every design process on behalf of the applicant. So just just to be

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clear, I make sure I've understood

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compliance with the MPs is a decision stage matter. In other words, Secretary of State will need to form a view as to whether the design,

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so far as it is secured through the development consent order and the evidence that's been put in about that meets the meets the NPS requirements

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thereafter

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those requirements are in place to ensure that outcome, in other words, that the decision maker has to be satisfied at that point, that the DCO is fit for purpose with that objective in mind,

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given that that the DCO provides a legal framework which would constrain any further design and construction work in order for that to be lawful, I'd be grateful before we set a set of

16:20

up to answer that question, just to understand what the concern is as to that post consent stage

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and how it might affect the decision of the Secretary of State, if it doesn't concern the framework set By the DCO, or is the question as to whether more needs to be added to the DCA to secure good design. Because I think it will be helpful to understand the examining authority's thinking in order to make sure we actually address it in our response. Thank you. The

16:55

examining authority's concern, I think, in broad summary terms is that there is, there is not a and in fact, we've, we've discussed this in previous hearings. There is not a developed design. Or rather,

17:10

of course, there's not a developed design. There's not an outline design proposal for for the onshore substation structures at this stage. In fact, there's not,

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there's not a decision on the type of onshore substation structure at this stage. Therefore, the applicant's design process needs to demonstrate that whilst

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the design process is at a relatively fledgling stage in terms of the onshore substation structures, the the commit their requirements to achieve good design and design quality can be secured through through the process that it it adopts, which includes, amongst other things, the brief to its contractor,

17:56

sir, thank you. Um herbal Philpot Casey on behalf of the applicant. So so far as the securing, the securing Good design is concerned, and for the purpose of decision making,

18:08

that will need to be through the DCO, in the sense that the DCO

18:14

encapsulates what is regarded as necessary by the Secretary of State in order to secure good design have in regard to, amongst other things, the stage of the design has reached at the point of decision. So if,

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when the Secretary State is considering the adequacy of the requirements, the adequacy of the design documents to which they refer, the processes that are set up,

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those are matters which can be controlled and regulated through the DCO. And indeed, that's what's that's what's suggested. The contractual

18:51

means that the applicant seeks to put in place within that framework is a matter that would normally be beyond the control of the DCO. The Secretary of State either controls matters that are important to design through the DCO, or they then effectively become beyond its reach. Those then are contractual matters. And so if the concern is that there is more that needs to be secured within the DCO to ensure that the post consent design process is adequate, then that needs to be addressed within the DCO itself, rather than leaving that to a subsequent process. If, if that's the concern that is being framed, I just want to make sure that that I have correctly understood it. Because if it's thought that we need more in the DCO, we need to understand that. And so we know that what the target is. The concern from the excuse me, from the examining authority's point of view is that the design principles statement is,

19:52

is lacking in terms of design, about design principle statement, which is the certified document, but the design

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and.

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It,

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the doubt I've forgotten, forgotten that the accurate slot is, it's escaped me for the moment, which isn't a certified document, but the the information that's in there is, is lacking in terms of the the the outline design proposals for

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for the substation design,

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and it's understood that there are reasons why the applicant has chosen not to develop design options for those

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that's understood, but that that leaves us in a situation where it's it's unclear at This stage what, what will move forward, and therefore

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what the design principles, design principles statement effectively secures, and how the local authority ultimately is the determining Lincoln County Council is the determining authority how they can have certainty that the detailed design that ultimately comes Before them actually, is in line with the design principle statement. It's, it's very, very broad at the moment, and I think it gives leeway to to

21:11

to develop, it certainly gives leeway to develop a high quality design, but it also gives a leeway to to not do that. So that's Harry reformed on behalf of the African that's helpful. So that's helpful so we can take that away and seek to give it some consideration and seek to address that

21:32

through written submissions in the first place. But the reason I wanted to be clear is because if there is a concern as to the adequacy of the the documents and the processes that have put in place through the DCO to secure good design, then we need to understand that and to if we consider it appropriate, put forward further proposals, as opposed to examining contractual means thereafter, because they would be beyond the DCO, and those are matters the secretary won't be able to regulate. But of course, the processes and the principles are matters that can be put in place through the DCO, even whereas here there is a

22:18

high level concept, as opposed to a design which is not, in principle, uncommon for projects of this type and nationally significant infrastructure projects generally. But we, I think, now we have a better understanding of precisely what the concern is, and we can take that away and hopefully address it. Okay, good. Thank you. Lincolnshire county council, anything that you would like to add to this stage?

22:44

Definitely holding into county council. No. Thank you, sir. No. Thank you. I'll just turn to the room and online see if there are any other

22:52

points that anybody wishes to raise before I move on. In that case,

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I see no hands. So in that case, I'll move on to

23:01

Agenda Item 3.7 the draft development consent order,

23:08

beginning

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with Article Two

23:14

and the definition of the relevant planning authority. And I have a feeling we may have touched on this in earlier discussions this morning,

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but the definition relevant planning authority currently, the definition for relevant planning authority is written as it means the district planning authority for the area in which the land to which the relevant provision of this order applies is situated

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and coming to Lincolnshire county council first, is this wording, referring, as it does, to the district planning authority, still appropriate Stephanie Hall, Lincolnshire county council? So no, I think the applicants probably are aware of the difference between us in terms of how we say this should be approached, or the the fact that there may be different discharging authorities for the purposes of the requirements, or we say, to be encapsulated within the drafting of the of the development consent order itself. One way that we would encourage and has been adopted in other DCA is in linkages, to have essentially a table within the order which sets out for which requirements, which authority is to be termed, the relevant planning authority for those requirements. And I think that's the way that we'd encourage it to be done.

24:46

So I'm just being told Stephanie holdings are just being told that we've had this discussion with the applicant, and we understand the applicant doesn't agree with us, so there's a point of difference between us and the drafting i.

25:00

Okay, thank you. I'll come to the applicant shortly. Can I just clarify so you made reference there, I think to

25:08

wording within other consented DCOs, which include a table of authorities. Is that correct?

25:16

Stephanie Hall, Lincoln to county council? Yes, sir. I think we think West Burton and techinson fen both do that. Probably cotton. I'm just about to check gate burst, I think, rather than, rather than pick, yeah, picking them out of your head, or scrambling to find them on online, if you could respond for a with, with consented orders, which, which included the type of wording that you're that you would seek, and is that okay? Yes, that, sorry, Stephanie, or yes, we will. We will do that. Thank you. And Mr. Philpot, I will come to you to respond as well. Please. Thank you, sir, Harry, with Phil but on behalf of the applicant, I'm going to ask Miss Moore to respond on this bit. So

26:04

Emma Moyer on behalf of the applicant,

26:06

the applicant's position is that the wording of the requirements as already drafted essentially achieves the same aim in a slightly less confusing way, taking, for example, the cotton solar DCO, which linkage county council did highlight to us when we were having discussions on this point. What they have in there is a definition of the relevant planning authority and the interpretation article, which is referring to

the local plan authorities. But then have a separate definition just for schedule one, which has different local authorities set out for different requirements. So when you're reading each requirement, to go back to the table at the start to tell you who is the discharging authority that's being referred to. Whereas the approach we've taken is the approach that has been used in a number of off for wind farms in recent years, where, if Lincolnshire county council are to be the discharging authority, whether that is in their capacity as the highway authority or just as the county council itself, we've named them as the discharging authority, and then had the requirement for them to consult with the relevant planning authorities, so that the definition of relevant planning authority is just consistently used throughout. So from our perspective, we just thought that left less room for for confusion or error over who should be doing what if someone reading the DC or wasn't as familiar with the terms of it?

27:26

Okay? Thank you. Lincolnshire county council, anything you'd like to add to this stage? Stephanie Hall, Lincolnshire county council, it's about more than just defining which authority is a discharging authority. It's also about

27:41

LCCs request to be defined as the relevant planning authority for those purposes, because when it comes to enforcement, that's key. So we can, we can expand on that in our in our written submissions,

27:56

coming back to the applicant, I'll let you respond to that. But also it strikes me as perhaps this is something that may need another round of discussion.

28:09

Certainly have to take that point away and discuss it. If I could just come back sorry on the enforcement point. This is something we have looked into and discussed with the county council in that the Planning Act 2008

28:22

gives enforcement powers to the relevant local planning authority. Now, when you look at section 173

28:29

of the Planning Act that defines the relevant local planning authority for the purposes of Part Eight, and in summary, it's generally the local planning authority for the area, unless the application is for hazardous waste application, for example, in which case, Lincolnshire county council is the or, sorry, the county council in that instance would be the relevant local planning authority. So

28:53

the difficulty is with the wording of the Planning Act 2008 and we don't think that changing the definition the DCO to define LCC as the relevant planning authority, does anything to actually change what the legislation says we have been looking into if there's another option that we can take forward in the DCO to somehow make sure that the county council would be considered the relevant local planning authority under the Planning Act for the purpose of discharging or purpose of enforcement with

compliance with compliance with conditions for which they are the discharging authority. So that is something we would like to take away and see if there's anything more we can do on that. But we don't think the suggestion that's been put forward actually fixes, fixes the issue at hand.

29:35

Okay, that's that's understood. Thank you. I will leave that in in your capable hands, both of you, and urge you to

29:45

find a middle ground by by deadline for a if possible, please. I'll come on now to move on to the next article. Which, which technically, if I were running through the articles in within the draft development.

30:00

Consent order in in order would be Article Six.

30:05

The the MMO continued to have concerns about the number of sections were drafting within the draft development consent order and the draft DMLS

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in marine licenses, including Article Six, the examining authority invited the the marine management organization to take part in today's hearings, but they were unable to attend. It

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appears, on the face of it to the to the examining authority that there are a significant number of unresolved differences between the MMO and the applicant relating to drafting within the the draft development consent order, and rather than deal with these as they arise within the DCO, I propose to address the issues broadly as one topic within this section of the agenda.

30:49

This will be a relatively high level approach, given the apparent number of areas where agreement has not been reached, and the number of the issues where a lack of confidence has been expressed that agreement can, in fact, be reached.

31:03

I won't enter into a one sided discussion where the examining authority essentially puts all of the MMOs outstanding issues to the applicant for response.

31:14

The examining authority view is the MMOs case has been made up to date at deadline for a and then the examining authority is confident the applicant can and will respond if necessary at the next deadline,

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if, in fact, it has anything further to add, in addition to the submissions it's already made at

31:34

PD, 1071

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and deadline for rep 4108,

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but at this stage, rather, the examining authorities

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more interested in understanding the main areas where a lack of consensus remains critical to the secretary of state's ability to safely make a decision on this application, and to understand why, with eight weeks remaining in the examination, this lack of consensus is as pronounced as it appears, having said all of that, I intend to return to this area of discussion at the end of this agenda item, after we've after we've dealt with what I hope to be somewhat lower hanging fruit.

32:13

So with that, I'll come on to comments made by TH Clements on the applicants draft development consent order, which the examining authority understands remain as set out in TH Clements, deadline, three, submission, which is examination, library, reference. Rep, 3063,

32:30

can I, first of all confirm that it's still the case that that is TH Clements current position,

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Mark Westman Smith for TH Clements,

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we are going to update our position in response to the latest draft DCO.

32:54

Not all of our comments have been accommodated, but in particular in respect to the restrictive covenant, many of our comments have been accommodated. And as such, the areas of disagreement, if that's the right word in this context,

33:15

are materially narrowed. The one remaining area of concern relates to consent to dig deeper than not point seven, five meters, where the land is waterlogged and there's an urgency to that work. The changes accommodate the ability to ask for consent to do that the consent is not to be unreasonably withheld. All of that is good, nor is it to be delayed. And again, that's helpful generally, but where the issue is urgent, in the case of waterlogging, we are going to continue our dialog with the applicant, probably outside of the room, and seek to gain some further comfort in that context, but otherwise, the

other key point is we want, and we've already discussed this today, to be consulted upon the outline Construction Code of construction practice and SMP,

34:20

but we don't go so far as to say our name has to be on the face of the order. We're pushing for our name to be in the outline code of construction practice and a requirement to consult, which takes us back to earlier today, rather than the current issue. So we're not going to push that point in this context in the draft DCO, but the point remains live. We're trying to address it in the more flexible arena of the outline, COVID, construction product practice.

34:51

Is it? Thank you. Is it preferable, in your view, then that you continue to take this offline and respond offline?

35:00

Rather than essentially, does it remain premature to discuss those issues now, as opposed to And is it your preference to take this offline? I think because we've made so much progress, and there's only those small points that we still want to put to bears, I think it's probably more profitable to do that offline,

35:22

and we're happy to engage with the applicant on that basis. Thank you coming to the applicant. Very

35:29

good Philpott on behalf of the applicant. So we agree with that. As Mr. Westman Smith has very fairly pointed out there, we now are into some quite small matters of detail, and I don't think we've quite completed the process of discussing those, so I think it may be premature to take hearing time in airing those now.

35:52

Thank you and

35:55

an ongoing theme. Then, when do you expect to be

36:02

at agreement, Harry, we thought, but on behalf of the African So from our point of view, we don't see any reason why we can't report back at deadline for a on this. The issues are, as has been described, quite narrow now.

36:15

Thank you. I'll move on then to well, I'll ask Chase Clemens whether anything further to add? No, we're happy with that. Thank you very much. I'll move on then to Article 19, the examining authority. Thanks the applicant for the further detail it provided to the examination in Appendix two of its written

summary for the oral case, for its oral case, put at issue specific hearing one, which is examination, library, reference rep, 3040,

36:43

in

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in its response,

36:48

and in Appendix two of its response, the applicant refers to and adopts the reasoning for the approach taken by the applicant for inmingham and green energy terminal. Has the applicant updated its position on this matter subsequent to its deadline three submission.

37:06

Thank you, sir. Emma Moyer, on behalf of the applicant, yes, we do have an updated position. Since the submission of the applicant summary of oral case at issues specific hearing one, the emmingham green energy terminal DCO has been consented. That was on the sixth of February 2025,

37:22

and in that consented version of the DCO, the article on the removal of human remains has been retained the examining authority and their recommendation report at paragraph 7.4, point 17 to 7.4 point 19, which I won't read verbatim, but Essentially in summary, they agree with the applicant's position that in the greeningham green energy terminal case, that the system of dealing with removal of human remains outside of the DCO process would create glaze and that there would be no harm, including such an article in the DCO on a just In case basis, in the event that such remains are removed, encountered apologies.

38:06

So the examining authority report was positive and the retention of the article, and then turning to the Secretary of State's decision letter, they did not pick up in particular on the issue of the need for the article generally, and only made one amendment to delete some wording in that particular article which is not currently found in the outer dosing development consent order. So we don't think it's a matter that we need to go into here. So our position is that following that decision that is a useful recent precedent for the retention of the article, and we maintain that it is something that we would like to retain in the DCO.

38:40

Thank you. Broadly speaking, I think the examining authority finds the applicants

38:47

justification for the inclusion of Article 19 as as generally speaking, reasonably well made and reasonably and reasonable and well made rather

38:59

and you're damning with faint praise, sorry.

39:03

One, one issue that around that surrounds your deadline. Three, response, however, is, is, I guess, whether it is reasonable for the applicant to adopt wording of an of another, an applicant for another, DCO as its own justification for for the same approach

39:22

Harry with Phil Park Casey on behalf of the applicant. So having advanced that justification in the immune green energy terminal case, I thought it might be best for me to address this, the point that was made and ultimately accepted. There is one we say that is a general application,

39:42

these are the sort of events which are unlikely to happen in many cases, but where they do happen, they can give rise to significant delay, and the purpose of the mechanism is to avoid that low likelihood, high.

40:00

Impact event by putting in place a bespoke process which ensures that the public interest in dealing with any remains that are discovered in an appropriate way is met but without the downsides that general justification isn't specific to a particular scheme,

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because, as in the immune green energy terminal case, and as here and as indeed in most DCOs,

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it is not that the land over which the project is proposed to be undertaken gives rise to a high or elevated risk. It's simply that we are in a country that has been populated for a very considerable period of time. Remains are found in places where they're not expected, and because there is no downside to including it,

40:58

it's only effectively a form of insurance to avoid delay which would be unnecessary is not dependent on there being an assessment that there is a particular risk in the instant case of that happening. And so the the wording which is included is in itself unremarkable. It's a form of wording which one finds in

41:24

similar sort of terms in a number of orders. The issue only arose, and it only came to be considered in that case, because in a couple of decisions made by the Secretary of State,

41:41

wording to that effect had been removed post examination without any consideration in the examination, on the basis that it wasn't necessary those decisions, as we explained before, were made

without any consideration in the examination, without any opportunity being given by the applicant in those cases to address the Secretary of State's apparent concern in the post consent period. So the immune green energy terminal decision is the first one so far as I'm aware, where the issue was actually ventilated before an examining authority, with input from the applicant, and indeed anyone else who wanted to have a say, but no one did,

42:28

in order to produce a considered decision. That considered decision having emerged, and Secretary of State as MS Moyer has explained having endorsed that in the order as made, we say that it is effectively on all fours as a precedent, because there is nothing to distinguish it. The wording have been considered acceptable, subject to the one exclusion which doesn't apply. Here we say there's no reason to depart from that precedent.

42:58

Thank you. That's That's clear.

43:01

I think the issue, the issue that remains for us, actually, I think, is a very straightforward one to resolve at this stage, simply by, again, hopefully, when you submit your written summary of the oral case made. The issue that remains for us

43:16

is in adopting the wording of an applicant for a completely separate DCO, as it as justification for for the approach in this case, we're we as an examining authority, are interested in the merits as they apply to this case, not as they apply to other DCOs. And it's not sufficient ultimately, to adopt wording presented in evidence from another application, particularly when that wording doesn't reference the same article number. So I think it's this is a case of dotting I's and crossing T's and nothing more than that. So what all simply we're looking for at this stage is

43:54

the justification as it applies to this application, per foot, but on behalf of the applicant understood, so we can deal with that in our post hearing submissions. We can draw together what I've just described, by way of a summary of the oral submissions. We can then apply the relevant article numbers in this case, so that you have something which is bespoke to these facts as our essential submission. Thank you. That's helpful. I don't

44:25

think we really need to record that as an action point. It will come out as part of what you submit. A deadline for a anyway,

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coming on then to schedule one. Part One work number 22

44:40

hopefully these are some quick fire issues. Wording within this part of schedule one refers to works comprising the reinforcement or replacement of the bridge.

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Should this wording be more specific in terms of which bridge it's referring to

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work number 22,

45:00

So Harry

45:01

will focus on behalf of the applicant. My understanding is that the relevant works plan and these have to be read together with the works plans. Is a very narrow area, so there's no ambiguity when you look at the description of the works together with the works plans, which because you have to do in order to understand the development that's consented, okay, that's understood that leads me on nicely to work number 25 and the description

45:28

within schedule one part one of work number 25 is of drainage works, sustainable drainage system, ponds, surface water management systems, formation of footpaths and access. This description doesn't match the one that set out on the works plans, and there's no mention of footpaths and access on and access on the works plans should one

45:50

which, which of these should be amended?

45:55

Emma Moore, on behalf of the applicant, if there is any ambiguity, the key on the plans should be updated to reflect the wording in the DCO, and we'll make sure that is corrected. Thank you. We, we will record that as an action points.

46:09

So that's to update the wording on for work.

46:14

Generally, actually not just work. 25 I think it's worth checking all of the works plans for that wording and to be updated too much, the wording within schedule one, part one

46:27

coming on then to part three, requirement, three brackets, two.

46:32

This, this reads as the total number of offshore artificial nesting structures must not exceed two where within the draft DCO or other certified document. Sorry, where within the draft DCO or other certified document is the term artificial nesting structures defined, and should that definition be included within Article Two of the draft DCO? Do?

47:20

So Harry Fauci, on behalf of the applicant, what I'm being told is we think that it's defined in the de marine license, but we can import a definition into the main body of the DCO in order to make that clearer, because it then obviously, as you've pointed out, features in schedule one.

47:38

Thank you.

47:42

And then coming on to part three, requirement 1111, two,

47:48

and I'll come to Lincolnshire county council. First of all, the local authority wishes to see a landscape maintenance period which exceeds that currently set out in the draft development consent

47:59

order. Can you expand on this

48:01

briefly setting out for the benefit of the hearing today, the reasons why the local authority believes that a longer maintenance period would be required

48:15

Stephanie Hall, Lincolnshire county council. So I'm normally on this point, assisted by Mr. Brown, who's our landscape consultant, who was present this morning via teams, but isn't available this afternoon. So it's really, I think, his point, which I will probably not do justice to if I try to paraphrase, but is essentially about sort of the long term nature of the project and the long term requirement for landscaping, leading to a requirement for to ensure that that is implemented and maintained longer than the potential I suspect this is a reference the five year period in part two of requirement 11. But so if it's if it's acceptable to you, I think it might be something that we're best off responding to with the assistance of Mr. Brown, rather than me. Try to paraphrase, of course, of course. If that can be at deadline for eight please,

49:12

I'll come to the applicant in a moment. But I'm

49:17

mindful that

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more recent made orders

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follow along the lines of the time period that Lincolnshire county council are seeking. That's one issue.

49:36

I think the examining authority would also suggest that since the applicant's primary means of mitigation of the proposed onshore substation structures would be reliant on its landscape proposals, and those proposals surviving into maturity and for the lifetime of the proposed development,

49:55

those areas of landscape planting which have been designed to act as mitigation for.

50:00

The negative effects of the onshore onshore substation should be maintained for the lifetime of the proposed development. And as I mentioned already, this this would align the advertising offshore wind farm draft development consent order with recent made orders particularly, I'm particularly thinking of the sharing of endogen extension project.

50:22

Can I ask the applicant to respond

50:25

on that point, please? So yes. Harry wood, Phil, but on behalf of the applicant, so I'm going to turn first to Ms. Jo Phillips, who's taken a seat

50:35

again to deal with this. She is the landscape and visual impact lead, an associate director at open which is part of SLR consultant, so I'll ask her to deal with it, and then if I've got any further comments, I'll come in after that.

50:53

Joe Phillips, on behalf of the applicant, there's a few matters, just to distinguish here that we have a five year maintenance period, and that's really for along the onshore cable corridor. And the reason it's five years is we have if we have plant failures, and they are most likely to occur within the first five years, and beyond five years, we start to thin planting out, if it's woodland planting, so we'd be taking species out. So if there were dead and diseased species within the mix, then they would be removed anyway. And that's why it's standard for lot projects to apply a five year maintenance period. When we look at the onshore substation, there's a different approach, that we would also have a five year replacement period for the same reasons, and that if failures are going to occur, they will occur within that five years, most likely. And beyond that, we start to thin the planting out so that the stronger specimens have more space to develop more fully

52:03

at the onshore substation, we go beyond a five year management plan that it would be for the lifetime of the project, and that ensures that there's a management and maintenance regime that would be ongoing, that would make sure that the health and well being of the plants within the planting areas is looked after.

52:29

Thank you. Thank you. MS, MS, Phillips, is it ms or Mrs. Or you don't you don't mind, whatever.

52:38

A couple of clarifications. Then

52:43

is it? Is it the case? Therefore, essentially, and for the benefit of those that don't, don't understand landscape planting,

52:52

like myself,

52:55

essentially, it's, you appear to be saying that the strategy is that the at its initial stage of planting, you're over planting on on the basis that plants, plants will fail, and the ones that don't fail will then be thinned back, and you'll strategically thin back the ones that that are less healthy.

53:18

Yeah, that's correct. The other point to add is along the onshore cable corridor, a lot of the planting that's being removed our hedgerows and hedgerows are relatively easy to re establish. It's kind of a common feature of a rural landscape, and landowners would be familiar with establishing hedgerows successfully. So you wouldn't necessarily have thinning out with a hedgerow, but with woodland areas, or more substantial areas of planting, there would be a thinning process taking out so starting with an excess of plants and then thinning them out to leave the healthier ones. Thank you. Thank you. And you referred to the planting at at the onshore substation, which has a different maintenance regime. Do do you mean planting generally at the substation, or planting which specifically is in place to mitigate the negative effects of of the onshore substation in the landscape?

54:14

Talking generally about the planting that's shown on the mitigation planting plan, which currently is indicative and would be the maximum. So that's something that we would review through detailed design.

54:28

Thank you. But, but that planting, generally, you're proposing that that planting is maintained for the lifetime of the of the proposed development,

54:39

my understanding is, yes, that's correct, that it wouldn't necessarily be the project that would carry out the management and maintenance, but that would be part of the ongoing program.

54:49

Thank you. I think,

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for the examining authority at this stage, I think if the applicant could provide confirmation of the work numbers that correspond.

55:00

And to the planting that that essentially is intended to be maintained for the lifetime of the project, I think that would be the proposed development that that would be helpful for the exam examining authority at this stage. And Harry would fill pot on behalf of the app. And so we will do that. One thing I suggest we do as part of the sort of written response to this is perhaps to

55:24

expand on the relationship between requirement 11, two and requirement 10, which is the the requirement to obtain a written approval

55:41

of the landscape management plan and associated work program. So that's management of the landscape and how 11 two fits into that picture. Because what 11 two is dealing with, as I read it and understand it, is something which, unless it is dealt with in the approved landscape management plan, provides a general requirement

56:10

to

56:12

replace trees or shrubs that either removed or die or become diseased and so on within the first five years. And so one has the general obligation to manage the landscape, and then a very specific requirement about trees that go within the first five years, for whatever reason. And as I understand what's just been explained after those first five years, what is appropriate in terms of dealing with trees may not, in fact, be to replace everyone you take out. There may be good reasons to take one out and not replace it, and so that there would appear on the face of the drafting to be a distinction between landscape management plan generally and the specific requirement to deal with trees or shrubs that die or are removed for whatever reason in the first five years. And I think that's something which we might unpack a little and perhaps explain better that would be helpful. Thank you,

57:15

Lincolnshire county council. Is there anything you'd like to add at this stage? Stephanie or Lincolnshire county council? So obviously, we'd just like an opportunity to comment on on what's proposed. We'd be

interested to to understand further the proposed relationship between the management strategy that's proposed to be authorized under Part One and the residual effect and purpose, therefore, of part two. If, if that's the point, we just, we'll wait to see what we get from the applicant, and we'll, we'll feed back at that point. Thank you. Thank you. Anything further from the applicant at this stage, certainly, thank you. Thank you. I'll come on then to part three requirements, 17 to and the examining authority understands from submissions received at deadline for that all parties have reached agreement on on how the interface between onshore preparation works and archeological investigations would be managed. For the benefit of today's hearing, could I just ask the applicant to summarize the resolution that has been agreed

58:14

as briefly as you can please?

58:20

Emma Moyer on behalf of the applicant. Our understanding of the resolution is that there is to be no amendment to the wording of requirement 17, as all parties that being the applicant, Lincolnshire county council and Historic England have agreed a set of amendments to the outline written scheme of investigation. I don't have the specific paragraph numbers to hand, but the tracked version of the outline written scheme investigation that was submitted at deadline four identifies where those changes have been made, and it's set out in our response to the written questions as well. And so it was just three or four paragraphs where a cross reference was made to compliance with Article sort of requirement 17 two in the DCO, and that seems to have set aside all parties on that matter, as far as we're aware. Thank you, Lincolnshire county council. Anything to add Stephanie Hall for Lincolnshire county council? So yes, that's correct. I've got Mr. Parker Wooding, who's waited patiently all day for this item.

59:18

I don't know whether Mr.

59:21

Parker Wooding wants to say anything. I'll just give him the opportunity.

59:28

Thank you. Yes. Matt parkouring, LCC, yes, we've come to an agreement with the applicant and Historic England regarding the the requirement 17 for the archeology, rewording of the outline written scheme investigation. The remaining matter of substance is the adequacy of the amount of trenching. And we were having ongoing discussions with the applicants, archeological consultants regarding that, and hopefully that will be decided and

59:59

agreed before.

1:00:00

Four deadline for a at the end of the month.

1:00:05

Thank you. That's good to hear anything more so no, thank you. Thank you. Anything more from the applicant at this stage? No, thank you, sir. Thank you very much. I'll come now to

1:00:17

the outstanding issues which concern the MMO, as I mentioned at the beginning of this agenda item, I don't intend to address each outstanding item of concern.

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However, from from a read of the MMOs, most recent deadline for submission, which is examination, library, reference, rep, 4129,

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it is apparent that there still are concerns

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around

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at least the following sections of the draft DCO and DMLS. I will list these out, but I will come back to them

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each in turn, Article Six, which I touched on earlier, and then the definitions of maintain and materiality, the determination dates expressed within condition 14 of schedules 10 and 11, maintenance reporting, the timescales for submission of marine mammal mitigation protocol or triple MP

1:01:17

in principle, monitoring plan, site Integrity plan, or SIP ornithological plans and maintenance plans, the definition of force majeure and the the introduction of a temporal piling restriction for the protection of spawning banks herring during September and the first 16 days of October and and then further to those which which are. I'm not

1:01:39

going to speak for the MMO and say the main post. But in addition to those points, the MMO has also listed a number of proposed variations to drafting within within the draft DCO and DMLS, and has provided comment on changes made by the applicant to the wording of conditions within the draft DMLS.

1:01:57

First of all, does the applicant agree that this represents at least as a high level summary the outstanding issues that it is aware of between it and the marine management organization.

1:02:09

Harry wood Philpot, behalf of the applicant. So yes, I'm being told that that is consistent with our understanding of the position at higher level.

1:02:17

Thank you. So I'll come on first to to the issues around Article Six, the article deals with the potential transfer of benefits within the order which and the transfer of benefits is a regulatory requirement for the transmission infrastructure, and the applicant has a deadline for under examination, Library Reference, route 4108,

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as well as procedural deadline one, which is PD, 1071,

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responded to the issues raised by the MMO, the most recent iteration of that of

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of these issues was raised By the MMO at deadline. Four, in rep 4129,

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for the benefit of this hearing, can I? Can I ask the applicant to briefly set up its understanding of the main issue at the heart of the concerns raised by the MMO in relation to Article Six? Harry, with Phil, but on behalf of the applicant, so on these MMO matters, I'm going to invite Ms, Emma Reed, who's a solicitor at Shepherd and Wedderburn, to take the lead in responding to your questions.

1:03:33

Thank you. Emma Reed, on behalf of the applicant, I think this point falls into the former category of the two that you outlined earlier, sir, in relation to points that may remain outstanding at the close of examination. This is a point that's been debated at length at various DCO examinations and decisions, and the appropriateness and legality of these provisions, in light of the 2009

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act, have been considered appropriate by various secretaries of states

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as the applicant understands it. The outstanding issue from the MMOs perspective is that it's principally the MMOs view is that this results in an increased administrative burden as a result of the variation to the deemed marine license that would need to take place following any transfer. And from the applicant's perspective, the alternative that is proposed by the MMO in order to address this issue, ie having two separate transfer processes running in parallel, does not address the the issue that has been identified. And furthermore, in the MMOs deadline for submission at rep 4129,

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there are a number of comments made by the MMO, which, in the applicant's view, relate more to the interaction between the Secretary of State and the MMO than it does to the.

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Precise mechanism and the appropriateness of the transfer of benefit article in the order, and so that would be the applicant's response to those particular points. And of course, we will respond fully in writing at deadline for a to those points.

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Thank you. That's helpful. I think within within the examining authority that there is there are members who have sat on a number of panels for offshore wind farms. The examining authority is well aware that this is an issue that occurs regularly.

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I guess really trying to understand why it keeps reoccurring is the heart of my question today,

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does the applicant take the view that the the MMO has interpreted the wording of Article Six accurately? I

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thank you, sir. Scott McCallum, my partner at Shepton weatherburn solicitors for for the applicant, sir,

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I assume that the MMO have interpreted the article accurately, but they are raising some concerns about the way in which the transfer process would work, which are surprising. On that basis, the

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transfer benefit has, in practice, happened in a number of of DCOs, so confirmed orders to date in that process, as has worked well, and as Miss Reed said, the MMO are concerned as point in principle, that the role really should be for them to carry out a transfer through through a variation process of a marine license. They're equally concerned that there is a process that has to be gone through at their end, post a transfer, so that they can,

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in their submission, clean up

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the remaining marine licenses, so that it's very clear to everyone where the benefit of that marine license then sits. But there is a process set out within, within the article, within the transfer of benefit provisions, making sure that everyone is informed of an impending transfer. The dates very clear as to when that transfer happens. So it's a matter of public record who the benefit of that marine license then sits with. So I think, sir, in our view, this is a very important article for the applicants to make sure that a transfer of benefits process works across the DCO and and marine licenses at the same time in a

coordinated fashion. We feel that the protections are inbuilt to that process to make sure that there can be no misunderstanding at any point in time as to who has the benefit and who enforcement could be against. So as we say, Sir, I think it is going to remain a disagreement in principle, but I think the approach that the applicant has taken to the transfer benefit provisions

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follows a process which has worked previously in practice. We've built in all of the various mechanisms that have been debated in previous DCO examinations to make sure that there is advance notice and to make sure that everyone is consulted and understands what's about to happen. So there's nothing novel in what's being proposed. And as I say, sorry, the MMO have been through processes where that that has worked and worked effectively. So we don't think there's a misunderstanding, but there's certainly a disagreement as to the burden that that then puts on on the MMO.

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Thank you, Mr. Bucha. I think the MMO alludes, whilst perhaps not directly stating, to the risk that the Secretary of State may make an unsafe decision, is that,

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what does the applicant say to that? Harry thought on behalf of the applicant, so as a matter of principle, one can't

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draft on the assumption the Secretary of State may make an error of law.

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The Secretary of State, like any other decision maker, who whose future decisions are anticipated by the order, is assumed to exercise their responsibilities lawfully and reasonably, and that has to be the principles on which the drafting is based, and for the Secretary of State, in particular, to make a decision on the base of the drafting the order that the Secretary of State can't be trusted to do that would be an extraordinary situation. And we can't, we can't envisage as Secretary of State making such a decision. So.

1:10:01

Is there.

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I take that point. I think, from the examining authority's point of view, we also have a responsibility to not recommend a decision to the Secretary of State, which may lead the Secretary of State to make an unlawful decision.

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I think is that's the that's the risk, I suppose I'd, I'd like to hear from the applicant, first of all, and via, via responses at the next deadline from the MMO to to the reality of that risk. I suppose so we can, we can put in further written submissions at deadline for a if it would be helpful. One of the difficulties that we

labor under, for the purposes of today, of course, is that we don't have the MMO here to explain the nature of its concerns. So we're, we're slightly shooting in the dark because we can't clarify, with the benefit of their attendance and answering these questions exactly what the nature of the concern is. But we will, we will do our best. Thank you, Mr. Fauci, that's a fitting point to end on. I think I'll just summarize by coming back to the concerns that I raised in my brief introduction to this agenda item, as well that I am compelled to ask both the applicant here today and the MMO via responses at the deck into the next deadline, and I'll ask for an action point to request a response for the MMO here to set out why there is such a gap in their relative interpretations of this article and what further steps each party will undertake to reach agreement prior to the close of this examination, or the very least, to get closer to an agreement by the close of the examination, is there anything you'd like to add? Finally, before I move, thank you, sir. Thank you. I'll come on then to the definitions of maintain and materially the examining authority's understanding of this matter is that this matter is now largely agreed, but the that the MMO seeks the alignment of the wording in paragraph 29 of schedule one with the wording set out in the DMLs,

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has, have I understood that correctly? And if I have that's that's a reasonable position to hold, is it not

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needs on behalf of the applicant, excuse me, I believe it may be the other way around, and that the wording of the condition appears to be agreed, but requirement 29 and schedule one is perhaps still outstanding. However, I'm hoping that I can

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help with that point. I believe the wording in requirement 29 two achieves the same AMS has been requested by the MMO, and therefore the applicant would hope that this matter is now resolved.

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Is that something that you could confirm today, or would you prefer to come back in writing

1:13:12

Emory on behalf of the applicant? I believe we might need the MMO to confirm their position on that, but we would be happy to discuss that with them at the meeting that Mr. Tomlinson identified was happening on Monday and confirm in writing at the next deadline that would be helpful. Thank you.

1:13:28

I'll come on then to the matter of determination dates within condition 14 of schedules 10 and 11.

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The MMO seeks a removal of prescribed timescales for the agreement of technical matters relating to licensed activity.

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What is the applicant's

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view or position on this?

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Emma read, on behalf of the applicant, the applicant's position on this is that

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the reference to the determination timescales must be considered in light of the policy drivers in the relevant NPSs which balance the need for appropriate requirements alongside the critical national priority for low carbon infrastructure and the need for that to be deployed at speed and scale. So with that in mind, the applicant has proposed a default position of a four months determination period for the approval of pre construction plans following pre application consultation where there were particular complexities identified in relation to particular plans that period was increased from four months to six months. This is a matter that remains outstanding and is the subject of active engagement between the MMO and the applicant, and will be discussed at the meeting on Monday, and the purpose behind that discussion.

1:15:00

Mission is to identify whether there are other plans which may fall into that category of being particularly complex and would therefore justify the need for a longer determination period.

1:15:12

The only other point I would wish to make on on this particular aspect is that in the MMOs deadline for submission there, there is a reference to a three months determination period, and that applies in the context of the deemed marine licenses at schedules 12 to 15 for the artificial nesting structures. And the applicant's position in relation to those is that those plans will necessarily, because they relate to more minor works, be as a matter of course, less complex, and therefore would require a shorter determination period within which the MMO can consider those plans.

1:15:53

Thank you. That was an item that I was going to come to, but I think we can, we can address that now. I think my reading of the MMOs justification of that is that it disagrees fundamentally with that, that as a view, that of whilst they are smaller structures, that the work involved in

1:16:15

in assessing the information submitted associated with those structures is not necessarily more minor or less less time consuming. And the MMOs position is that it seeks those the timescales that it is proposed in order to avoid the potential for delays, rather than to cause additional delay. And that's that's a reasonable point of view, isn't it?

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I

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Emma Reid on behalf of the applicants, the applicant

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is of the view that this is a matter that is to be determined on a case by case basis, in accordance with the particular plan and the particular complexities that apply to that plan. So it perhaps disagrees that it would, it would be necessary, in all cases, to extend the termination timeframe.

1:17:11

As I say, this is a matter that is the subject of ongoing discussion in the round with the MMO and with a view to reaching agreement on this particular point.

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Thank you. Just generally taking schedules 10 to 15 as a whole.

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As it relates to this matter what, under the current drafting what would happen if the MMO did not determine an application for approval

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within the time periods are set out currently,

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Emma read on behalf of the applicant, I suspect, from a practical perspective, in the first instance, the applicant and the MMO would discuss and agree an appropriate amendment to that timescale. However, if such an agreement was not forthcoming, that is a point we will need to take away and come back to you on in rating.

1:18:03

Thank you. If it's helpful in response, in previous responses from the applicant to the specific issues around condition 14 of schedules 10 and 11, the applicant has referred

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for referred back to to responses via a few different responses, but essentially referring back to response which underpins a commitment to seeking arbitration, is that ultimately where you end up,

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and is that why you've referred back to that point in answer to the I?

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To the issue.

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Sorry, sir. Scott McCallum for the applicant, if we could just have one minute just to have a look at the draft link, of course. Thank you.

1:18:55

Thank you, sir. Scott McCallum for the applicant, sir, in agreement with the MMO the arbitration provisions within the DCO have been disapplied insofar as they relate to disagreements with the MMO in relation to the deemed marine licenses. And the reason for that, as I understand it, sir, is that the MMO were not comfortable with an arbitration provision applying to the discharge of their their function.

1:19:22

So on that basis, sorry, I don't think arbitration would be the ultimate consequence. In that basis. We can come back in writing, sorry, but I think you would have to seek some resolution through, through the course on that basis, if indeed the MMO were acting unreasonably, which is obviously not a not somewhere anyone would expect ever to get to,

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but, but we do feel so it's important to have realistic timescales put on

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the face of the deemed marine license. In terms of.

1:20:00

Of the time period that the MMO have to make decisions. And as you say, sir, the MMO set out that the consequence of them having to refuse and free to start again is that there would be extra delay. But I think the difficulty is, if you don't have something that's realistic to start with, that's that's a risk in any case, and we need to know if there, if the MMO have a concern with the plans that are being put, put forward so that we can stick to the construction program, which to allow delivery, delivery and within the timescales that the project are are looking for, it's important that there isn't unduly

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noted. I think

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it strikes me as whilst we're conditioned, we're talking about conditions within four, four schedules.

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We're talking about two months. And it appears that the MMOs concerns go away if you if you agree that the time period generally is six months.

1:21:02

I suppose I don't fully understand why, for the sake of two months, the applicant would wish to risk the potential for delays that you've alluded to. For the sake of two months, I

1:21:25

thanks, sir Scott McCallum, for the applicant search, really, in relation to the lead in times for the project to prepare these plans, have the plans discharged, and then carry out the work that they have to within the timeline, because it's everything is interlinked. So for example, putting in place the artificial nesting structures has to happen sufficiently in advance of the construction of the main wind farm works, which means that that every day is a prisoner, sir, in terms of making sure that we're putting forward the information, we're making sure at our end that it's sufficiently comprehensive that allows the MMO to discharge it on time, that allows us to stick to program. So undoubtedly, there is, there is risk, and that risk is borne by the applicant and making sure that that we are putting forward plans are capable of being discharged within the timescale set out,

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but it's not something that we can easily give on on the basis that the program is so tight that through with procurement and all of the input that we need to develop these plans, it's important that we can get something out of the discharging authority within a reasonable time period. And we think that the time periods put forward are reasonable. Obviously there's a disagreement on that, and then that's where the discussions have

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started to go into trying to identify what are the more complex areas, and trying to reach agreement on those, to say that a longer a longer period will be given in the discussions applicants put forward what it considers to be the complex areas to the MMO that that is something that we hope to discuss next week and perhaps start to bridge that gap.

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Thank you, Mr. Philpott, however, with Philpott on behalf of the applicant so and just to provide some context for this. We are, of course, engaged in a process where the Planning Act itself sets quite tight time frames for determining the DCO and all that goes with it, both in terms of the length of time required for the examination of the entirety of the project, which is six months.

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And then, of course, the reporting time that you and your colleagues have in order to decide what is appropriate and make a recommendation. And then for the Secretary of State to take all of that into account and make a decision again, all within six months. And so that that has two consequences. First of all, it provides some context as to what might be a reasonable time to deal with matters of detail in relation to one part of that overall project. But secondly, and more generally, it sets the context in terms of the expectation that nationally significant infrastructure projects will be dealt with expeditiously that's within the statutory framework before one even comes on to the policy framework and the very considerable public interest in rapid delivery reflected not just in The MPSS, but in wider government plans for tackling climate change and the target for the deployment of offshore wind

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as an important part of that policy. So all of that sets the context as to whether

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six months or perhaps something

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should.

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Also, but still considerable. Four months is an appropriate time where time matters. It matters in the public interest. It's not just about the practicalities for the applicant in procuring and actually putting these things in place, but the clock is ticking in public interest terms on deployment of these things and therefore delay, even if it may seem like it's only a matter of a couple of months here, a couple of months there, needs to be justified. It needs to serve some particular public interest purpose that warrants that extra time being taken.

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Thank you. That's understood. I think I'll come back to

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my understanding of the the MMOs justification for its position is that it proposes the longer time frames on the basis that

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it's seeking to avoid the potential for delays. So I think, I think you are aligned in that sense,

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it's,

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I suppose, but by implication, therefore it sees that the there is a greater risk with a four month determination deadline for delay than there is with a six month. And it on the face of it, therefore it seems like it's in everybody's interest that that six months is agreed upon Harold Thompson on behalf of the applicant, so if on the on a detailed explanation of the internal processes and requirements that are said to justify the extra time and to give rise to the risk, if the Secretary of State is persuaded by detailed submissions to that effect, that ultimately six months is less likely to give rise to delay than four months. Then there it is, that will be the decision the Secretary of State would make. It can't, however, simply be an assertion that that will be the ultimate outcome. There's a significant difference between assertion and full justification. And of course, what we're seeking to do here is to explain the implications from a practical perspective, from it in terms of delivery of delay. And if the

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MMO wishes to persuade you and the Secretary of State that actually delay is less likely in six months than four, then it needs to justify that. Needs to explain what lies behind that assertion.

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Thank you. That's clear. And as I began this section by saying, I and the examining authority are not here to speak for the MMO, and of course, neither is the applicant,

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but that point is noted. Thank you. I think,

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just to summarize, then I'm correct in saying I think that the applicant will take this forward to discuss with the MMO next week.

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And also, I think the applicant was going to confirm what would happen under the current drafting if the MMO didn't determine the application for approval within within the four month period as currently drafted.

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Just before I move on, I'm going to hand over to my colleague, Mr. Jones, who has some additional questions.

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Thank you, Mr. MacArthur, just whilst we're on this subject, a couple of thoughts have come to mind. Firstly, what amount of consultation takes place before the submission of any of these given plans? Or are they submitted almost blind to the MMO, and then they've got to

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start to look at them. So that was question number one, and whilst you're considering that,

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the second question was, once the consultation the submission processes started, is there any ability to stop the clock during that process in the same way that you would have for the EIA regs, for example, not the national infrastructure, EIA Rex, town of Country Planning, EIA Rex. So is there any ability to

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put a hold on things if, for example, there was a significant piece of work that was lacking, that was that was needed, and it needed the correct ecological season, for example, for that assessment work to be take undertaken or in I'm assuming that won't happen, but if it did, is there that chance to put it on hold? Or would that just be part of the overall negotiation process, and therefore you'd have to negotiate a longer time period with the MMO, for example.

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Thank you, sir, that's clear. I'm going to invite Mr. Greg Thompson, who's the applicant's offshore consent manager, to provide a response to that.

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Greg Thompson, for the applicant, turning to your first.

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Observation, I think it would be within any

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applicants post consent plans to essentially engage with both the MMO and any relevant consultees on a plan before you submit the final version or their approval. That certainly will be our intention should consent be granted in terms of our formulation of those plans, engaging on drafts under, for example, discretionary advice service with Natural England and with the IMO prior to their submission. So essentially, it wouldn't be our intention to submit old documents for discharge. So

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and

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Greg Thompson for the applicant,

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essentially, that question would probably be better answered by the MMO themselves in terms of their processes in that period, what I can tell you, from my experience, having worked in this field for approximately 15 years, is essentially, in the event that there is an issue with the document, the MMO will write to you formally and ask for an update or ask for further information such like and that may necessitate the need for further consultation.

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However, our aim would be to minimize the risk of that occurring through that pre application, pre submission of a condition discharge application that you essentially just talked about in point one, but essentially back to the discussion that has just taken place

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without having that clarity on what happens at the end of that process, it's difficult to answer that. We obviously have no control over that clock. That's the most decision in terms of their decision making processes. Harry with Phil but on behalf of the applicant. So just in terms of the way that the

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conditions on the de marine license and themselves are drafted taking condition 14, sub paragraph four, which sets the four month period for determination of an application for approval under condition 13, that is a period which applies unless otherwise agreed in Writing with The Undertaker. So within the condition, it provides the mechanism, if it was agreed, okay, you need more detail, and that's not going to come forward in the time frame, then it would be likely that there be an agreement to extend it to allow for that to happen.

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That's what I thought might be the case.

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Okay, thank you. We will move on now to the next item, which is

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maintenance reporting. The examining authority understands that this is a matter that remains under discussion, but could I ask the applicant to provide a brief update on progress towards resolution of the outstanding areas of disagreement on this matter, please.

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Thank you, sir. Emma Reed, for the applicant, yes, this is a matter that remains under discussion. The applicant's position is that such a condition is unnecessary. Under condition 13, there is already the requirement to submit an operation and maintenance plan, which will give advance notice of the operation and maintenance activities that are going to be carried out.

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Similarly under condition seven, there was a requirement for notifications to be made.

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And the applicants view is that taking both of those conditions together, the requirement for further reporting on the operation and maintenance activities would be, would be unnecessary.

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Thank you.

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And

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I guess coming back to

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progress towards resolution, which really was the question, is there any

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are our positions, any close, any more closely aligned than they were

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at deadline? Three i

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I'm worried for the applicants. So the applicants view of the position at the moment is that there is, there's no clear middle ground as matters stand. But this will be a matter on the on the agenda for discussion on Monday with the MMO

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on Monday, you said,

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I I may have, I may have missed this in writing something else during during this morning's discussions, but as the applicant committed to providing a report of of its a summary of its discussions with the MMO at the next deadline, i.

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I

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read for the applicant, the applicant would be happy to provide an update on the discussions at deadline for you, I think that would be very helpful, and I'll record, or I'll ask for an action point to be recorded for the MMO to provide a similar update on those discussions at the same deadline. Please.

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Coming on now to force majeure, the MMO have set out its updated position regarding force majeure and its deadline for submission. Rep four, 129

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noting that it would not include such a provision in standalone marine licenses, and citing pins advice that DMLS should be broadly consistent with stand standalone marine licenses. In addition to this, the MMO believes that the current definition of force majeure is too broad, and that it includes causes which would be entirely within a vessel Master's control, and which would not, by definition, constitute an unforeseeable circumstance.

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The MMOs cases that has currently drafted the wording of this condition would allow the master of a vessel to deposit authorized materials anywhere and for any reason, if it believed that the safety of human life or the vessel is threatened,

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and that this is not a reasonable use of the expression force measure, what does the applicant say to that it

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will read for the applicant, so the applicant disagrees with the MMOs interpretation of the wording in condition 12 in particular for two reasons. One, that the master of the vessel must determine if it is necessary to make the deposit, and the applicant submits that necessity is a high test, and not simply

whether it would be a right to do so or desirable. And secondly, the remainder of the wording of that condition refers to the reasons behind that decision, ie, the safety of human life and or of the vessel is threatened, which therefore, in the applicant's view, sufficiently restricts the operation of the of the right in which the vessel master could take that decision such that it couldn't be for a broad scope of purposes to make that deposit.

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But is it not the case that wording which says for any reason is by definition, a very broad scope.

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Emma read on behalf of the applicant. The applicant's view is that the wording of condition 12, one needs to be read as a whole. And so whilst the the wording any other causes, as of itself, a broad term, it must be read in the context of the surrounding words. And those provide the relevant restrictions on the scope of of the application of that condition?

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So is it the applicant's

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position at the moment that, for instance, the wording, for any reason, could not within the context of the drafting as it currently is, could not be interpreted as, for instance,

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that reason would be negligence

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on the vessel masters part so

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Harry Wolf and on behalf of the applicant. So as I, as I understand it, that the key here is that they would need to be shown to be a necessity to deposit the material, because either human life, the safety of human life, is threatened, or the vessel is threatened, so that that is the key. So if

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those circumstances arise, then it kicks in. Now what it is that gives rise to the threat to the safety of human life, or the threat to the vessel is broad, because all sorts of things can give rise to those circumstances. Sorry, to cut in, really, just because otherwise I'll lose my train of thought. The fundamental is that that must be force majeure

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that leads to that risk to human life or to the vessel.

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And force majeure is not broad, not as broad as the MMO claims it is currently drafted to be, is that have I misunderstood?

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Well, my understanding is it is one would need to understand the

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condition together with the title in order to understand its overall effect. But if there is a concern over whether.

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That is sufficiently clear when those two things are read together, we can take that away.

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But the essential point is that if those two conditions are one or other of those two conditions are met, that in those circumstances,

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the deposit could take place. It's not entirely clear why would matter in circumstances where either human life is threatened or the vessel is threatened,

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whether that was due to stress of weather or negligence or some other cause,

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because at that instant point, though, that emergency effectively having arisen, the question is, what is, what is the appropriate provision within the license in those circumstances, whether you characterize that as force and majeure or whether it potentially embraces other things, what's the appropriate thing to happen in those extreme circumstances? That's what I understand is directed to,

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I think my my understanding of the MMOs

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concern, and

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as as it's been expressed, I share some of that concern that it appears on the on the face of it, to, admittedly not a legal brain that if, whilst a vessel Master may take the actions as set out where human life or the vessel is at risk,

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with the inclusion of the wording for any reason, it no longer becomes a force majeure clause, Because

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force majeure is not as broad a definition as encompassing anything including negligence. Negligence is, as I understand, it, not a force majeure.

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The instructions I'm getting which reflect, I hope, the submissions that I'm making is that it may be that the

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concern is over the description of this as force majeure, rather than the substance of what is provided. And if one changed the heading, if that took away the issue, the question would then become, is it appropriate to have a provision of this sort to deal with what happens in those extreme circumstances, whether you call it force majeure or

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you simply have it threat to safety of human life and or the vessel that was to say, for the sake of argument, if that was the heading,

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the question then becomes, is it appropriate to have a clause such as this and that? That may help to narrow the issues, but I think it may be helpful if we discuss this with the MMO, with this discussion in mind and see if that helps unlock the point. Because if that is the issue, then at least we understand what we're dealing with. Yes, and it is a developing theme this afternoon, isn't it? I think it would, it would be helpful once again, having read the MMOs concerns

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I, I put my interpretation on it because, because I think there is merit to to that, that concern, it may well be, as you say, that force majeure is simply not the correct definition of this, this particular section of the of The of the DML,

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and so just just However, just because it's been helpfully drawn to my attention, the the provision in the condition effectively reflects and bring within, brings within the scope of the de marine license, the The defense of action taken in an emergency under

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Section 86

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for a person who's charged with an offense under Section 85

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and so it may be that the principal question is whether it is appropriate to bring that defense in anticipation into the terms of the

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condition,

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if that's accepted, or if that's the issue, it may be better to just strike out force majeure and replace action taken in emergency, which is the heading used for the section in the act, if that's if that helps at least crystallize the issue, which is whether you need it in the in both documents,

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I think

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I'll leave that with you for further discussion.

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Thank you. That has been helpful, nonetheless.

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Okay, I will conclude the examination of the issues raised by the MMO here at this stage, but I do have the risk of repeating myself.

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I want all parties to be aware that that does not indicate that the examining authority regards these matters are settled. The examining authority has heard from the applicant today, but clearly.

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Not from the MMO, and the MMO may wish to provide further commentary in writing at the next deadline in response to what it's heard today. And

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I'm hopeful as well, it will bring some of that knowledge of today's hearing to your meeting next, next week as well.

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And

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I think nonetheless, I'd like to record an action point to request

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a response from the MMO to any and all of the points covered above, where, where we haven't already recorded one where it feels it needs to respond.

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And I'll just conclude by reiterating our concern that with eight weeks to go of the examination, there does appear to be a considerable, considerable distance between the applicant and not just the MMO, but other IPS on matters relating to the drafting of the development consent order.

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Now we've heard today that the applicants and those parties are going to take steps to try to bring your positions closer together, and that's welcome. I just urge all parties to redouble their efforts to reach that agreement before the close of the examination. Is there

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anything the applicant the applicant would like to say? Finally, before we move on, no, sir, that's understood is we're obviously keen to find agreement where we can minimize the number of issues that are left with you and the Secretary of State to determine Thank you very much. At that point, I think we will adjourn

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briefly for a break. We've been going for a couple of hours this afternoon, so we'll adjourn until 20 past four. I.