



Hearing Transcript

Project:	Tween Bridge Solar Farm
Hearing:	Recording of Issue Specific Hearing 2 (ISH2) - Part 1
Date:	23 June 2026

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NEWAUDIO_TWEENBRIDGE_ISH2_SESSION1_230626

Wed, Jun 24, 2026 11:33AM • 1:40:28

SUMMARY KEYWORDS

Tween Bridge Solar Farm, issue-specific hearing, development consent order, environmental impact, permit scheme, framework highway works agreement, City of Doncaster Council, North Lincolnshire Council, National Highways, Lincolnshire Wildlife Trust, contamination risk, preliminary works, construction management plan, statutory street powers, local authority control.

SPEAKERS

Speaker 2, Speaker 6, Speaker 1, Speaker 4, Speaker 8, Speaker 7, Speaker 9, Speaker 10, Speaker 3, Speaker 5

Speaker 1 00:04

Okay, good morning. It is 10am and the hearing is now open. I'd like to welcome you all to this issue-specific hearing. This is the second issue-specific hearing for the Tween Bridge Solar Farm project. Can I just confirm that everybody can hear me clearly? Great. Could I also confirm with the case team that the live streaming and recording of this event has commenced? Yes. Excellent. Okay. Thank you. My name is Luke Simpson. I am a chartered town planner, and I have been appointed by the Secretary of State as the single appointed person, otherwise known as the examining authority, or exa, to examine this application. I'm also joined in person by my colleagues Sarah Norris and Jenny Savage of the Planning Inspectorate Case Team. They're sat at the back of the room and handling the virtual components of the meeting online is Harpreet Kur. The first thing to say is it's obviously very hot today, and it's likely to be very hot during hearings for the next two days, with amber weather warnings issued by the Met Office for Wednesday and Thursday. So, please feel free to remove jackets and ties. Please also raise your hand at any point if the heat is making you feel uncomfortable. I'm not sure the air conditioning is working today, but the AV team have done their best to make the rooms cool as possible. If you feel uncomfortable, raise your hand, and we can have a break. There's water available at the back of the room. Please stay hydrated. I think there's also water on the tables if you're sat at one. So, with that in mind, I'm going to seek to streamline the hearings over the next few days as much as possible. As such, I've removed quite a few questions, which can be dealt with in writing, sticking only to those that require oral discussion, so I wouldn't envisage that these hearings will all last a full day, and as I said, we'll make sure we're taking plenty of breaks. Does anyone have any questions to raise with regard to that approach? I No. Okay, so I'll now deal with a few housekeeping matters for those attending in person. Could everyone please set all devices, laptops, and phones to silent, such that we aren't disturbed. Toilets are located to the middle of the room on the right hand side, I don't think there's a fire drill planned today, but if the alarms do go off, please use the fire exits behind me and meet outside the Tourist Information Center on the High Street. Today's hearing will follow the agenda published on the National Infrastructure Planning website on fourth of June 2026 the agenda is Examination Library Reference EV four double 01 It would be helpful if you had a copy of this in front of you. The agenda is for guidance only, and I may add other considerations or issues as we progress. I will conclude the hearing as soon as all relevant contributions have been made and all questions have been asked and responded to. But if the discussions can't be concluded, then it may be necessary for me to prioritize some matters and defer other matters to further written questions. Timings of breaks will depend on how we progress today. We will have a lunch break, just to say today's hearing is being

undertaken in a hybrid way, and that means that some of you are present with me here today at the venue, and some of you are participating virtually using Microsoft Teams. A recording of today's hearing will be made available on the Tween Bridge Solar Farm section of the National Infrastructure Planning website as soon as practicable after the hearing is closed. With this in mind, please ensure that you speak clearly into the microphone, stating your name and who you are representing each time before you speak. Could you also ensure that you turn your microphone on and off accordingly? If you're not at a table with a microphone, then there should be a row. Microphone, so please wait for one of those to be brought to you before you speak. If the applicant could try to display the documents as I refer to them, then I would be grateful. A link to the planning inspectorates privacy notice was provided in the hearing notification, I therefore assume that everyone here today has familiarized themselves with this document.

Speaker 1 05:27

This establishes how the personal data of our customers is handled in accordance with the principles set out in the data protection laws. If you have any questions or concerns about this, then please speak to a member of the case team at the back of the room after the hearing. I'm now going to ask those of you who are participating in today's hearing to introduce yourselves. When I state your organisation's name, could you introduce yourself, stating your name, who you represent, and which agenda item you wish to speak on. If you are not representing an organization. Please confirm your name, summarize your interest in the application, and confirm the agenda item you wish to speak on. Please, could everyone also state how they wish to be addressed, so mr. mrs. Ms. or Miss, and so on. So I'll start with the applicant, who will be representing the applicant. Please,

Speaker 2 06:28

good morning, sir. Tom McNamara, on behalf of the applicant, I am a legal director with the law firm TLT LLP, and as I say, acting on behalf of RWE Renewals UK Solar and Storage Limited. In relation to this application, mr. McNamara is fine. Would you like me to introduce the rest of the people around me? So, to my left I have mr. Angus Duncan, who's a development project manager with the applicant. Immediately to my right, Ms. Beth King, solicitor at TLT LLP, and then to mr. King's right, mr. Michael Baker, also development project manager, with on behalf of the applicant. Those are the people, sir. I expect to speak to your agenda item three on the draft and consent order. I was proposing to introduce the other people for environmental topics later, but I can do that now, if you'd like me to.

Speaker 1 07:22

If you could do them all now, please, I'd be grateful.

Speaker 2 07:25

Sure, that's fine, sir. So, speaking to Transport and Access will be mrs. Katie Stock, Pegasus Planning. Speaking against Cultural Heritage will be mr. Jonathan Millwood, again, Pegasus planning and speaking to biodiversity and ecology will be mr. Rob Rivolta, Tyler Grange.

Speaker 1 07:54

Sorry, mr. Rob

Speaker 2 07:55

Rivolta.

Speaker 1 07:58

Okay. Thank you. Okay, and for City of Doncaster Council, please.

Speaker 3 08:12

Good morning, sir. Yes, Andrew Zhurikovsky for City of Doncaster Council. Mr. Zhurikovsky is fine, and I will speak as required on any issues that come up in the course of the day. If you would like me to, I can introduce the rest of the team here. Firstly, we have got online our legal counsel, Mr. Emme Thomas, who I think has just made himself visible on the screen, who will be doing the DCO then. For the Highway Authority, we have got Mr. Richard Mudd, who's sitting in the corner, Mr. Qazim Al Samaria next to him. We also online have Julie Guest, who, if there are any issues relating to public rights of way, will be the person responding. Then, in relation to ecology, we have Martin Novacki, who's two spaces to my left here, and then finally, in relation to cultural heritage, we have David Hornsby sitting to my left, and we have Mr. Andrew Lyons, who is with us virtually, and that's our team, sir.

Speaker 1 09:37

Okay. Thank you very much. Thank

Speaker 4 09:44

Okay, and for North Lincolnshire Council, please, morning, sir. Paul Skelton, I'm a planning consultant representing North Lincolnshire Council. Mr. Skelton is fine, I. To my right is Louisa Simpson, who will be discussing answering questions on highways matters, including the draft DCO. To her right is Emily Sturdy, who's not expecting to speak. And online we will be joined by I'm not sure she has joined yet Alicia Morley, who will be dealing with biodiversity and ecology matters. Unfortunately, Mr. Goddard, the council's archeology advisor, isn't able to attend today, but I think there is a large degree of commonality between the cases for the two councils. He's been discussing things closely with Mr. Lyons, so hopefully that will, but if there are any other questions, then we can, we can take those away, sir.

Speaker 1 11:01

Okay. Thank you. I didn't get the second is Louise a surname.

Speaker 4 11:05

Sorry, Simpson.

Speaker 1 11:06

Simpson, thank you very much. Okay, if we could move on to statutory parties. Okay, so for National Highways, who will be representing

Speaker 5 11:42

one is that mine? name is Ross Corsa. I'm a solicitor at Pin St. Mason's, representing National Highways, and I'm happy to be addressed as Mr. I expect to be speaking at agenda items three and four A.

Speaker 1 11:57

Thank you. Any other representatives from National Highways?

Speaker 5 12:04

No, just me today. Thank you.

Speaker 1 12:06

Thank you. And Lincolnshire Wildlife Trust. Good

Speaker 6 12:13

morning, sir. Dr. James Wood, Lincolnshire Wildlife Trust. I'll be responding as required to points on biodiversity and ecology. Thank you.

Speaker 1 12:24

Thank you very much. And for the Environment Agency,

Speaker 7 12:32

good morning, sir. It's Miss Danielle McLean Spencer, Planning Advisor on behalf of the Environment Agency, and I'm joined today by my colleague, Miss Annette Hewitson, planning advisor, and we wish to speak on agenda item three.

Speaker 1 12:47

Thank you very much. Okay, are there any other statutory parties before we move on to interested parties? no. Okay, so interested parties. I think we have a couple of gentlemen at the back of the room. Is it Mr. Carr? Would you like to introduce yourself?

Speaker 8 13:20

My name, John Carr. I'm a concerned resident. Thank you.

Speaker 1 13:29

And Mr. Brooke,

Speaker 9 13:31

yeah, Michael Brooke, representing local drainage authority and such like that. Local farmer we found in the area for 120 years, the family, so we've had to put up with all the problems, and I'm going to be affected visually.

Speaker 1 13:51

Okay, Mr. Britt, if you could just introduce yourself. So, you mentioned the drainage authority, which drainage authority is this?

Speaker 9 13:58

Doncaster East,

Speaker 1 13:59

Doncaster East, and you are the representative, are you?

Speaker 9 14:03

Yeah, I'm the main delegate for the, okay, yep.

Speaker 1 14:07

Thank you very much. Sorry, is that the internal drainage board? Is that the IDB? Okay, thank you. Are there any other interested parties who would like to participate today? Okay, thank you. I think that's the introductions complete. Okay, so most of today's questions are for the applicant. What I'll typically do is hear from the applicant first, and then the councils, followed by interested parties and statutory parties. The app. Second, we'll have the final right of reply. The discussion will be structured and led by me. So, we'll now move on to agenda item two, which is the purpose of the hearing. Okay, so the first topic to be discussed in this hearing will be the development consent order. I'll then move on to environmental matters, which include transport and access, biodiversity and ecology, and cultural

heritage. So, those are the only issues that we're going to be discussing today. Obviously, we've got other issues specific hearing tomorrow. The purpose of this hearing is for me to get the information that I need in order to properly and effectively examine this application, so the questions which I have are those which I consider warrant or would benefit from discussion in a hearing setting, just because I don't mention something, for example, a particular effect or an issue, which you may have raised in a representation, does not mean that I won't be considering it. This is primarily a written process, and obviously we have two more rounds of written questions and responses in writing. Okay. Before we move on to agenda item three, does anyone have any questions about the purpose of the hearing? No. Okay, so the first item is the development consent order. The latest version of the draft development consent order is Examination Library Reference CR 1006 and whilst this version was only accepted as part of a change request last week, it only includes one minor change, which is to article 22 compared to the previous version. As such, nobody has been prejudiced by the use of this version for the purposes of this hearing, so that that is effectively the latest version of exam library reference CR 1006 Six, so this hearing is being held on a without prejudice basis. So, in essence, even if your position is that development consent should not be granted, and therefore that the Secretary of State should not make the draft DCO, you can still make representations in this hearing on the drafting of the DCO without conceding your wider position that the draft DCO should not be made so effectively, just because we're discussing the development consent order doesn't mean that I've made my mind up. This part of the hearing is important for the examining authority, because I am under a duty to provide the Secretary of State with the best drafted DCO that I can, even if I end up recommending to the Secretary of State that they should not make the DCO, so even if I recommend that development consent should be withheld. I still must append a draft DCO, ensuring that Secretary of State can decide to make the order if they so wish. The agenda set out that this part of the hearing will focus on the DCO issues raised by City of Doncasters Council's local impact report. The DCO issues raised in North Lincolnshire Council's local impact report, issues raised by interested parties in relation to the draft DCO, and other issues which I consider relevant, including in particular the consistency of the articles in the draft DCO with those in recently made solar DCOs, however, a number of the issues raised by the councils and some of the questions which I have overlap on that basis, I'll run through my questions in the order in which the articles and schedules appear in the draft DCO, so I'm only raising those issues which I think would benefit from discussion in a hearing. For example, some of the more, my more technical questions will be reserved for written questions.

Speaker 1 19:38

Before we proceed, I'd like to thank both councils for their detailed comments on the draft DCO, and going forwards, I'd be grateful if any disagreements on the DCO wording could be specifically appended to this statement as a common ground and. Wherever there is a disagreement, I would be grateful if the councils could also include their proposed wording for the relevant article or requirement. Is that something that CDC is happy to provide?

Speaker 3 20:15

Yeah, certainly.

Speaker 1 20:16

Okay. And North Lincolnshire. Yes, sir. Okay. Brilliant, do If the applicant could display the articles on screen as I refer to them, then I would be grateful. Okay, so let's begin with Article Two. All right, under Article Two, one of the draft DCO, the definition of commence excludes permitted preliminary works, except where stated to the contrary. This effectively means that where Schedule Two requirements require details to be approved in advance of commencement of development. The details do not need to be approved before the permitted preliminary works, unless stated to the contrary, and the definition of permitted preliminary works under the same article includes site clearance, such as vegetation

removal. I have reviewed Schedule Two requirements, and as far as I can see, only requirement nine, which relates to fencing details, requires details to be approved prior to permitted preliminary works, consequently potentially high impact physical works, such as broad vegetation stripping, could legally occur across the order limits before any pre commencement requirements other than requirement nine are discharged, so as far as I can see, there are several potential implications associated with this. So, firstly, the site is obviously located in close proximity to European sites and includes functionally linked land, yet under the current wording, site clearance and vegetation removal is permitted without the prior approval of the CEMP and LEMP, so the construction environmental management plan and landscape and ecological management plan. Secondly, in terms of archeology, site clearance and topsoil stripping could proceed before a written scheme of investigation is approved. And thirdly, the site is at risk of flooding, and as far as I can see, there's no carve out in requirement 11 to ensure that preliminary works do not increase flood risk elsewhere. I think the recently made Fenwick DCO included preliminary works in the definition of commence for surface for the surface water drainage requirement, and I'm fairly sure that that site wasn't located in flood zone three, although I may be wrong. Just wondered, what the applicant's response to those points is, please,

Speaker 2 23:27

somewhat them on behalf of the applicant. Thank you, sir. I'll take a few points there. So, in terms of the carve out from the definition of commence. I just note that requirement 12 on archeology, specifically paragraph five of requirement 12, also includes a similar carve out. So, article requirement 12 five says, unless otherwise agreed, commence includes any permitted preliminary works which involve intrusive archeological surveys and other investigations for the purposes of assessing ground conditions, so the purpose of that is to say that the detailed written scheme of investigation would be required even where those permitted preliminary works are proposed, so that is in addition to the requirement nine carve outs that you mentioned, sir. In terms of the more general principle, what we've tried to do here is include a limited number of works that could be carried out within without engaging the pre-commencement conditions, and we think we've limited those to relatively small-scale low-impact works, and the list that we've come up with is reflective, broadly reflective of precedent, precedented UCO draft. In and it's necessary, sir, to provide some flexibility to implement the development without having to go ahead and discharge all the all the pre commencement conditions. The primary safeguard here, sir, is that all schedule one development, and I think it's clear that we'd be dealing here with schedule one development is subject to the parameters of the environmental statement, so if you look at the list of ancillary development at the end of schedule one, in particular the final sweeper provision that refers to further associated development in connection with the authorized development, insofar as that development is unlikely to give rise to any materially new or materially different environmental effects to those assessed in the environmental statement, so what we say, sir, is that whilst those works are anticipated, the ultimate control and safeguard here is that we can't be doing anything that would exceed the premises of what we've assessed and what we've concluded and what's set out in the environmental statement, which will be certified alongside the order, and so the other thing to note is that even though these activities are carved out of the definition of commence, I think we made this point in a response to an associated question in rep 2087 I can't quite now find the particular written question reference, but we made it clear, sir, and sought to assure interested parties that even in relation to these permitted preliminary works, our intention would be to comply with the spirit of the management plans and outline management plans, and it would be within our interest to do that, because when we approach the point of discharging the pre-commencement conditions clearly, the extent to which we've complied with obligations through those plans will be relevant to the discharging authority's consideration of any application to approve those management plans. So we say that whilst it doesn't form a legally binding commitment in the order, there's a soft commitment on our part to comply with the spirit of all the management plans when undertaking permitted preliminary works, and what we've landed on is a, is a precedent, a widely precedented approach in DCO drafting, balancing flexibility with, with providing safeguards, ultimately

Speaker 1 27:42

look Okay, I think I understand that it's a precedented approach in terms of the drafting, but obviously there is the, there is the option for carve outs and the requirements, and I think many of the recently made solar DCOs include preliminary works in the definition of commence for certain requirements, and obviously it depends on case-specific circumstances, whether certain requirements require that. I just wonder, what your view is, obviously with the site located in close proximity to European sites, and including functionally linked land. I mean, are you satisfied that there's sufficient control in order to avoid adverse effects during the construction period?

Speaker 2 28:39

Tom, at the mind, on behalf of the applicant, so yeah, we certainly are, and on the proximity to designated sites, clearly we've excluded any works from the from the geographical extent of it, of any of those sites, and so we don't think there's any prospects of any likely significant effects occurring, so what I can commit to doing by way of follow up is to considering each of the articles in turn each of the requirements in turn and reflecting what you said about precedent to considering whether it would be appropriate for us to include further carve outs within those requirements. We can certainly do that. I've mentioned the two requirements that have it at the moment, and we can go away and consider further.

Speaker 1 29:29

Yes, I mean, I think I raised three issues, and one of which you say is already addressed: archeology. I would be grateful if you could look at that and come back in writing at the next deadline, I just wondered what City of Doncaster Council's view on those points is. Please,

Speaker 10 29:52

thank you very much, sir. Good morning, my Emir Thomas, on behalf of the City of Doncaster Council. First, the council obviously welcome the commitment to reconsider the requirements, and would welcome that additional strength was included in the requirements, particularly those that have already been flagged this morning in terms of the use of precedent by the applicant. What we have seen was acting for authorities who have been subject to several DCOs is that maybe on the first order the drafting is accepted on this understanding as set out in most explanatory memorandums that the intentions that the works would be de minimis works, whoever, that's what the explanatory memorandum says. As you rightly identified, the power in the order itself is unconstrained, and we've had several unhappy instances with clients where the contractor has taken a far more liberal approach with say vegetation clearance than was anticipated ever in the explanatory memorandum or during discussions in the examination, so for instance, Suffolk County Council on the Bramford to Twinstead order, subject to the unconstrained regime, but for subsequent DCU applications for Sea Link and Norwich to Tilbury, which ceiling just finished examination. Norwich to Tilbury, going through examination, they're requesting a more robust regime when it comes to these carverts from commencement, and this has resulted in an evolution of the drafting, and so we see, and it's identified in several solar projects, and in the one most relevant to the city of Doncaster in Fenwick, where we have these additional securities included in the requirements, mr. McNamara referred to a materially new, materially different point, but it's not clear to the council where these particular activities have been assessed or whether identified in the environmental statement, but we can obviously go and consider those if they could be flagged up. That's what the city of Duank has to say on this point, sir. Thank you.

Speaker 1 32:20

Okay. Thank you very much. Would the applicant like to respond?

Speaker 2 32:25

Tom Adams, on behalf of the applicant, nothing substantive to add, sir, over what I've said, which is to say that we will consider each of the requirements and come back to you with any further drafting as a result, and we can certainly help with the reference to the environmental statement and identifying the appropriate references there.

Speaker 1 32:51

Okay. Thank you. And North Lincolnshire Council, do you have any representations to make?

Speaker 4 32:58

Paul Skelton, North Lincolnshire Council. Nothing substantive, sir, but we will be happy to review any revised drafting once it comes in. Thank you.

Speaker 1 33:09

Okay, thank you. And interested parties, we're obviously discussing a specific article. Do you have any points you wish to raise, mr. Brooke.

Speaker 9 33:24

Oh, just back down to ground level. RW, we had some contractors out about a month ago, a 360 digger and another machine, and they've been doing little things all over, like, and they came unstuck on high levels, the farm manager there went across to them. There was on site, and where there was going to be putting this thing was right on top of one of the major culverts, and the chap is what we're doing the work, didn't even know nearby that there was a fuel pipeline. Okay,

Speaker 1 34:02

okay, so you're suggesting that's illustrative of the importance of the

Speaker 9 34:06

being there was there was out for several days, two machines doing something that these chaps will know what they was doing and putting plots in different fields what they were doing.

Speaker 1 34:21

Okay,

Speaker 9 34:22

okay,

Speaker 1 34:22

that's useful context. Thank you very much.

Speaker 9 34:24

Okay,

Speaker 1 34:28

okay. The other thing to say is, I think, let me just get my bearings. Yeah, so the the Environment Agency's relevant representations, which are exam library reference R 009 also raise concerns with regard to the inclusion of remedial contamination work in the definition of permitted preliminary. Work, I just wondered what the applicant's position on that was. Please,

Speaker 2 35:08

Tom McNamara, on behalf of the applicant, so that's one that we will take in hand as part of the wider review, and it seems to me that that might be an instance where, for example, we could include some drafting as part of, for example, the outline construction management plan requirement, whereby we would say that commence doesn't include, you know, commence includes remedial works in respect to any contamination to ensure that, insofar as that particular pre-commencement activity is concerned the requirement to have the camp approved would be triggered. I'm not saying that will be the outcome. What I'm saying is that that is a potential outcome that will, that will flow from the review that we're going to do, and that will report back to you on, sir.

Speaker 1 36:00

Okay. And thank you. Did the Environment Agency have anything to say on that particular point? So,

Speaker 7 36:08

thank you, Sir Danielle McLean Spencer. On behalf of the Environment Agency, we would support that this is sort of considered further, and any carving out is explored. So, we've, as you've mentioned previously, made representations on the draft DCO, and we remain concerned that the current drafting does not adequately secure the necessary contamination risk assessments before remediation works can take place. So, at present, it's proposed to be secured under the construction environmental management plan under requirement 14. However, remediation works could, as currently proposed, take place prior to the CMP being approved. So, from our side, we consider that there's a potential gap in the drafting of the development consent order, and whereby remediation works could proceed before the relevant contamination risk assessments have been undertaken and approved. We're therefore concerned that the assessments recommended are not fully secured by the draft DCO at this time, but we appreciate the applicant's position on wanting to retain flexibility within the draft development consent order as outlined in their response to our relevant representation. So today I'd just like to raise that we'd like to propose a revised approach to that, but we previously set out in our representations. We previously advised that remedial works in respect of contamination should be removed as a permitted preliminary work, and that an additional land contamination requirement should be included, but we consider that remediation works can be included as a permitted preliminary work, subject to an additional requirement, potentially to manage land contamination, so we would like to propose, or welcome that our originally requested requirement could be included in the draft development consent order with an additional subparagraph, paragraph three to read for the purpose of subparagraph one. Commence includes any permitted preliminary works comprising remedial work in respect of any contamination. It's our sort of view that this would strike a bit of a balance between retaining flexibility and ensuring that adequate environmental protections are in place. Thank you.

Speaker 1 38:58

Okay, that's quite a lot of information, but thank you very much. So, the firstly, in terms of the remedial contamination work going ahead in advance of the approval of the CEMP, what is the actual consequence of that? What are the risks associated with that? Could you explain?

Speaker 7 39:29

Thank you, sir. Danielle McLean Spencer, on behalf of the Environment Agency. So, the risk with the current approach in the draft development consent order is that remedial works could occur before the necessary ground contamination assessments are undertaken and approved as the environmental statement proposes that they'll be dealt with under the construction environmental management plan and. And that's not required to be discharged ahead of the preliminary preliminary works, so in theory the applicant could undertake remediation works without appropriate assessments in place, and this could lead to contaminated land being worked upon and contaminated land potentially being inappropriately sort of managed, which could lead to a risk to groundwater pollution, etc. Thank you.

Speaker 1 40:40

Okay, and I think you mentioned we're going to come on to schedule two later, but you mentioned a proposed additional requirement on contamination, and effectively you suggested bringing in remedial contamination work there. there to address the preliminary works under that requirement, is that right?

Speaker 7 41:10

Yes, so we we've previously requested, and under sort of the revised approach, would request that an additional requirement is included in the development consent order to make sure it's on the face of the DCO and for the avoidance of doubt and that would also include for the management management of unsuspected contamination.

Speaker 1 41:40

Okay, I think we'll pick up the requirement when we get to schedule two towards the end of the DCO section of this hearing, but would the applicant like to respond?

Speaker 2 41:55

Tom Adams, on behalf of the applicant, so I think I covered this point in my last submission, which is to say that we are going to go and consider the further carve outs that might be possible under the requirements, and one of those would be this provision regarding remedial works in respect of any contamination, and in principle we're minded to say that an appropriate way to deal with this would be to include provision within requirement 14 to exclude remedial works in respect of any contamination from the list of permitted preliminary works, such that if any of those works were proposed, we'd have to, we'd have to get the chem signed off.

Speaker 1 42:41

14 is

Speaker 2 42:42

14 is the construction environmental management plan, and I, from what I'm hearing, said that would would go a substantial way in addressing the concerns that the Environments Agency have raised.

Speaker 1 42:59

Okay, and as I say, we'll discuss the recommended requirement later, and presumably you're suggesting that's not required, and that you can address that under 14. Okay, so if we could pick that up later, that would be useful. Thank you. Did anyone else have anything to say on that specific issue before we move on? Okay, okay, let's move on. Article eight, so article eight is the consent to transfer benefit of order. Now Article eight of the draft DCO permits the undertaker to transfer or lease the benefit of the order provisional to any or all parts of the authorized development, so my question to the applicant is, in the event that the undertaker exercises Article Eight to split the development, for example, transferring the operational benefit of the battery storage system to a third-party storage operator while retaining the solar generation arrays, for example, How does the DCO establish the liability for shared site-wide schedule two requirements, eg, Who would be liable for breach of requirements in such instances, so

Speaker 2 44:42

Tom Atomar. On behalf of the applicant, thank you, sir. I think in that situation, sir, the provisions of Article eight 9c would apply, so that makes clear that where the under. Undertaker has transferred any benefits, the exercise by a person of any benefits or rights conferred is subject to the same restrictions, liabilities, and obligations as wouldn't apply under this order if those benefits or rights were exercised by

the undertaker. So, in a situation where part of the benefit of the order was transferred to a third party, that third party would then be liable and required to comply with all of the schedule two requirements, and that is provided for, as I say, by Article eight 9c and the bit that remains with the undertaker, if that, if that were the case, those obligations would continue to apply to that same undertaker.

Speaker 1 45:49

Okay, but I think that the general point is, how would liability be established if there was, say, a shared boundary between, I know, the prospective battery storage system operator and the undertaker for the solar generation arrays. How would that, how would a council determine who was at fault and enforce

Speaker 2 46:15

Tom McNamara on behalf of the applicant? That's an interesting question, sir. I mean, I think ultimately for want of a better answer, I think it would, I think that would just boil down to a question of fact in any given specific case, and and I think it would just have to be established on the basis of what had happened on the ground to determine which party would be liable in those circumstances, and of course, it's possible both parties would be liable if both are at fault, but it's difficult to answer that question in the abstract, because I think it will be safe act specific,

Speaker 1 46:56

it would, but I think it is a reasonable question, because say the development was split and there was an issue with one of the requirements. There's nothing to stop one party from saying, well, that's nothing to do with us, that's the battery storage system operators' responsibility, and then vice versa. So, that's the, that's the concern I'm sort of raising, but I take your point. Do does City of Doncaster Council have a view on that,

Speaker 10 47:38

sir? Under the, you'll be aware that under the planning act, section 167

Speaker 1 47:44

Sorry, I can't quite hear you.

Speaker 10 47:46

Oh, sorry, sir. Is that better?

Speaker 1 47:48

Yes,

Speaker 10 47:49

I lean in. You'll be aware, sir, that under section 167 of the planning act 2008 it is possible for the relevant local planning authority, so the enforcement authority to require information from an applicant. It serves an information notice, and it can require certain information to be provided, including about any operations being carried out on, in, or over, or under the land or information about the provisions of any order granting development consent for the development of land, so I suspect we'll take this away and have a think about it, sir, but I suspect the relevant local planning authority would have to serve notice on the owner or occupier of the land, or a person with any other interest in it, and demand the information it is required to demand under section 167

Speaker 1 48:50

Okay, so you're are you suggesting that that is a mechanism to address the issue which I've raised?

Speaker 10 48:58

Well, I'm saying so that that is how the council would go about trying to find out any information that it needed to find out, like I said, we need to take away section 167 in the context of your question, and I suspect we'll, we'll come back with something more substantial in our post hearing note, but that's our on the hoof response, if you like,

Speaker 1 49:21

okay. Thank you. And North Links, did you have anything to add? Nothing to add, sir. Okay. So, obviously, when the applicant responds to that point, and City of Doncaster, obviously, there are precedents in drafting. I'm not sure what they are personally, but if you could refer to them, that would be useful, I suppose.

Speaker 2 49:42

Tom, at my on behalf of the applicant, so we can do that. My suspicion is that this provision is already in the model form, and I suspect that this is an issue that could, could arise in any case, but we can, we can try and put. A bit more meat on the bones in terms of what the local planning authority could do in a case like that.

Speaker 1 50:06

Okay. Thank you very much. So, do interested parties have anything to say on that particular point? No. Okay, I've got another question in relation to article eight, so I note that the text of article eight three expands automatic transfer privileges beyond the established threshold seen in recently made solar DCOs, so for instance, Article 36 of the Tilbridge Solar Order 2025 and Article seven of the Gate Burton order 2024 and others more recent limit automatic unaudited transfers to entities holding an electricity generation or transmission license under section six of the Electricity Act 1989 so basically those provisions limit who the undertaker can transfer the holding to, and it must be to someone with a license, a company with a license under section six of the Electricity Act. So, in contrast, I think the applicants draft DCO introduce a more broad exemption under Article three be allowing an automatic transfer to any internal corporate holding company or subsidiary without needing the prior written consent of the Secretary of State, so I think one of the reasons DCOs typically limit these powers and require approval from the Secretary of State is associated with the funding implications, so are these holding companies or subsidiaries, do they have sufficient funds? So I just wondered, what the applicant's response to that particular point was. Please,

Speaker 2 52:33

Tom McNamara, on behalf of the applicant. Thank you, sir. We provided a response to this point in our responses to written questions, and it was question 5.1 point two, that's rep 2087 and we explained that this provision was included in order to provide a limited degree of commercial flexibility to determine which entity within the group might take forward development. There is precedent for this inclusion, which I just mentioned in passing. Two order two solar orders emerge from that. So, article six of the Byers Gill Solar Order 2025 and Article 35 of the Cotton Solar Project Order 2024 where this provision was included, and I think that the main safeguard here in relation to funding arises from the existence of Article 47 and that provision requires a party who proposes to exercise compulsory opposition powers under the order to have in place a guarantee in a form approved by the Secretary of State, and so we say that that is as far as the funding for payments of compensation is concerned, that provision provides the overall surety that a body with sufficient standing and sufficient funding will be in place and then it's appropriate for that provision to be included in those circumstances, so okay,

Speaker 1 54:25

but does Article 47 apply to future owners in the event of transfer?

Speaker 2 54:37

Tom, at the moment, on behalf of the applicant, sir, I think it would, because the undertaker in that situation would be whoever the third party entity is, and 47 one specifically says must not exercise the powers conferred by the provisions in paragraph two, so I think that if the undertaker. It was ultimately a different person that entity would need to have in place the guarantee in the form approved by the Secretary of State. So, I think on my reading of article 47 it would apply to a third party, a future future entity.

Speaker 1 55:22

Okay, I mean, I'd expect if that were to apply, I'd expect Article Eight to include some wording to confer same powers or the same restrictions as faced by the undertaker to future owners, and I think you mentioned earlier that there is such wording, which article is that,

Speaker 2 55:48

Tom, at the moment, on behalf of the applicant. That's right, sir. So it's article eight 9c and again, just to repeat, that says that where the undertaker has transferred any benefits, the exercise by a person of any benefits is subject to the same restrictions, liabilities, and obligations as would apply if those benefits or rights were exercised by the undertaker. So I think it's clear from that that a future transferee would be subject to the same obligations under Article 47 as the undertaker itself. Okay, that's

Speaker 1 56:30

useful. Thank you. And City of Doncaster Council, would you like to come back on that at all? Obviously, there is some divergence in the wording of Article eight in recently made DCOs, but the applicant has suggested that was it article 47 addresses the issues associated the potential funding issues. Do you have anything to add,

Speaker 10 57:04

so this Emmett Thomas, on behalf of the City of Doncaster Council. This wasn't something we'd picked up on in our, in our LIR, but we'll consider it after today. And then, if we have anything else to add, we'll include it in our post hearing submission.

Speaker 1 57:20

Okay. Thank you. And is there anyone else that wishes to make representations in relation to Article 3b No. Okay, we'll move on to part three, which is streets, and I've noticed that a lot of both councils' main issues with DCO wording relate to this section of the DCO, so part three there are discrepancies between the draft DCO powers and recent precedents, and in particular in Fenwick solar farm order 2026 So I've compared part three streets of the draft DCO with the recently made Fenwick solar farm order 2026 which obviously operates within a similar regional highway network and partial local authority context, and I note that the applicant's explanatory memorandum, which is exam library reference APP 017 relies on older sort of 2022 to 2023 DCO precedents to justify what I see as relatively extensive statutory street powers, however, the most up to date drafting approach established in Fenwick introduces more robust local authority controls to maintain network management and protect public highway assets. Currently, the Tween Bridge draft DCO lacks a dedicated permit scheme application clause, and it also fails to require a framework highway works agreement, so to the applicant, what, why is the applicant omitted a dedicated article governing the application of a permit scheme equivalent to article nine in Fenwick could you explain how the day-to-day road space coordination and network management will be maintained without such a framework?

Speaker 2 59:53

Tom Atlamar, on behalf of the applicant, specifically on the permit scheme points, uh. That is something we are in discussion with City of Doncaster Council on, and we're considering what changes to the order might be necessary to bring the permit scheme within the scope of the measures that we've committed to complying with, and as part of that, we're having regard to the Fenwick Order, and considering whether that strikes the right balance and achieves a legally coherent outcome. What I will say is that, in the, in the absence of the permit scheme provisions at the moment, the position is that the relevant provisions of the new roads and street works act would apply to street works, that's governed by, in particular, by Article 12 of the order, and that includes provision for things like providing advance notice of works to the local highway authority under section 54 of the new roads and street works act and were related provisions which which speak to this issue of the local highway authority being able to coordinate works and of course prior to permit schemes coming into effect which was sort of early 2000s everything was everything was dealt with by the New Roads and Street Works Act, and that's where these precedented provisions arise in DCO drafting, of course. The emergence of permit schemes does change things somewhat. Fenwick is authority for the principle that a permit scheme can apply, and we're having regard to it, but of course, there's a good number of orders where reliance is placed on the new roads and street works act instead of a permit scheme, but as I say, it's something we're discussing with the council, and and we do expect that on the permit scheme, at least, there'll be some movement on this, and that the order will will include some updates to recognize its existent existence.

Speaker 1 1:02:04

Okay, so I hope that is the case. I'm just wondering, is that something that you see progressing or not? To be frank,

Speaker 2 1:02:20

to make the mind, but after, again, yeah, very much so, sir. It's not something that we're just going to kick into the long grass, and, and then leave it for you and the Secretary of State to decide. It's something that we're actively doing, and whether or not we can bring that forward at deadline three, I suspect not, because there's some complexity to the drafting and the statutory provisions underpinning them, so I think this would be more likely to be something included in an update to the audit deadline. For

Speaker 1 1:02:47

okay, and who's who is it you're negotiating with in these terms?

Speaker 2 1:02:57

Tom, at the moment, they have the applicant. So that's those discussions are happening with City of Doncaster Council, and with, in particular, with mr. Thomas, who you've been hearing from, and as I say, it, they're quite tricky provisions of these, and so I wouldn't want to rush them out of the door and get the answer wrong at deadline three when I think that it just needs a bit more considered thought,

Speaker 1 1:03:24

okay, and mr. Thomas, what's your view on on this on the permit scheme in particular, and how that's progressing?

Speaker 10 1:03:34

Well, the council's view is that obviously the permit scheme is helpful in allowing the council to better manage activities on the highway network, minimizing disruption caused by highway works in their area. There was a discussion as to whether Article Nine ought to be included in the Fennec order, and it was included after a discussion with the applicant there, and an agreement was made. You'll note

from Article Nine of Fenwick that the regime is modified, and so the approach that the council took in the Fenwick discussions was very much open-minded and hopeful that an agreement could be reached as to the form of permit scheme that will be applied, and how that will be reflected in the article, and the council's approach is similarly open-minded in respect of these discussions. There have been two meetings on the 20-first of May and the 10th of June with mr. McNamara and his team. I attended those meetings along with two lawyers from the council, and we warmly welcome the comments he makes in terms of including some drafting in respect of the permit scheme, but of course the devil will be in the detail, and so we look forward to seeing that, and obviously the understanding is I think that meetings between the lawyers will continue outside of the. You know the regular deadlines for in respect to the DCO examination, and I suspect we'll be meeting relatively soon to discuss where we are with the various points that we have in disagreement.

Speaker 1 1:05:13

Okay. Thank you. And then on the framework highway works agreement, what is the why should street layout modifications not be subject to a frameway highway works agreement or mandatory prior written consent as was secured in in Fenwick? Could the applicant respond on that?

Speaker 2 1:05:36

Tom Adams, on behalf of the applicant. Thank you, sir. I think fundamentally our position is slightly different on the highway works agreement than it is permit scheme, because the way the way I see the framework highways agreement is I think that document arises or emerges from the council's normal practice where a planning permission is concerned that would involve some off-site highway works, and ordinarily would expect a developer in those circumstances to enter into what's known as a section 278 agreement dealing with the implementation of those works, and that requires, obviously, the council's agreement. What we have here, sir, is a statute instrument that is capable of including provision for these things, and this, this harps back to the one stop shop principle of DCA drafting, and what we have done, sir, in part three, and through the specific schedules that part three refers to is include provision that enables us to secure authority, statutory authority to carry out the relevant street works, and so instinctively we're opposed to a scenario where we've secured statutory authority for these works, but then have to go and secure what is in effect a separate section 278 agreement from the council that to us seems fundamentally to be a duplication of of the consenting for these street works. Now there is some nuance to that, because what we're not saying is that we're completely opposed to every single thing the council would expect to be included within a section 278 agreement, and it might be that there are provisions within that agreement that could sensibly be applied to works that we're proposing under the order, but we say so that those things could be dealt with within the framework of the order rather than a separate framework agreement, and if you look at the way that the Fenwick order is framed in these terms, and I think it's article 12. Sorry, I don't have the Fenwick order to hand, but it seems to suggest that the framework would set, would set the would set in motion a process by which the applicant in that case would then subsequently need to go and secure an agreement for each and any highway works that it's proposing, and that to us seems to be, as I say, duplicative, and what we have done is to try to fold everything within the framework of the order, so we have statutory authority for the works under part three, and that those refer to the streets in the schedules and the streets shown on the relevant plans, that isn't the end of the road, though, sir, because under the schedule two requirements the local highway authority and the planning authority will have oversight of what we're proposing, so if you look at requirement six, for example, which deals with detailed design matters, we will have to go and secure the council's agreement to the design and layout of means of access to the authorized development, so that is one way in which the council can secure control over what we're proposing. Similarly, we have the outlying construction traffic management plan, and that is a document that contains a number of controls about how the local highway or network will be modified and managed during construction, that's a document, sir, that's part of our development consent, and we say that the councils have sufficient oversight and approval of those documents, which then negate the

need for us to go and secure separate agreements, which to us sit outside the DCO world and speak more to the Town and Country Planning Act world, and obviously we've come forward with this development consent order application, and one of the reasons we've done it in this way is because it enables us to include in one place all of the things that we might need to do to implement this project, and final thing I just note here, so I may come back to reference this document quite a bit during the course of this hearing, and maybe tomorrow as well, but you'll probably be familiar that late last year there was a.

Speaker 2 1:09:59

The review of nuclear regulation undertaken by John Fingerson and other members of a task force appointed by government to consider how nuclear regulation could be improved and sped up in the UK, but that task force made a number of recommendations specifically on general points of DCO drafting, and one of the things you will see from that recommendation 28 and it's quite useful because all the kind of DCO recommendations are at recommendation 28 of their report is that they talk quite a bit about reinforcing the one stop shop under the Planning Act 2008 so moving away from the system, which seems to emerge, where, whereas I think it was always considered that everything would be in one place, there seems to be a movement towards things, you know, going back to how it used to be with this sort of overlapping and multitude of consents, and I think there isn't, there is an ambition now to rein that in, and I think that's useful context, because it sort of speaks to what we, what we are thinking here. So, ultimately, on the one hand, we've got the permit scheme, and we think there's probably going to be some movement on that, but we're, we're more resistant to the idea of this framework agreement for highway works, for the, for the various reasons that I've mentioned, sir, the Okay.

Speaker 1 1:11:24

Thank you. So, where so the 278 section 278 agreement, where the equivalent, if you like, is 278 just requires approval right from the highway authority, that is the requirement in 278 is that right,

Speaker 2 1:11:47

Tom at the moment, that's that's right, sir, but I think I think the agreement makes provision for a number of related matters, and we are considering the matters that the council would like to see included in that sort of agreement, and we're seeing if there are gaps between what we've already committed to through the order and through the management plans and what might reasonably be included by way of a supplement to the to the management plans that we're bringing forwards because what we're saying, sir, is that those sorts of matters should be included within the DTO documents that we, that are before you, and not left to, you know, to separate future agreements, which to us seems to be at odds with the DCA process. What should also say, sir, is that Fennick has obviously taken this approach, obviously, that turns on the facts of the case, and you know there will have been specific reasons why that might have happened, but this is by no means a standard approach. I haven't turned up any other solar DCO where this sort of approach has been taken before, that's not to say it's the wrong approach, it's an approach, but we're comfortable with the idea that if there are things the council would like to see and would normally ordinarily like to see included in a section 278 agreement, we're open to considering what those things are and finding an appropriate home for them, but we say that that home is the order or it's a management plan that sits within the order.

Speaker 1 1:13:31

Okay, that's what I was getting at, really, because you're saying effectively that the DCO, you want it to supplant the requirements of Section Two Seven A, what they would typically be, but I'm keen to make sure that equivalent articles or requirements or measures in the management plans are included to cover what would would have been provided? Obviously, you're suggesting gap that the, you don't want

to seek further approval from the highway authority. I take that point, but the DCO should include equivalent requirements, if you like, the other thing to say is, you mentioned a one stop shop. I take your point, but with street works aren't there street works that highway works that you aren't currently aware of, you can't pin them all down in advance, can you? So they're not necessarily covered by requirement six means of access.

Speaker 2 1:14:53

Tom Adama, on behalf of the applicant, I'll just take a few, a few points there. So, so, in terms of the control. That we say are included in the order. I think the major one is requirement six, so detailed design approval, and that to me seems to go to the very heart of the need for a section 278 agreement. If the council are approving the design and layout of these means of access under the under the DCO, what we have, sir, under part three, we've identified a comprehensive list of the street works that we anticipate being necessary, and those are the ones identified in a schedule. But you're right to say that there is a general kind of backstop power, if I can call it that, where we can do other things necessary to implement the authorized development that are not listed in a schedule, but the ultimate safeguard there, sir, is that in each case where that is the case, the local highway authority will need to approve what we're proposing, so if I give you an example of that, so in practice, Article 13 is the power to alter the layout of streets, and Article 13 one says that we are given authority to alter the layout of the streets identified in Schedule five so that and Schedule five then proceeds to list out the streets so that is an example of the order conferring direct consent for those things that would be included within the consent issued by the Secretary of State. If, if this scheme is approved, Article 13 Two, then, is a more general power to alter the layout of streets not identified in Schedule Five in connection with the authorized development. So, say we've missed a street in Schedule Five, and we need to, we need to do something about it, but then Article 13 Four says that the power that I've just mentioned, the general power, must not be exercised without the consent of the Street Authority, which may be given subject to reasonable conditions, and that is an approach that applies across the board, so where we've got general power to temporarily close the streets, the same framework applies. You've got the general, you've got the specific first, and then you've got the general, but each time that we're talking about a general power, then it will ultimately be subject to the approval of the Street Authority, and then I think the final point you mentioned, sir, was requirement six, and my take on that, sir, is that at the moment that requirement is in terms that no phase of the authorized development may commence until details of the specific matters, so in this case vehicular and pedestrian access, for example, relating to that phase, have been approved by the relevant planning authority, and my view is that if a phase was approved, that could include provision for the means of access that are in a schedule, and the means of access that are not in a schedule, and it would not change the fact that the council would need to approve all of those means of access, whether or not they're identified in a schedule, because the phase has to identify all vehicular and pedestrian accesses relating to that phase, and that those details that need to be approved by the planning authority. So I think in that way, sir, that even where we're talking about things in streets that are not included in a schedule, ultimately the planning authority will have essentially two controls, one under the article itself, as I've mentioned, and one via the detailed design requirements as well.

Speaker 1 1:18:51

Okay. Thank you. City of Doncaster, mr. Thomas, do you have a response?

Speaker 10 1:18:58

City of Doncaster Council. Yes. Thank you, sir. The council sent its standard section 278 template agreement to the applicant sisters on the things the 26th of May this year, and we're awaiting their comments. We have been awaiting their comments on that document. It seems now that I would surprise and slightly disappointed to hear this, that there is not going to be an intention to take the

document forward but to rather supplement management plans. It will be appreciated that it has been commonplace since the start of the DCO regime that DCOs envisage agreements, highway agreements being entered into the model provisions include such an article, and indeed the first draft of this DCO included such an article, so it has always been a part. Of the regime that these agreements are entered into, whether it's a 278 agreement or an agreement entered under the relevant article of the order. Alternatively, you'd expect to see protective provisions included in the back of the order for the protection of the highway authority, because whether it's an agreement or it's protective provisions, they will include provisions which are incredibly important to the council, for instance, a requirement that the applicant provides a cash deposit or a bond to protect financial loss on behalf of the highway authority in the event of works not being done to a satisfactory standard or works not being completed as they ought to have been completed, so we'd like confirmation, I think, in the first instance of how that particular issue will be dealt with, and then, in terms of agreements, generally, in my experience is quite commonplace for negotiations on these types of agreement to take place during the examination and afterwards, whether and in the small number of cases you'll all you'll find as an alternative to agreements, as I mentioned earlier, protective provisions included at the back of the order. Just a pause on Article 32 that Mr. McNamara mentioned, the scope of works that are potentially capable of being sought under that provision are wide ranging and apply to any street, as I understand it, not just those within the order limits, and the highway authority would have no more than 28 days to deal with those applications. That's another point, sir. But yes, I think we, we need to see as soon as possible what the proposals are for these management plans that we can consider them, and we also need, I think, confirmation in respect of the cash point. We would obviously prefer a regime similar to that in Fenwick. It doesn't have to be exactly the same as Fenwick, because what the council is keen to avoid, and this applies to several provisions, and not just this one, is a patchwork of arrangements arising from the various DCOs that are going to come to its area. This is the second of three DCOs that the City of Doncaster Council is aware of and consistency across those would obviously be helpful to officers. Thank you, sir.

Speaker 1 1:22:52

Okay, I think it was you mentioned article was it 32 or 13 two, because I think, yeah, couldn't refer

Speaker 10 1:23:01

13 to

Speaker 1 1:23:03

perfect,

Speaker 10 1:23:04

yeah,

Speaker 1 1:23:05

all right, and you also mentioned, did you mention Article 18 of the original DCO?

Speaker 10 1:23:16

This was Article 18 of the original DCO, which is pretty much a standard term, which provides that a street and a street authority and an undertaker can enter into agreements essentially in respect of those things set out in the equivalent of part three. The remove the point I was making there says that that provision has been included in the model provisions from 2009 and a pretty standard in DCOS, and so it's expected that there will be an agreement, a highways agreement under a DCO, owing to the extensive nature of highways works proposed under DCOs, so it's not something new or unusual or outside of other box, it's something pretty standard and commonplace,

Speaker 1 1:24:08

but how does, how does it relate to the framework highway works agreement? Well, you would need

Speaker 10 1:24:16

it in those circumstances, if you're the framework highways works agreement. If the agreement is agreed, you could have a situation similar to Fenwick, where cross reference is made to the existence of that agreement. The way that the formally Article 18 provision is set out is that's a power for the parties to enter into the agreement, although there are instances of more prescriptive provisions being included in those provisions. I think it's Article 23 of the size well order, for instance, which prohibits certain works under that DCO being carried out until an appropriate agreement. Under the relevant article, article 23 has been entered into. So, this is by no means anything. The fact that agreement, an agreement is proposed is not at all radical here. I would suggest,

Speaker 1 1:25:15

so the if you've got a framework high works agreement provisions, you don't necessarily need a school 18, is that right?

Speaker 10 1:25:22

Not exactly, sir. That's what I'm saying. You don't need, you need. Sorry, just to go back on a point raised by mr. McNamara. The reason that Fenwick is drafted in the way it is drafted is that the proposals for the street works under that order were at a very, very early stage, and so it had to be a framework highways agreement that was entered into, because the drawings, for instance, couldn't be appended to the relevant agreements. What the agreement says is, once you've got the drawings, send them to us, and the rest of the provisions of this order will be applied to the new order.

Speaker 1 1:26:01

Okay, thank you. I was going to come on to Article 18, and I've done a bit of research, and my reading of article 18 is that it acted as a legal mechanism to bring parties back to the table, and it gave the applicant and the council gave the applicant a DCO back power to contractually agree on how street works will actually be engineered, financed, and handed back to the public, just to the applicant. Why was that included in the first place, and then subsequently removed.

Speaker 2 1:26:50

Thank you, sir. Tomorrow, on behalf of the applicant, so can I just check that I'm clear that this is this was the previous power to enter into agreements with the Highway Authority

Speaker 1 1:27:01

Arsacle 18 of the original originally submitted draft ECO reference APP 016 I think it's on it's on screen at the moment. That article has been removed, and I'm just wondering why it was included in the first place, and why subsequently been removed,

Speaker 2 1:27:24

so I think that is right. It was in the order originally, I think, based on original precedent mr. Thomas mentioned, but what I think we have learned from more recent cases is that this provision has been coming out. I think the reason is it's not to say that agreements can't be entered into. I think our position is that, as a matter of law, it's self-evident that those agreements can be entered into with the local highway authority under the Highways Act, and therefore it's not necessary for the order to say to say as much, so we're not trying to say that there's no ability to enter into an agreement with the council, it's

just that we think it's already clear, so if it would help in our, in our post hearing submissions, we can refer to the recent cases where this provision has not appeared in the made order.

Speaker 1 1:28:31

Okay, I mean, doesn't the DCO effectively negate Section 278 So, how you mentioned the Highways Act. Well, that's not biting, is it? Wouldn't it be voluntary any agreement with the with the Highway Authority under the currently drafted

Speaker 2 1:28:51

demo of the applicant? That's absolutely right, sir. And that was no, I haven't. I won't go on to the every point that mr. Thomas has raised, but that's fundamentally our point here is that there is an ability, non-mandatory, to enter into an agreement with the Highway Authority, where a DTO is in play, and there might be circumstances where that is appropriate, but the difference here is that we're being referred to a precedent in the form of Fenwick, where the wording is mandatory, so if we look at article 12 three, I think it is of that order. Sorry, sir, just bear with me while I find it, I so it's article 12, sorry, article 16 three. Prior to commencement of any works under this order, the undertaker must enter into an agreement which is substantially in accordance with the Framework Framework Highways Work Agreement between. And the council and the undertaker, and so what we're saying, sir, is that we were not attracted to the idea of having to enter into an agreement, which we say is not strictly necessary on the basis, as I've said, that the order and the management plans that exist under the order are capable of controlling impacts, and mr. Thomas referred to protected provisions, for example, as one way of achieving an outcome, but of course the difference between protected provisions and an exterior agreement is that the protected provisions form part of the DCO, and so perhaps it's some, perhaps it's a point more of form over substance, but fundamentally our position is that if there are controls that the council would like to see included, we're open to listening to those things, and as mr. Thomas has said, we've been discussing these matters with the council, and we are considering the example agreement that's been sent to us, but ultimately our position is that if there are controls that we're willing to agree to and we think is sensible and reasonable, we'd like to find a home for those within the order and all the management plans that sit underneath it. So I'm hoping that that will provide some reassurance to mrs. Thomas that we're not just sort of dismissing the agreement out of hand. What we want to do is understand what the agreement says, and then find the right way of giving effect to it through the order.

Speaker 1 1:31:33

Okay, so okay, you mentioned earlier precedents the framework highway work agreement unusual, you suggest, but isn't that because you've got typically got article 18 equivalents in other DCOs?

Speaker 2 1:31:55

Tom, that number on behalf of the applicant, I think the difference, though, sir, is that generally speaking those articles that you're referring to always use the term may enter into agreements, and I think actually Fenwick is an example of that. So, Fenwick starts with the proposition that a street authority and the undertaker may enter into agreements non-mandatory, and so there might be specific scenarios where an agreement is relevant, where I should perhaps I should be more clear where I think that is somewhat an outlier in this regard is by saying the undertaker must enter into an agreement substantially in accordance with the framework highway works agreement, so that is clearly imposing a contractual agreement within the terms of the order, and it's, it's envisaging that you know subsequent high subsequent agreements will need to be reached in order to give effect to the works, and we just don't think that that sits comfortably with the DCO framework and the Planning Act 2008 framework. Then there's the question of what the agreement provides for, and we're willing to listen to the to what the council has to say on that. We're willing to work with it to understand what reasonable controls it

would like to see, and that that process is ongoing, but we don't think that that needs to sit in the highway framework agreement. We think it can sit within the order and all the management plans,

Speaker 1 1:33:23

all right. I mean, what would be helpful for me is not to have both parties' positions sort of up in the air. I need, I need them nailed down, so I need to know what the app can't's definitive position is on the permit scheme and the framework highways agreement. What? Okay, you've mentioned that you will look into the permit scheme, that's good in terms of the 278 requirements, equivalent requirements. I think you've suggested that there might be some room to address them in the DCO, but I need that nailed down, and from the City of Doncaster Council I would need ultimately in the next deadline, preferably if not the following deadline, any specific wording to address these concerns, whether it is reinstating article 18 or wording relating to framework high works agreement, I would need that provided if possible. So, is the applicant happy with that approach?

Speaker 2 1:34:39

Tom, I'm gonna ask the applicant. Yes, sir. And just to reassure you, I mean, in a similar way to the protected provisions, for example, we see this in the sort of same basket where we're negotiating these provisions, and we're looking to agree common ground, and we're working diligently to try and progress things and reach agreed positions, and I know that you will want those things. Worked out in good time, if possible, and I can't commit to having all of this bottomed out by next Tuesday, sir, for deadline three, but certainly I think, as far as the permit scheme is concerned, I can say that we will haven't have a clear position for you for deadline four, and I think we can, we can probably do the same on the framework highways agreement points as well.

Speaker 1 1:35:28

Yeah, I mean, deadline for really is really important that I have sort of definitive positions on on DCO wording from all parties, really, because I am going to provide a effectively a commentary on the DCO in table format on the 11th of August, which I'll then see comments on, so I really need the positions nailed down before I do that, I need time to consider them, so deadline four really would be useful for definitive positions on DCO wording article wording requirements. Okay, that's 21st of July, so that's, you know, a fair way off. I appreciate you might not, there might be some areas still under discussion, but things like these, this seems to be a quite contentious issue, and I don't really want it up in the air when I come to review the DCO. I appreciate there may be other matters that aren't quite ironed out. That's fine. Okay, is City of Doncaster happy with that approach? mr. Thomas,

Speaker 10 1:36:55

Emma Thomas, City of Doncaster Council. I think we'll obviously be reacting to what mr. Markamara and his team have to say about the scheme and the agreement, I think we've certainly been in a position to have a list of bullet points, certainly by deadline four, if not by deadline three, of the things we'd want included, but as I said, I think we're gonna have to see what the app, because we haven't received the applicant's comments on our template 278 document yet. So I think we'll be in a position if we could have an indication of when we might be receiving those comments, that might help us then in committing to when we can come back to you substantively. So,

Speaker 1 1:37:40

okay, I take your point, but it might be worth being a bit preemptive about it, and having a starting point in terms of word. Yes, I mean, you've got, we've got precedence, we've got really the applicant included article 18 in full, and we've got precedence on Fenwick, but I need, yeah, I just need to know the specific wording, really, by deadline four.

Speaker 10 1:38:12

I'm sure deadline four will be fine, sir.

Speaker 1 1:38:14

Okay. Thank you very much. Okay, I think we will have a break. Oh, interested party before we move on from talking about Article 18 and the streets. Mr. Brooke,

Speaker 9 1:38:33

just on this point, living in the area, this is completely different to Fenwick, our area, in that Fenwick just has two country roads on its boundary. We've got the bloody motorway, we've got the A 18. Okay, north of the A 18, the roads are quiet. South of the motorway, I mentioned it at the last meeting. We have the biggest death threat crossroads for many miles around, and there's going to be panels on all four corners, so how many people are you going to kill, and that road has a seven ton limit on it. Thank you.

Speaker 1 1:39:13

Okay. Thank you very much. Is there anything anyone else wants to say on part three streets before we move on to have a break. No, okay. So I've still got we're moving on to schedule two next, which is requirements, and I've got about four four questions on that. So if we have a break now for 15 minutes, that would take us to five to 12, and then hopefully we'll be done on requirements by about one, and we can break for lunch. I'm not moving along particularly speedily, despite my assertions at the beginning. Me, which is fine. It's not unbearable in here, like I said. Please do raise your hand if you're uncomfortable, or it's getting too hot. So, what we'll do is, we'll have a break now, returning at five to 12. Okay, 15 minute break. Okay, the hearing is now adjourned.

1:40:21

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