



Planning Inspectorate
Arolygiaeth Gynllunio

Hearing Transcript

Project:	Lime Down Solar Project
Hearing:	Issue Specific Hearing 4 (ISH4) - Part 1
Date:	3 July 2026

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FULL TRANSCRIPT (with timecode)

00:00:06:28 - 00:00:38:04

Good morning everyone. It is now 930. And time for issue specific hearing for to begin. Can I just confirm? Everyone can hear me. Not many of us here today. We're a depleted bunch. Um, can I also confirm with CVS that. Yes. I didn't even need to say the words. Thank you very much. The live streaming and recording of the event has commenced. Um, welcome to the final hearing of this week in relation to the Lime Down Solar project. This is to discuss the development of the draft development consent order. My name is Jeanine Laver.

00:00:38:08 - 00:01:08:22

I'm the lead examining inspector appointed by the Secretary of State to examine this application, and I shall be taking us through this hearing. My colleagues, David Love to my left and Ben North over to my right. We're also examining inspectors who have been appointed to the panel. Together, we constitute the examining authority or the WSA for this application. Um, as you're all very much familiar now, we do have members of the case team joining us, Deborah Allen, our case managers at the back of the room. And we have colleagues in Bristol also assisting.

00:01:09:08 - 00:01:44:09

Um, it is the case team that you should contact if you have any queries about how this, um, hearing is being run today or if you have any connection issues. Um, as you'll also be well aware, we've got two non panel inspectors also present in the venue, um, shadowing us and watching the proceedings from a breakout room. So in terms of housekeeping, as with the previous days, this week there are no planned fire drills, but there are fire doors to our or to my left, um, or outside of the doors to my right. Um, if we hear a fire alarm, we must exit the building and gather in the car park near the EV charging points.

00:01:45:02 - 00:02:01:17

Um, again, I'm not aware of any requests of any special measures or arrangements to enable participation in this meeting, but please speak to the case team as necessary. I'm assuming we have nobody here from the press today, because there's so few of us in the room, but nope. Um,

00:02:03:06 - 00:02:33:21

again, if we could all keep our devices and phone set to silent, I'd just check my own. Yes. Um, that would minimize disruptions again for any virtual attendees. If you could keep yourselves muted and your cameras off. Um, unless you're called to speak. If at any point in the meeting you wish to attract our attention because you wish to come in. Please raise your hands. I may not always see it immediately, but one of my colleagues may. So just please be patient while we find time to come to you.

00:02:34:27 - 00:02:53:10

The hearing is being recorded and will be made available on the National Infrastructure Planning Project webpage as soon as practicable after the hearing is finished. With this in mind, could you speak clearly and say your name each time you speak and who you're representing? Everyone in this room I know is very familiar with this procedure.

00:02:56:11 - 00:03:30:18

The hearing must finish no later than 1:30 p.m. due to examining authority restrictions today. I'm certain we will get to cover this agenda. I don't think I've been overly ambitious on this particular agenda as I have been on some others, so fingers crossed we will finish on time. Um, as with the other hearings, however, if we are unable to finish, we will defer some things to further written questions, actions, or September when we are very likely to be back for further hearings. So does anybody have any queries about any of that? Nope.

00:03:31:18 - 00:04:11:26

So I need to explain the purpose of the hearing. Um, those in the room will be very aware of why we are here. But for those who may listen back to the transcript, I think it's important to understand what the DCO hearing really encompasses. The draft DCO is an important document. Um, the hearing is held with on a without prejudice basis. So in essence, even if the position of parties is that the development consent should not be granted, um, and that the Secretary of State should not make the draft development consent order, you can make representations in this hearing on the drafting without conceding your wider position that the DCO should not be made.

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Now, it's important for the WSA because we are under a duty to provide Secretary of State with the best drafted DCO that we can. And this is because the WSA does not decide these applications. Rather, we make the recommendation to the Secretary of State and he or she makes the decision. So even if the Zay were to recommend to the Secretary of State that development consent should not be granted, we must still append a draft development consent order, ensuring that the Secretary of State can decide to make the order if he or she wishes.

00:04:43:18 - 00:04:59:07

So I'm assuming nobody has any queries about what I've just said and nothing from the applicant either. So on to introductions. Um, I will firstly come to the applicant. Um, Miss Broderick, please, if you could tell me who's with you today.

00:05:00:25 - 00:05:30:24

Good morning. My name is Claire Broderick. I'm a partner at Pinsent Masons LLP, solicitors for the applicant Lime Down Solar Park Limited. Um, I'm obviously a much smaller team. Um, with us here today. So, uh, just to be clear, obviously we've got people to talk to the drafting of the DCO, but we don't have our topic experts to talk to. The substance behind, um, any of the environmental impact assessment work that's been undertaken. Um, I'll just let those at the table who may be speaking introduce themselves. Thank you.

00:05:32:25 - 00:05:40:12

Good morning everyone. Will Threlfall for the applicant. Um, senior project development manager at Island Green Power and project manager for Lime Down Solar Park.

00:05:44:06 - 00:05:49:12

Good morning everyone. Jacob Burton for the applicant, managing senior associate, Pinsent Masons LLP.

00:05:50:24 - 00:05:53:11

And that's the applicant team that is speaking today.

00:05:53:13 - 00:05:55:29

Can I just check? You said your surname was Pearson.

00:05:57:03 - 00:05:57:25

Burton.

00:05:57:27 - 00:05:59:18

Burton. Sorry.

00:06:04:24 - 00:06:36:21

Okay. Coming on to Wiltshire Council then, miss Shelby, please. I'm Odette Shelby. I'm embarrassed to representing Wiltshire Council. Um, to my right is Karen Jones, who's a strategic planning projects lead at the council, and she'll be participating today. We've also got on the table David Lee, who met earlier, who's a service specialist in the highways development management department at the council, and Kate Tate, who's an agricultural officer at the council, who will be participating as necessary on those specific areas and online.

00:06:36:23 - 00:07:09:13

There's two participants who, um, will join depending if, if, if that's helpful. Um, we've got Joanna Weber, who's a solicitor at David Jones, who's been coordinating some of the council's responses on the draft DCO wording and working with the applicant on that. And we've got Kevin Schrader, who also participated online earlier in the week, who's the traffic and network manager at Wiltshire Council. Lovely. Thank you. And, um, sorry just to say I've invited both of them if they want to participate, to put their hands up on teams directly.

00:07:09:15 - 00:07:11:25

If if that's okay. Sure.

00:07:11:27 - 00:07:16:14

I'll make sure my colleagues are also looking because my my eyes tend to be in the room.

00:07:16:16 - 00:07:17:24

So. Yeah. Thank you.

00:07:18:09 - 00:07:23:03

Um, so stop lying down, Mr. Gazelka, please.

00:07:23:21 - 00:07:34:08

Um, thank you, Madam Daniel Gazelka, for. Stop lying down. Um, I'm I'm a barrister, and I'm attending with Celia Reynolds today, and it'll be me who's doing most of the speaking.

00:07:34:10 - 00:07:44:26

Okay. Thank you. Now, I believe the Environment Agency and National Gas Transmission withdrew from attendance, but just want to check online.

00:07:48:12 - 00:07:54:24

Yeah. I thought that was the case. Are there any other persons who had registered to speak who I'd not called out?

00:07:57:15 - 00:07:58:00

Nope.

00:07:58:02 - 00:08:29:28

Okay. So we can move straight then into item two of the agenda, which is the substantive part of the hearing. And hopefully you've all got a copy of the agenda in front of you. Um, it is my intention to discuss draft DCO articles two, nine, ten and 15, 11, 14, 16 and 41 and then hopefully we'll have time to discuss the requirements, um, in schedule two of that and then of the draft DCO, and then coming on to just an update on protective provisions.

00:08:30:00 - 00:09:02:24

So going straight then into article two, um, and this relates to the definition of maintain. So in the first written questions which was PD 010 We asked XQ one dco 1.3 whether the definition of maintain was too broad, and whether it should include wording to explicitly prevent removal, reconstruction and replacement of the whole development under the premise of maintenance activities.

00:09:03:08 - 00:09:22:15

Now the applicant's response at deadline three, which is rep 3128, rejected the suggested insertion of such restrictive terms because it said the Lime Down Environmental Statement specifically assesses replacement of all solar panels and batteries during the lifetime of the project. However, I.

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Note.

00:09:23:14 - 00:10:03:02

That while the applicant has assessed and reported on replacement of solar panels and batteries in the environmental statement, the non-technical summary specifically states components such as solar PV, mounting structures, cabling, and the substation and best area buildings are not anticipated to be replaced during the operation and maintenance phase and that no intrusive groundworks are anticipated to replace solar PV panels or Bess. I also note the climate change. Chapter seven, which is AIP 059, also confirms there is no anticipated replacement of mountain structures, interconnecting cable grid, connecting cable or onsite substation buildings.

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While only a 20% onsite cable replacement allowance has been made. Therefore, as no assessment has been undertaken of the likely environmental effects for replacement of those elements with the applicant, now agree that the definition of maintain needs to be tightened up to prevent reconstruction and replacement of the whole of the authorized development.

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Claire. The applicant would be helpful to have the relevant provisions on the screen as we discussed, and we have got somebody available if that would be useful. Um.

00:10:35:08 - 00:11:16:18

The applicant's, um, position here is obviously you have the definition and then you have the operative provision by which that definition is used. Um, so we don't read article two. In isolation, we read it um, in conjunction with, um, where it is used, which is article five. Um, and article five makes it quite clear that it um, the activities that can be undertaken under the term maintenance, um, don't authorise the carrying out of any activities that would give rise to any materially new or materially different effects that have not been assessed in the environmental statement.

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So the applicant's position is that the, um, there isn't a need to, um, make any changes to the definition of maintain because maintain needs to include replacement because we are actively seeking replacement. Um, however, what elements of the scheme can be replaced? Um, is constrained by what has been assessed in the environmental statement. I think the applicant's concern with reference to the whole, um,

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was that that could be misinterpreted, as we are talking about the whole of the panels and the whole of the bears, and we wanted it to be very clear that there was the ability to replace those elements. We don't feel it's necessary to list in the definition, those elements that cannot be, uh, or have not been fully assessed as being replaced because the operative provision in article five already already does that. So we don't think it is too broad because its, uh, definition is limited by article five.

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Can I just ask about then article five? Um, who's the overseer really, of article five? How does it work in practice? Does everyone just take on trust that any activities that you do during operation to replace things doesn't actually do anything that wasn't assessed.

00:12:42:22 - 00:13:20:19

By the applicant. So during the, um. Uh, operational phase, then, uh, the operational environmental management plan is in place, and that specifies the types of activities that are routine maintenance activities. And then it specifies the additional controls that will need to be put in place should a replacement activity be put forward. Um, and that would require, as we discussed uh, yesterday, believe, um, the measures that were put in, the relevant measures that were put in place during construction would need to be brought back in again during those larger replacement activities.

00:13:20:21 - 00:13:50:01

So compliance with that management plan is the control mechanism. Um, in terms of enforcement then obviously that is um, any breaches of that plan, then enforcement falls to the, uh, local planning authority, as is the usual way with breach of any of the provisions in the DCO, but the applicant's position is the activities it can do are controlled through that management plan. So there is an element of control during operation.

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So is there an. Is there sufficient coverage in that operation environment management plan I'm sorry. My words are just not coming out today. Haven't had a particularly good evening. So I'm really sorry I've been a little bit ill overnight. Um, so I'm so sorry if I'm stumbling over my words this morning. Um, but I wonder if, um, in the operational environmental management plan whether there's sufficient coverage for the items, which I just read out that will not be replaced.

00:14:27:06 - 00:14:56:09

So I'll just refresh. Um, the applicant doesn't anticipate replacement of mountain structures. Interconnecting cable grid. Connecting cable. onsite substation buildings, and only a 20% onsite cable replacement allowance has been made. So if I take those things, we haven't done a full environmental assessment of a full replacement of those. And I just wonder, without the operation environmental management plan in front of me, whether there's sufficient detail in there to ensure that the whole is not replaced.

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And if it's okay, you can come back to me in writing.

00:15:12:14 - 00:15:12:29

Uh, Clare.

00:15:13:07 - 00:15:52:14

Atkins. So there is a section in the outline Operational Environmental Management Plan, which is section 2.1. Sorry, 2.12. Um, that relates to, um, the replacement of um, those replacement activities which we talked about, which was replacement of, um, all of the panels and replacement of all of the beds it does in in that section, make reference to what was the assessment carried out in the in the ES? Um, it doesn't at the moment specifically list the other elements.

00:15:52:16 - 00:16:28:05

Obviously if a particular mounting structure were to get damaged for whatever reason, then the applicant would be seeking to replace individual components if they were, if they were damaged. But I take your point in terms of the yes as not assessed, obviously, the complete replacement of the

mounting structures as part of those solar panel activities, if it would be of assistance to, um, the Wiltshire Council, I suppose it's in terms of keeping track of the ongoing commitments we can have.

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Um, I think about whether there is, um, Merit in putting it in some text to clarify the point in the outline operation, Environmental Management Plan, or in the um. We're doing a greater mitigation roadmap type document to keep track of all of the, um, of the parameters and, and the obligations. Um, so in terms of being a signposting document to remind, I suppose, somebody who in 30 years time is being asked to approve the replacement activities for the solar panels, for example, as a reminder that that was what was in the.

00:17:04:13 - 00:17:11:25

Yes, originally. Then we can we could add a excuse me, add a note in there so that it's not forgotten if that if that makes sense.

00:17:12:03 - 00:17:42:26

Yeah. I think something will need to happen to that operation environmental management plan just to to give some more comfort. Um, is there a reporting mechanism within that to the, to the local authority, whether it would be Wiltshire or some other local authority in many years to come. About when you undertake those replacement activities as to the extent of the activities that are taking place. And though we will come on to controlled documents at another hearing.

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But. While you've got it in front of you.

00:17:47:03 - 00:18:19:02

Clare project for the applicant. So there is a section in the outline operational management plan in terms of uh monitoring. Um, and it, it states that monitoring and reporting will be undertaken for the duration of the operation and maintenance phases to demonstrate, um, compliance and says there will be sort of a dedicated environmental manager who will, um, log the things in a logbook. Those records would be, um, retained, um, as, as evidence of compliance.

00:18:19:04 - 00:18:40:06

So when when you say logged in a logbook, that is when you replace any component or when you go through your replacing of panels, whether they're damaged or whether it's the wholesale because they've come up to the end of their life. Is that the intention of that log, and does that log get shared or does the applicant have. Or does the council then have to request to have sight of that.

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Project the applicant. So at the moment,

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the list of sort of items that will be included in those records is more geared towards sort of site inspections, environmental surveys and those sorts of, um, sort of more of the environmental elements of it. But the applicant could add in a criteria in terms of

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replacement of parts. Obviously there's a um there's the routine maintenance as we discussed, but the actual if we if the applicant was going to replace all of the, um, uh, all of the solar panels, then that would be a different exercise than there would be. Uh, it would be recorded differently in the same way it has been done during construction. So that's effectively what the applicant is committing to do, so that the measures, the relevant measures that were in place during construction so that we're in the um, at the final approved camp, would then be carried forward during those replacement activities.

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So it would be a distinct phase governed by additional obligations compared to sort of routine maintenance activities.

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Okay. I'll come over to the council first, Miss Shelby, to see if you have a position on this.

00:20:24:24 - 00:21:38:22

Advert shall be Wiltshire Council, and the council continues to be concerned by the broadness of the definition of maintain in the way that the examining authority has identified and appreciate what article five says. But that still leaves a very broad definition of maintain that could permit whole scheme replacement and repowering by stages. That's not subject to any controls at all. Um, and so we, we are happy to suggest some wording, but essentially, um, what we would be suggesting is that after the word um, replace where it says including scheduled replacement in article two, um, so it, it says including scheduled replacement of components of the authorised development, where such replacement remains within the parameters assessed in the ES and secured by the documents certified under article 42 and the requirements and then and improve any part of the authorized development, but does not include the removal, reconstruction or replacement of the whole of the authorized development other than such scheduled replacement, where it remains within those assessed and secured parameters.

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So the issue is partly what's been assessed in the US, but also, um, what's been secured by the documents certified under article 42 and that the current definition goes beyond that. So that's what we would be proposing that altered definition.

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And have you put that ultra definition to us before this oral submission?

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No we haven't.

00:22:00:14 - 00:22:01:11

I thought I hadn't seen.

00:22:01:13 - 00:22:14:06

We we've done it in preparation for this hearing, having reviewed what the applicant said at deadline three in response to SSC one. Um, but we can put it in the next round of submissions as opposed to hearing submission or.

00:22:14:11 - 00:22:33:06

Yes, that would be good if I just leave you with the action to submit that with your justification for that. Yeah. Um, and it may just help me. Um, not. Then just have to issue you a question of second written questions about it. Um, but thank you. Is there anything else that you wanted to add? Um.

00:22:35:13 - 00:22:36:22

Stop lying down, please.

00:22:38:17 - 00:22:55:23

My apologies, madam. Karen Jones, Wiltshire Council. Um, what Miss Broderick had said about having the having it secured within a management plan and that enhanced definition of exactly what activities were covered under operation and maintenance. We would welcome that inclusion as well, please.

00:22:56:01 - 00:22:59:19

Great. Thank you, Mr. Gazelka. Please.

00:23:01:05 - 00:23:36:01

Thank you, Madam Daniel Gazelka, for stop lying down. Um, our position on this. I mean, it wasn't a point we'd raised in our written rep because we accept the principle of what article 53 is trying to achieve, and it is a standard wording in most of these dsos. Um, and so really we saw it possibly as a matter more of a control document than necessarily the definition of maintenance. Although we agree with the Council, that is a way of achieving resolving the concern that's been raised. Um, so maybe I can sit on a fence somewhere and say we'd welcome seeing what wording the applicant is going to suggest in the control documents.

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We'd also like to think about the wording that Shelby has just suggested. And then between those two things, we think there is a way through here. Okay, great.

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Thank you, Mr. Roderick. I don't think there's much to come back on there.

00:23:49:12 - 00:24:21:17

Er, obviously we can comment on the drafting when it's submitted. From listening to it, it sounded like a duplication of the provisions that are already in there. Obviously we already have to comply with the management plans. Article five already limits it to what's in the ES. So from a statutory drafting principle, we don't consider that that additional wording is needed because it's already in the document and you don't need to duplicate in the in the definitions what's already controlled via an operative provision, but happy to have the actual.

00:24:21:19 - 00:24:35:18

Obviously it's quite difficult just to hear it out loud. So happy to have that. And it does sound as if potentially the actions we've taken to have a look at the outline management plans may address the concerns that have been raised in any event.

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Sure. That's great. Thank you. Okay. So let's move on then to article nine um which is application of highway permit scheme. Can the council please explain, um, to me the permit scheme referred to in article nine, what it does and how it normally operates and can it then can explain why it is so concerned about the powers contained within article nine.

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Um, Wiltshire Council, could I perhaps invite Mr. Cheerleader to to respond, at least on the first part of that?

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Sure. Do you need article nine displaying?

00:25:13:22 - 00:25:17:07

Um. It would be helpful, I guess. Yes.

00:25:18:07 - 00:25:22:19

We just will see Mr. Escalada in a little window on the side, but, um.

00:25:27:20 - 00:25:30:07

Okay. Mr. Escalada, it's over to you.

00:25:30:11 - 00:25:53:06

Yes, sir. Kevin Schraeder from Wiltshire Council. Um, yes. Uh, basically, uh, we also have been running a highway permit scheme for, um, uh, since 2020. Um, we run a very successful, uh, scheme. Um, sorry. Can you repeat what the question, uh, concerns, please?

00:25:53:08 - 00:26:04:23

Yeah, sure. I was I was interested to know what it does, what your permit scheme does, how it normally operates. Um, and why you're so concerned about the powers in article nine.

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Okay. Yes. So. So permit scheme, uh, basically is our main tool for knowing what works are planned on our network so that we can fulfill our network management duty to coordinate all the works and activities on the highway to make sure our network flows. And there's minimal disruption of this called expeditious movement of traffic on the highway. And so, uh, yeah, permits are, uh, key to that. They're asking for permission and we can apply conditions to those.

00:26:38:01 - 00:27:05:29

We always have to be pragmatic with our, um, conditions that we apply, and we have to be able to justify them. We're not unreasonable. Um, but it is our main tool. So a dilution of our powers, uh,

would be a huge concern. And we, uh, wouldn't be able to coordinate the all the other activities on the highway, uh, that might interact with these works.

00:27:07:09 - 00:27:31:19

Is that, in essence, because every time somebody wants to do something on your highway network. They clearly apply for this permit. You can then decide when they can undertake that work so that you're not. You don't have two sort of utility companies pulling up. You know, one road and the diversion route should be on another. And then you've got another utility company on on that other roads looking to break ground. Is that, in essence what it is.

00:27:31:24 - 00:28:15:08

That's in in essence, yes. And it's very um. Uh. Oh, yeah. I'm so sorry. I'm struggling for words here. It's well, I wasn't, uh. Um. Yes. Um, yeah. Basically the applicant, uh, asks for they actually set out when they want to actually do it, and we either agree or ask for a postponement. We have, uh, powers to ask for or give direction under section 56 to, uh, to, to of new industry and to act, to actually give them direction and we can negotiate on an alternative route for that apparatus as well.

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So and, and we can ask for things. There's loads of conditions we can ask for including um, sort of uh, look at methodology for works to being less impacted on the network and, um, might reduce future maintenance needs as well.

00:28:35:08 - 00:29:07:20

Okay. Thank you. So in answer to our first written question, um, which was DCO 1.13, the council put forward a revision to article nine and that's in rep 3142. Um, I think what it seeks is to prevent the applicant being able to rely upon appeal rights contained in schedule 16 of the draft DCO. And I'm sure I can be corrected if I've misinterpreted that.

00:29:07:22 - 00:29:32:07

But if the WSA were to accept your revised drafting and put that forward to the Secretary of State, could the Council explain what appeal Wright would then be open to the applicant? If the council refuses to grant a permit for the works which are being sought by the applicant under article nine, or if you grant a permit with conditions which the applicant does not agree with.

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Um, Odette Shelby, Wiltshire Council. Um, so my understanding of what the council is proposing is that, um,

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it should be dealt with through the dispute mechanism in the council's protective provisions.

00:29:52:12 - 00:29:58:08

Um, but Mr. Slade or Miss Baber, if that's wrong, please, please correct me.

00:30:01:28 - 00:30:12:29

Um, yeah. Kevin. Cheerleader from Wiltshire Council. Um. Uh, basically. Uh, sorry. Can you repeat the question again?

00:30:13:01 - 00:30:13:26

Yeah, sure.

00:30:13:28 - 00:30:14:16

Um.

00:30:14:26 - 00:30:49:05

I think the way it works at the moment under article nine, as it's currently drafted, it it's in essence gives the applicant almost a deemed consent route so they can apply to you. You can't impose unreasonable conditions that would prevent them being able to carry it out. And you can't issue a moratoria to prevent their works. But the way that your revised drafting in article nine, in response to our first written question, it seems to remove the applicant's appeal rights that they would have from the DCO.

00:30:49:07 - 00:31:13:12

And I just wonder what that's replaced with. Now, Miss Shelby is suggesting you've you're in discussions with around protective provisions with the applicant, and I am aware of that, but we've not seen any of the detail. Um, and you seemingly there's a dispute mechanism being built into those protective provisions. So it might be helpful if you could just explain what those dispute provisions are.

00:31:15:06 - 00:32:09:03

Um, well, the dispute. I'm sorry. Kevin. Cheerleader from Wiltshire Council. Um, yes. Uh, disputes. Uh, uh, on a daily, uh, job of permitting is sort of dealing with disputes. Um, and it's just a routine way of going forward. So we've just thought that the schedule 16 was just just, uh, a two of the top. Um, you see what I mean? I don't know, that's not legally speaking. Uh, and it was two draconian, um, in effect, um, um, yes, we understand that, uh, uh, we don't want sort of be able to be obstructive and put in, um, use our section 58 powers to prevent work, um, to, to protect our asset, but we're always pragmatic and reasonable in that.

00:32:09:05 - 00:32:25:21

And there's mechanisms within the permit scheme for dealing with that. Um, I'm it's just just so much of a routine matter and it just seems too much of an escalation to then go to the schedule 16 um, dispute.

00:32:26:12 - 00:32:57:28

Um, Wiltshire Council. So in terms of your question about what the what the dispute mechanism is in the protective provisions, I mean, for a number of these questions, Wiltshire Council's answer is going to be we think this can be resolved by the protective provisions that are coming along, um, well, and being negotiated with the applicant. So, um, it may be that some of this discussion needs to be ultimately pushed back to writing or another day, because there is a lot of progress that's been made on those protective provisions.

00:32:58:00 - 00:33:19:03

And we've said them to the applicant. The applicant sent us back to us. And I think both sides are content that that progress is being made. And currently within the protective provisions, there's a clause about expert determination and that sets out a procedure, um, or for when there is, um, a dispute and it's

00:33:21:01 - 00:33:40:27

referred to and settled by a single independent and suitable person with appropriate qualifications. Um, and this time scale, if you've got to instruct an expert within 14 days of notification of the dispute and then timescales for how that process is dealt with. So it would be expert determination essentially.

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Is that is that different though to the arbitration surgeons?

00:33:45:22 - 00:33:46:12

Yes.

00:33:46:22 - 00:33:48:05

In what respect?

00:33:48:07 - 00:33:48:28

Um.

00:33:51:07 - 00:34:03:15

So I need to get up the arbitration provisions of the dispute resolution. Um, but it it it intentionally applies the arbitration Provisions. Um. Just get up.

00:34:07:28 - 00:34:10:24

I don't know. Miss. Miss blade is there.

00:34:13:24 - 00:34:57:11

That was it for the applicant. Would it be helpful if I answered the question? Certainly. If that would be of assistance. So, um, there are different measures, obviously, of, um, resolution of any refusals of consent. So one of there's, um, arbitration is, is is one mechanism and there is the schedule that sets out, um, a procedure for appointing an arbitrator with a number of the statutory undertakers. Um, some of them would like arbitration. Um, some of them, when it comes to a technical matter, um, consider that a suitably qualified expert is a more appropriate person to determine that matter, particularly if it relates to the technical detail of a construction issue, for example.

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And so they have bespoke provisions that defer that, um, that issue to an expert rather than a general arbitrator. And then obviously, schedule 16 is a is a different appeal mechanism whereby if, um, the applicant, um, where the consent has been refused can appeal to their to the Secretary of state effectively. So similar to if there's a, uh, a refusal to approve the discharge of a requirement, then it would go off to, um, the Secretary of state to be the determining a body.

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So there's different mechanisms for determining disputes. I think the applicant's, um, position is that they're just there needs to be a measure, um, which wasn't contained in the, um, I believe, the previous drafting. However, I think all I just reiterate is we're not seeking to change the permitting regime. It's what we're seeking to do is not allow what the measures which, um, uh, Mr. Schneider mentioned exist, which could in fact just stop works taking place at all.

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And that's the applicant considers, um, that that is, uh, appropriate and necessary because if the Secretary of State is minded to grant consent, this would be a critically critical national priority infrastructure project. And it wouldn't with a fixed grid connection date. And it wouldn't be appropriate for the council to be able to say, I'm sorry, there's been too many roadworks in that road. You can't bring your cable through this year. Um, that's the scenario that we're trying to avoid.

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We're not trying to avoid any approvals of the actual details of the works, um, or providing any of the drawings that need to be provided. It's really a very limited amendment to ensure, one, that the council aren't able to say no, no works at all when we've got clearly road crossings that need to be taken by the cable route. And secondly, they can't impose a condition that would mean that the applicant is in a breach of another measure in the DCO, because obviously that is automatically a criminal offence and the applicant can't find itself in a position where the permitting team wanted to do an activity that would result in a breach of these two very limited amendments.

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Otherwise, the applicant is complying with the existing permitting regime.

00:37:18:27 - 00:37:52:08

Now, I fully understand what the applicant is seeking to achieve, but I can also understand from the council's perspective that they've got highway safety, traffic management, network management, um, matters, which they also need to achieve for their network, their residents. Um, and at the moment, we're not in critical national priority infrastructure because that's a test of the NPS. So I'd like to just leave that phrase out until until we need to use that phrase. But it I fully understand where you want to go.

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You get your DCO. Um, it therefore becomes a national infrastructure project to be delivered with some urgency. And as you say, you do have a grid connection date. But I also fully accept the council wanting to have control over their network because they've got lots of other things to handle, not just pushing this project through. So I fully appreciate article nine. Um, and I appreciate this, the DCO being a one stop shop, but I have some element of sympathy for what the council is also trying to seek control of.

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Come back to me, Shelby, please.

00:38:25:14 - 00:39:14:02

Shelby, Wiltshire council. So thank you for that. I mean, the concern is the council's ability to impose sort of legitimate permit conditions affecting timing, phasing, traffic management and coordination. And there is a real risk to that. And the concern about schedule 16 is that the appeals process is going straight to the secretary of state is far too formal for day to day traffic network management and the expert determination route through um, the protective provisions would be much faster and more effective. Given the technical nature of this, but what the Council proposes to do is take away this discussion and propose some additional wording so that that is written into a new draft of article nine, and to refer expressly to the expert determination in the protective provisions schedule and put that to the applicant.

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Okay.

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Well, I think because you're still in obviously very day to day discussions about this, I think we'll just park it, um, because it seems progress can be made and that an agreement can be found. But I, I can see both sides of, of the position here. But it is great that it looks like it's coming closer together. So, Mr. Gazelka, I'm assuming because this is a council matter, you don't have any comments.

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Because I can stop lying down. No, no. Okay.

00:39:39:26 - 00:40:16:22

Great. So we'll come on then to articles ten and article 15 because they, they sort of get read together, which is power to alter streets in agreement with street authorities. And Michel Abbe may very well again say we are looking at protective provisions in article 15 and therefore the discussion is sort of moot. But, um, it's on the agenda. So let's let's hear it. Um, so the council has expressed concern again about the broad power in article ten to alter any street under its control, both inside or outside the order limits, as well as the lack of obligation on the undertaker to seek the council's consent to do so.

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Now, the examining authority made inquiries about this broad power in its first written question, DCO 1.14, which was in rep 3128, and the applicant advised in its response that the general power covers unforeseen street works, which may only become evident at a detailed design stage, provided that the consent of the street authority, in most cases the council is obtained. Now I can appreciate the need for such a power, particularly as a good length of the sort of construction route is outside of the the order limits.

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Um, what I don't see is there's an absolute obligation on the applicant to obtain the street authority's consent under article 15. I mean, what I see as the word may, um, in the, in the drafting. So articles ten and article 15 both states the powers conferred by article 10th May not be exercised without the consent of the street authority. But the word may doesn't seem to me to be an absolute obligate obligation. And I wonder if the word must would provide a clear and definitive requirement.

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So my question first is to Wiltshire Council, um, is whether if we just changed the word may to must, then that would make them more comfortable with the powered.

00:41:31:05 - 00:42:02:02

Um Odette shall be Wiltshire Council. It would help, but it wouldn't be the answer to the question because um, whilst, uh, even if the applicant is required to consult the street authority and with the six week limit for determination or approval under article 47 is a real concern, as the council will have no idea as to the scale or complexity of any highway works outside the DCO order limits, which the applicant may seek to propose in the future.

00:42:02:04 - 00:42:25:29

So the council really doesn't see why the applicant shouldn't follow the standard Wiltshire Council Section 278 agreement process and outside the order limit. And in terms of the protective provisions at the moment, those don't cover works outside the the DCO and and works plans. So that wouldn't actually resolve the concern in respect of this article.

00:42:31:26 - 00:43:02:23

Um, David Edwards council. Um, yes. Mr. Chalabi kind of said the main things. First of all, we don't know what we'd like to think that the applicant would have a pretty good idea of what they want to do, and most of the works would be within the order limits. But should something come outside? We don't know what the complexity of those works would be. Um, scale. Um, and also, and also there's a concern there over the six week theme consent for those works. Um, the protective provisions which have been mentioned.

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Um, good. There is very good progress on that. But what I would say is within those protective provisions, they refer precisely to roadworks and cable works, which are effectively those works types. Areas eight and eight be within the order. So they don't relate to anything wider out outside of the order limits or those or those definitions, as I understand it. Um, I think the other concern is obviously, um, obviously we've had the discussion about article nine in terms of obviously, if if the applicants power to do what they like under article ten.

00:43:44:09 - 00:44:21:25

Then also it sort of I don't understand. I'm not sure whether it's the case, but the permit scheme then seems to be effectively undermined, or there's a change to how that operates over a much of the moment. We're saying, well, it's works permit works within the within the order limits. That then throws a much wider net that says, well, actually we've got some works we want to do four miles away and your permit scheme won't apply. So it seems to me that the, um, that's that's potentially the concerns we have with the permit scheme get undermined over a wider, potentially wider geographic area.

00:44:22:17 - 00:44:53:21

Okay. I'll come to the applicant on that in a minute. But I similarly, when I read article 47, um, it seems a bit of a blunt tool six weeks and then it's deemed consent. Um, and particularly coming from a local authority background, just resourcing is always a nightmare. And if you receive something and you know you're on a on a time cap and you don't have staff in place or it's more complex than you.

You need to to obtain that. Um, it can be very difficult for a local authority, so I am a little concerned over that timeline.

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Um, but I'm yet to know what you said your preference would be for them to follow the sort of two, seven, eight process or the timeframes on that. And what are the timeframes for if they came in under a two, seven, eight process?

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Um, so we do I mean, we use the full legal agreement. We do have a small for very minor works. We can sometimes use what we call a two, seven, eight permit, which is for something very simple. Um, so that means it's not like a sealed two, seven, eight agreement. It tends to be. Um, so we we use it for works, maybe very minor, not on major roads because it's a and usually where you can cover off where the developers are happy to cover off the, um, any bond requirement on a on a cash bond basis as opposed to so as opposed to using a surety, um, where it becomes agreement.

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So we do we do have simpler ways. We do use simpler ways of, of of um for minor works.

00:46:00:02 - 00:46:33:15

But if you received a sanction 278 application, I don't know how the 278 process works for when you get approached by somebody looking to, to do something in your in your streets to alter your streets. Um, but is there a, a bit like a planning application? Is there a is there a statutory timeline? Because the ultimately the applicant needs some certainty given, you know, the speed they need to develop this at, um, that they're not going to come to you and something's just going to sit and sit and sit. So hence article 47 um, being a backstop.

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So if what's the alternative to article 47.

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Um, I mean, so when you, when you talk about six weeks. Oh, sorry. That's what we see. Obviously, as part of the process we go through, there's approval of drawings which go into that process. Um, and obviously there's the drafting of the actual document, the, um, the section 38, second section 2008 agreement itself. Um,

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I think the quickest I've ever seen it done. And it was a very if the agreements are very simple, we do have standard templates. Mhm. Um, the quickest I've ever seen it done is maybe two months for, uh, for something fairly simple because obviously it depends on, on, on the legal resource as well if it goes to the legal team. Um, and obviously title documentation if there's any, any, any problems with, with that. So um.

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Um, Odette Shelby, Wiltshire Council, we do understand the concern you're raising about there being no sort of backstop, and it might be something we need to take away and think about, but, um, the

current wording essentially really, really doesn't work. So to my understanding, I'm sure Miss Broderick will correct me if I'm if I'm wrong is that there isn't a time scale inherent in the section 278 process that has that kind of backstop, but I think we don't have the answer for you, okay on that right now. So it's going to have to be something we take away.

00:48:01:09 - 00:48:40:09

We talked I'll come to the applicant in a moment. But we talked yesterday about, um, section 106 agreements when we were in Mr. Love psychology. Um, part of the hearing. And I'm just I suppose what I'm trying to understand is, is it a resourcing issue? Because if it's a resourcing issue, then obviously section A, section 106 agreements with the applicant to seek some financial, um, ability to be able to appoint people knowing these applications may come in. Um, so I'm trying to understand if that's the issue, or if it is just the fact that it's the deemed consent, um, that's the issue.

00:48:44:26 - 00:49:16:07

Um, as I read the deem consent, basically, as long as we respond within six weeks so that some drawings could be sent in and we could say, no, that's not good enough. We would satisfy the six week rule, and then it would re re the way I read article 47 is that basically, as long as we respond within the time frame, then if something's unacceptable and then effectively the time clock starts again. That's not to say we would deliberately use that as a delaying tactic. We wouldn't do that. But um, that's my reading of it.

00:49:16:09 - 00:49:47:08

If it's a case, we have to there has to be a technical approval within six weeks. And that is an issue. Um, and it would come down to whether, if you were even if you, if you were to do the same use of article 15, say, we've never liked the idea for works. I mean, we bear in mind that when the process started, we didn't have any discussion on protective provisions. So we were left with a situation where we had article 15 which said they may enter into an agreement. And we said, well, what do you mean may enter into an agreement? We need something.

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So if we are to use a in a situation, um, an agreement, um, under article 15, I mean, even even without there has to be some sort of template for that which we don't know what that looks like. Um, because I say protected provisions wouldn't apply to works outside the order limit, so we would need something else. So that template, I guess, would evolve and be agreed over time, but you would still have to.

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So assume that the works come forward and there are 50 drawings to look through. I'm not saying it would be that complicated. Um, we still need to. We still need to do the technical approval process, whether it's done under two, seven, eight or, um, an article 15 agreement process. So, so so yeah, there is a there is a resource issue on that. But what I would like to think that most of the works the applicant may be proposing would be fairly minor in nature. They're not going to be rebuilding bridges and um, or deciding to, um, triple the size of a junction.

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So I'm not. So I'm a little surprised that given the time the applicants had to maybe put all this together, that they wouldn't if there were substantive highway works outside of the order limits, they would have identified them by now. Anyway, that's my view.

00:51:08:12 - 00:51:46:27

Yeah. Um, shall be council. So on instructions. I understand that deem consent is the real concern about this. Um, so there may be another way around it, through the protective provisions, which currently, as I said, aren't drafted to include land outside the order limits. But it's possible that that could be, widened to include abnormal damage to the route outside the DCO. Um, and it is at essentially the, the, the deemed consent and the resource and time and concern about the level of detail that will require on the council if the current drafting of article 47.

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The issue, of course, that highways matters relate to a safety issue. It's not a planning determination about the colours of something, it's a real safety issue. Um, so it does merit, um, a more robust approvals mechanism. But we're happy to take this away and try to make some progress with the applicant. Um, after after the hearing. Yeah. Having heard your concerns.

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Thanks. And I do note for the, you know, for the applicant's defence in section 47, it does say six weeks or such longer as may be agreed. So there is there is seemingly a mechanism there to agree a longer period. But it is if the applicant chooses not to agree that longer period, you're left with the blunt tool of just refuse.

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Oh.

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Or it's granted.

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So Odette shall be watched. I mean, obviously, the the concern might. I mean. Exactly. It's in the applicant's hands then whether to agree a longer period or not. Um, yeah. And that creates difficulty.

00:52:44:05 - 00:53:10:00

Coming to the applicant, obviously to, to rebut or just explain a little bit more around their position on this. Um, we don't because you haven't done your design detail and obviously some of your construction routes are I mean, whilst they were mapped out and we talked about them yesterday, I mean, do you envisage at this point that there may be significant works outside of the order limits, um, on the highway?

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Uh, Claire project for the applicant. I mean, obviously yesterday we did talk about the council's requests for further works to the highway outside of the order limits. So in that context, it's quite possible that there could be. Um, I think it's worth. There seems to be a misunderstanding as to how this provision works, and I will try my best to explain it and I apologize. I might end up saying this in

relation to all of the articles, but the purpose of these provisions is to ensure no other statutory consent is required.

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So there is no need for consent under section 278 because the statutory requirement is included within the draft DCO. The DCO needs to be read as a whole, and that power is necessarily limited by the requirements, and the requirements require an outline construction traffic management plan to be submitted, and section 2.3 has a section on detailed design. And it says prior to carrying out any work to the public highway.

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So it's not just limited to works within the order limit, but prior to carrying out any works to the public highway. The detailed design of such works must be submitted to the Highway Authority for technical approval and include all of the things that the council have said that they would like to see and that you would typically see if you were following a section 278 process and the council has control over the approval of the final TMP, which will need to include details of all of the highways works both within and without, outside of, um, the order limits.

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So in terms of design, you have a control mechanism under the construction traffic management plan. In addition.

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Our view is that the protective provisions also apply to the road network. Generally, because the definition of work road works is any work to the highway that is authorized by the order. So it's authorized by the order via article ten or article 15. And therefore the protective provisions do apply. So it's a wide statutory power to avoid the need for another statutory consent, but is controlled by the construction traffic Management plan and the provisions and the protective provisions.

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So the scenarios, the concerns that have just been raised as to what could potentially happen. Our view is that that's not actually the consequence of that power, because it is we have to comply with those other elements to which give the council all of the sign offs that it requires, and it may well as what would happen in practice is that if you if we've got consent under the protective provisions for the works and we've got the construction traffic management plan approved, then that is the consent for the purposes of article ten.

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So I just think that the I appreciate that, that this is a different way of doing it than the day to day norm for the council, but it all of the elements are still there that the council requires. They're just put in different places. So perhaps the couch doesn't need to take it away and and consider it in that context. But I don't think any of the concerns raised by Mallaby actually arise, because there are those other control mechanisms that apply in addition to the power in article ten.

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Yeah. Forgive me. I am listening to you. I'm just trying to bring up the construction traffic management plan in the background. So, um.

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You say it was section 2.1?

00:56:55:02 - 00:57:23:09

That was the applicant 2.3, which is the section on detailed design. There was obviously then, um, different measures relating to other things, but um, it's the main part that then sets out that we have to submit the detailed design of the works for technical approval to the, um, highway authority. So there isn't a scenario that can arise where the applicant can just do whatever works it wants to the public highway.

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So what you're saying is, when you come to discharge your construction traffic management plan, and that may be one plan or it may be multiple plans. So, um, because you may do it over different parts of the route, any work that you that you want would want to do under article ten would be the design detail would be picked up at that point of discharge in the construction traffic management plan. So there isn't going to be a scenario then where, you know, you start, you've got your construction traffic management plan signed off.

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Um, you know, your delivery start happening, but then something else arrives. Does that mean then you then have to go back and re approve a construction traffic management plan? Or can you just rely on the power in article ten to set that aside, because you've got a power that would allow you to do that?

00:58:12:26 - 00:58:32:09

Uh, Claire Broderick, the applicant know. So there would be like it would depend, I suppose, on the nature of the works, whether you would go go back and add it into your final tmp as an amendment to that plan, or whether you were doing a new plan specifically for those particular works. So if they were.

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So so there is a scenario then where you could you you've got your construction chapter manager plan, it signed off. The council has seen the plans, but then there could be subsequent works where you could just do a separate plan under article ten, and then the six week deem consent provision kicks in. I'm just trying to see how how much control is in the track plan.

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Project the applicant. I don't think that that would be a scenario, because I think we would have said what our highway works were, and if additional highway works were, we've got to comply. The requirements requires both to submit the plan for approval. And then we also have to comply with that plan. So if we wanted to do works that weren't within that plan. We would either have to amend the plan or we have the ability, as you mentioned, to do some of the plans in part. So it would be you

could potentially do a new plan for that part, or you could do an amendment to the existing plan to bring those in.

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And that's in addition to I mean, there is an element of duplication here because the Wiltshire Council want all of that again in the protective provisions, which we're happy to do. But it's ultimately what we're saying is that the, the, the technical approval will be approved. There isn't a scenario whereby they don't approve the technical detail, either under the TMP or the protective provisions.

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Can I just check then if for article ten it isn't just for the construction phase though.

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I mean, it's a power to alter the layout of streets.

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For the duration of the order.

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So the company would cover a construction period. I'm not. I'm not envisaging why you would then need to alter road, but you will have an operation and maintenance phase and a replacement phase where again, roads could be altered.

01:00:32:10 - 01:01:08:14

Uh, the applicant in the event. So there are operational environmental management plans. They do include. Um, the requires us to put in place a operational traffic management plan. And so that level of detail would be in the operational traffic management plan in terms of if there was anything required for sort of routine. Uh, so you've got your operational environmental management plan, which would deal with routine maintenance activity to the extent we're doing replacement activities. Then there would be a requirement to put in place a traffic management plan for the duration of those replacement activities.

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So in the event that highway works were required to facilitate the replacement activities, there's an obligation to put in a specific traffic management plan to cover that period of time. And then similarly, at decommissioning, there would be an obligation to put in a decommissioning traffic management plan. And that's secured in the outline decommissioning for argument's.

01:01:26:12 - 01:01:51:20

Sake, for Alderton Road that we were talking about where there were temporary highway improvement works. You in? Mr.. Daryl said you would intend to reinstate those works once construction was done, but in however many years time you would need to, you know, undertake those works. Again, you're saying that would be picked up in a traffic management plan under the operational management plan? There's too many, too many management plans.

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A clear budget for the applicant. Yes. And that's section seven. Excuse me, of the operational traffic management plan, which says that a final operational traffic management plan will be prepared to cover the planned replacement operations during the operation and maintenance activity. Um, and yeah, so there's, um, wording in there that, um, sets out those requirements. Okay.

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Shelby.

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Um, Shelby Wiltshire Council, I think, you know, the overarching concern is there shouldn't be deemed approval for any of this. Notwithstanding what's been said about the construction management plan, the applicant still wants the inclusion of these broad powers under article ten and article 15. Um, if everything's under the construction management plan, it's not clear why this whole separate procedure is required. Um, so, yeah, the real concern is to avoid the deemed consent issues. Um, the EIA mitigation principles in the construction traffic management plan are different to approval of final technical design details.

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And it's those final technical design details that the council's concerned about. Um, we welcome what's been said about the protective provisions, um, extending beyond the order limits, and that's something we will take away and have a look at. And so hopefully again, it's something we can make progress on after this hearing with the applicant. Having heard what they've said. I don't know if Mr. Leah wants to.

01:03:21:24 - 01:03:56:09

Yes. David Wiltshire Council. Um, we've always we've always said all through the process the outline construction management plan, which we didn't get on to yesterday. Um, I mean, it seems to be the way it's written at the moment. It's a bit of a catch all sort of catches at the moment. It says all the technical design details agreed within that or the damages were, um, our understanding and I've never seen it anywhere else. A construction management plan is about how you're going to carry out the works. So where the compound goes, parking controls, um, we'll wash facilities.

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Um, the actual technical effectively approval of drawings is, is not part of the construction management plan in our view, you, which is really why we wanted the protective provisions built in, because basically said, well, there's some drawings in in the transport assessment schedule seven works. Um, and in theory they, they aren't covered effectively, they're deemed deemed approved. And we don't have to go. We have to get any, any further agreement to do that. And we always said, well, that's not detailed design.

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The answer to that was, oh yes. Well, the detailed design is part of the outline construction management plan. So. Well that's not the place for it. We never do it that way. So whatever agreement process we use technical approval. Um, because the technical approval covers things such as, um, and how we want those works to be done, we cover our indemnity when they're on site. They would cover bonds. Um, all those things are not in the construction management plan. So, as I said, the protective

provisions, we are now in the process of effectively working through and are what advanced and, you know, we we we we we do welcome that.

01:05:09:17 - 01:05:39:24

Um, it always struck me as odd that when I saw schedule 15, there were protective provisions for just about everyone else but the local highway authority. So. So we do have that in there now. But to come back to the point is, at the moment, the construction management plan says detailed design will be approved. So detailed design of permanent works. No, that's not the place for the outline construction management. It's not the place in the construction management plan. You already agreed that the construction management plan entails says how you will carry out the work.

01:05:39:26 - 01:05:49:16

So Laurie, routing, um, parking, um, site controls, that type of thing. It's not it's not it's not a place for technical approval.

01:05:50:17 - 01:06:03:17

That's my point. Thank you. Um, for the applicant, the construction traffic management plan in requirement 15. Obviously, there's there's there's another we've got the outline version and, you know, the.

01:06:05:03 - 01:06:26:21

weather. It's one traffic management plan or multiple, as we said, needs to go to the council for approval. But is that not covered under then schedule 16 the ten week approval period? So it may not be picked up under a deemed consent, but there's still a very short period of time for the council if schedule 16 is the backstop. Um.

01:06:27:26 - 01:06:32:07

Uh, Clare project for the applicant. Um, yes. So if the if the council. Um.

01:06:34:12 - 01:07:15:17

That when we submit the, um, a final, uh, construction traffic management plan, then the, um, schedule 16 timescales would apply, which the applicant considers to be appropriate and a common across a number of DCA projects. What I would just like to add, in response to the comments made by Mr. Lear, there was I appreciate that the scope of typical construction traffic management plans on TCP developments doesn't go into this level of detail, but this is quite common for DCA projects, and I do appreciate that not all councils have had DCO projects, um, go through.

01:07:15:19 - 01:07:46:27

Um, this is the the inclusion of detailed design, um, in the construction traffic management plan was the approach agreed with Lincolnshire County Council as the highway authority on IDPs Cottam and West Burton projects. So it's it is a sort of a an ability. The inclusion of that is not an unusual element for these types of projects as a way of capturing all of the types of information. And as has been said, the section 278 agreement process has no timescales to it.

01:07:46:29 - 01:08:24:12

And what the applicant is trying to do via the DCA process is ensure that all of the information is provided, but that the accounts will have an obligation to review that within a set period of time. And if they Don't review that detail. Then there is either a mechanism for appeal or a deemed consent process, depending on on the whether there would be materially new or different effects. We might talk about schedule 16 afterwards, but there has to be. There can't be a situation where the counsel just don't deal with an approval and it sits on a desk, because these are nationally significant infrastructure projects.

01:08:24:14 - 01:08:35:19

You have a fixed timescale, and that is a principle that has been established through all of the energy CEOs to date, that there is a way of ensuring fixed timescales are applied.

01:08:35:21 - 01:09:11:26

No. I do appreciate what you say. You you need a backstop date. Um, I'm not sure the blunt tool of a deemed consent is the appropriate tool. Um, irrespective of other dsos, there are also. We could all find a DCO in our favour. The council could do the same. Similarly to say. Well, that that provision doesn't exist in Luton Airport, for example. So I think we just need I think it's the case of the council and yourself continuing to have that dialogue. Um, I would just say at this juncture, before I move on to the next article, that I am a little confused.

01:09:11:28 - 01:09:42:19

Still, why we if everything's in the construction traffic management plan, as Miss Shelby said, why? Why article ten exists. And I know article ten is is pretty common drafting, but I haven't always seen detailed design and construction traffic management plans. And I guess I'm trying to understand if for all the detail designers in the construction traffic management plan, which then gives the schedule 16 determination periods and powers,

01:09:44:08 - 01:09:58:15

why article ten exists, I still can't understand those two provisions. Um, if the detailed design wasn't in the construction traffic management plan, then I could really Appreciate article ten more.

01:09:59:01 - 01:10:31:01

Claire. Budget the applicant. The reason for article ten is it's a it's a criminal offense to do work to the highway without statutory authority. So you either have statutory authority through a section 278 agreement or you have statutory authority through this particular provision in the DCO. So just because the work is approved in a management plan, it doesn't give the applicant the statutory authority to actually do those works. And less there is an operative provision in the DCO to do so. That is that is the primary function of the power.

01:10:31:12 - 01:10:39:04

And what we've been talking about is how we then control the exercise of that power. But without the power, the applicant can't do any work to the highway.

01:10:39:08 - 01:10:50:12

Yeah, that's that's really helpful. Thank you. Um, stop lying down. Shaking head. Good. Okay, so let's come on then to article 11. Um, construction and maintenance of altered streets.

01:10:53:07 - 01:10:56:26

So let me just have a look at it.

01:11:02:24 - 01:11:19:15

So I just want to be clear. Article 11, which I think is going up. Um, on the screen, does not require the applicant to repair damage or degradation to street use more widely by construction traffic only to ones it has altered.

01:11:24:13 - 01:11:51:27

Uh, Clare project the applicant um, in respect of this particular provision? Yes. Albeit that there are other, um, provisions that we've put in the construction traffic management plan to deal with the wider, uh, the use of roads that we are not altering. But this this particular provision only relates to altered streets. So where we've done works to those streets. Um, then the maintenance of those works that we have done.

01:11:52:13 - 01:12:19:06

So when we had the highway or the traffic and transport hearing yesterday, um, obviously we talked about there were certain streets. Um, and we probably certainly didn't cover all of them where there is already an element of degradation of those streets. Um, and they may not be in your highway improvement areas, but there's already some, some degradation, particularly of verges and passing bays.

01:12:22:05 - 01:12:29:00

Of which construction routing along some of those will just worsen the condition of those roads. So.

01:12:32:12 - 01:12:41:08

Why does article 11 not cover improvement of that, or are you just expecting to do road conditions surveys? Is that is that the plan.

01:12:42:00 - 01:13:12:03

Er Clare project the applicant. Yes. So that article 11 specifically works relates to the maintenance of, of works. And again that's because we are not doing works under a section under the power of section 278 under the highways, which does then incorporate maintenance obligations. Those have been transferred to the DCO. So we have both the power to do some works and then an obligation to maintain them at a statutory level. So it permits it on a statutory basis.

01:13:12:24 - 01:13:51:07

Um, so that's the reason for those provisions in terms of um, repairs being required to the wider, um, highway network. We added some wording, um, to the outline construction traffic management plan in section 6.1 um, which relates to um, the road condition surveys both at the beginning but then ongoing monitoring during the construction period. Um, and requirements to repair any defects, either at the end of construction or where they're required more immediately during the construction period.

01:13:51:09 - 01:14:15:28

So in terms of Wiltshire Council's concerns about ensuring that the, um, any damaged cause is actually rectified during the construction period, rather than necessarily at the end, where there is a sort of a highway network need for that to be done. Those obligations are covered in in section 6.12 of the Outline Construction Traffic Management Plan.

01:14:16:07 - 01:14:24:04

Okay. Um, I'm going to come to the council and to determine if there content with

01:14:25:25 - 01:14:28:16

with that Wiltshire Council.

01:14:28:18 - 01:15:09:06

Um, yeah. Just to confirm article 11, I see article 11 is basically only relating to streets which the effect for the applicant alters is correct under the Works Act works type A or B so it doesn't relate to the wider, wider damage um Of the network. Um, I think what I position at the moment is we obviously see the, um, various additions going into the outline construction traffic management plan, which talks about, uh, so somewhat driven by comments we've made about the need for not just survey brick highway condition surveys at the beginning and end, but also interim.

01:15:09:08 - 01:15:49:24

I think our position at the moment remains that we don't we're not entirely sure whether that's the appropriate place for. And we would like to see almost an overarching section 59 agreement, which basically defines. So we've got plans in it. So these are all the roads you will cover. These are the form the surveys will take. Um this is when they'll be done. How often. Um, and then also some acceptance by the applicant, the traffic, the trafficking that's going to be introduced onto the rural and the rural lanes in the area is extraordinary under the definition of section 59 at the moment is left to the.

01:15:49:26 - 01:15:57:01

It seems to be left in construction manner as well. Will carry out repairs as kind of if is reasonable and we think well.

01:15:59:03 - 01:16:06:10

Can we just see a situation? We get to the end where there's going to be arguments about whether the damage is down to the applicant? Um, and.

01:16:09:03 - 01:16:40:12

And we'll be arguing, you know, whether, whether that, whether that effectively that, that failure of the carriageway was caused by them or somebody else. So, so at the moment we're it I think we would like to see something formal. We don't know. We don't know whether the outline construction matter carries the same weight as maybe a section 59 agreement where there's a there's effectively a commitment to, to carry out repairs. Um, but it could be provided it's maybe as an appendix to the outline construction management plan.

01:16:40:14 - 01:17:20:13

And it's got it effectively contains sufficient obligation. though it may be sufficient. It's just I'm not I'm not in a position to effectively say whether it whether, um, inclusion within the outline

construction management carries the same powers as a section 59 agreement. But, um, but I mean, that's it's moving in the right direction in terms of but I don't think article 11 covers covers this because it's only where the applicant, as I understand, is carry out and works under um, works type eight A or eight B, whereas as you'll appreciate the damage to the network, the rural roads could be much a much wider area.

01:17:20:15 - 01:17:23:26

Yeah. Due to the, due to the HGV trafficking over two years.

01:17:23:28 - 01:17:24:19

Yeah.

01:17:24:24 - 01:17:48:02

No. And I accept the applicant's um reasoning behind what article 11 does. They've got the article ten which gives them the power to alter. And then article 11 is the follow on from that. And you do the works and then you have to maintain to the satisfaction. Yeah. So it shouldn't cover those wider well those wider areas Outside of that, and the construction traffic management plan is seeking to plug that gap. I have.

01:17:48:04 - 01:18:08:09

Sorry, but just to clarify, article 11 applies anywhere that we've done work. So those are both the known works. Yes. That are the mark works A and a B. But if we had to do other works to the highway, which was what we were just talking about for the need for article ten, it would then also.

01:18:08:24 - 01:18:09:09

Those up.

01:18:09:11 - 01:18:45:09

As well would also be covered by article 11. But again, because we're not doing it under a Highways Act power, we're doing it under a DCO power. So it's got both elements to them. So wherever we're doing a work we then have an obligation to maintain that work. So it's it is wider than Mr. Lee was envisaging that if we so if we've been asked to a so the process is if we if we've done our road condition surveys and we're monitoring that under the construction traffic management plan, which I'll just point out is a statutory obligation to comply with that provision and failure to comply.

01:18:45:12 - 01:19:15:25

Is a criminal offence, so there is a huge degree of weight that can be taken from the compliance with that. So it's not correct to say that they um, that um, the measures in the CMP are in some way weaker than another statutory provision because they have to be complied with under the terms of the Planning Act. And so we do a road condition survey on the wider highway network. We've identified some damage. We then need to repair that damage.

01:19:15:27 - 01:19:49:13

We would use the the highway power under article ten to do the works. And then that would be subject to article 11. But slightly this conversation is moot because we're agreeing protective provisions which require a different procedure to be followed. So yeah, it's to a certain extent that

everything in this in these provisions will be us have an added layer of these protected provisions on top. So we need to just remember in the context of those discussions.

01:19:49:15 - 01:19:50:00

Yeah,

01:19:51:20 - 01:20:26:18

I can see Mr. Leah's point, however. I, I absolutely accept TMP once it's approved, you know, you have to abide by it. There is because otherwise you're in breach. Um, but when it comes from the perspective of the local authority, when they then say, well, actually that road has deteriorated, you know, it needs maintaining before you move off your construction site and hand these highways back to us. I can envisage a scenario where a discussion will be, well, we didn't cause that damage.

01:20:26:20 - 01:21:04:22

That wasn't our trucks. I realized that that road's rated, but we're only going to pay X because we feel that's proportionate. And I can see where that could come. And it isn't just for your scheme. It could be on any other scheme that takes place around the country. And. But I can see that. And I guess for me it's just what powers. Then the council has to enforce the seat MP when there is that disagreement. But if you are moving forward with protective provisions that are going to cover that and in some way the rule of independent arbitrators essentially picks that up, then I need to carry on and talk about article 11.

01:21:07:14 - 01:21:24:01

Which the applicant. Yes, I think it is that whether I mean, I just obviously goes without saying that there could be road damage that is caused by somebody else. And so the applicant cannot accept that any damage caused through a road during construction automatically is as a result of the scheme.

01:21:25:01 - 01:21:59:14

No. Agreed. And this is where it becomes difficult because the local authority won't want to be. You know, it's the public purse. They've got to they've got to monitor that spend and they've got to do what's right by the residents who pay their council tax on those roads. And you're absolutely right. It won't necessarily be your construction vehicles or your your construction workers that cause that damage. But when there is an increased amount of construction from your proposal going over those roads, or there are diversions of local people off those roads for a reason, then I can see where you can find yourself in that arbitration scenario.

01:21:59:16 - 01:22:09:21

And I think the council is just looking for some comfort to try to avoid that. But we'll move on from article 11. Unless Miss Celia wanted just to say anything further.

01:22:09:27 - 01:22:41:05

I just want to make the point that as far as I'm aware, the protective provisions that's currently written only cover areas under which you define roadworks. So whether that's currently at A or B or anything you wish to propose in terms of general damage to the network, which may be agreed under construction over a wider area and how those works are undertaken. I don't think our provisions and

the design process has to be gone through. I don't think the protective provisions would extend to cover that, but obviously you can correct me if I'm wrong.

01:22:43:26 - 01:23:07:18

For the applicant, I believe they do that. It's obviously the council has, um, a legal representation that we're discussing the protective provisions with. So I think it would be sensible for us to take that point away. So I agree and discuss if there's a minor drafting change that's required. But at the moment it does say any work's permitted by the order. So that does include the works we're talking about. Yeah I.

01:23:07:20 - 01:23:15:12

Agree. Um, point noted earlier, but I think it's, it's a, it's a conversation in the background between the legal drafted.

01:23:17:14 - 01:23:48:23

Um, we're still stuck on highways, and I feel we're going to be in the same, as you said at the start of shall be, that some of these discussions are a bit moot at this point, but let's press on to article 14. Access to works. This gives the applicant or the undertaker the power to form and lay out temporary and permanent accesses listed in schedule seven of the draft DCO, without the necessity to provide any design detail to the local highway authority or seek its approval. That's as I understand it.

01:23:49:00 - 01:23:56:23

Um, so I guess if I if I've understood that correctly, I'd like the applicant to justify why such approval should not be sought.

01:23:57:17 - 01:24:28:21

Uh, Clare project for the applicant. Because the approval mechanism is via the construction traffic management plan. The risk of saying it again. Um, but yes. So the detail there is a requirement under construction traffic management plan to provide that level of detail. And therefore we don't need to state it in the operative provision. The access to works powers just gives us a statutory power to do works to the highway via the DCO. And then the detailed design is covered, but it will also be covered by the um protected provisions as well.

01:24:28:29 - 01:24:29:20

Okay.

01:24:30:22 - 01:24:31:10

Um.

01:24:38:07 - 01:24:40:18

Give me a second. I'm just having a look at my notes.

01:24:58:09 - 01:25:11:23

Okay. I have a query I'd written down to myself here, and I don't remember why, but I'm going to read it out. Um, just in case it does become something which I'm glad I asked because we might get an answer. Um, so I've written to myself here. Um.

01:25:13:24 - 01:25:39:11

An additional query is what provisions exist within the DCO or the control documents to ensure that the access design, inclusive of visibility displays, informs the extent of hedgerow removal in article 40. Brackets four and 40. Brackets five. So that no more hedgerow is removed than is necessary. I think I may have dropped that into myself yesterday following our discussion on hedgerows,

01:25:40:27 - 01:25:43:21

but I didn't write myself any context, so.

01:25:51:15 - 01:25:53:10

Oh, was it the landscape hearing?

01:26:00:27 - 01:26:31:10

Of the applicant. So that particular point would effectively fall across the two two different management plans. So there would be the technical detail of the actual access itself that's being created from a highways perspective. Um, and that would um, uh, be approved by the construction traffic management plan. But then the extent of hedgerow removal is going to be specified in the, um,

01:26:33:07 - 01:26:35:10

just get the correct plan.

01:26:43:01 - 01:26:48:07

Yeah. Thank you. The ecological protection and management plan. Um, so the the.

01:26:51:27 - 01:27:22:01

Right. Uh, yes. Ecological protection and mitigation strategy. Sorry. Rather than plan. Um, so that document also needs to be approved prior to undertaking any works. So the it would be combination of those two documents. So one would be the technical detail of the actual highway design, those technical drawings. And then the extent of hedgerow removal would be controlled via the ecological protection and Mitigation strategy. And obviously the applicant would need to ensure that those two documents are aligned.

01:27:22:03 - 01:27:49:02

And that's what I was going to ask. So presumably your specialists, you know, when they're appointed at the time and not doing these things in isolation, because you certainly you'll have a you'll have a highways engineer designing what would be the best solution for highways irrespective of the hedgerow. And you would then have, you know, another specialist working in complete isolation. And I think I will come across to the council, but I could see that not being aligned.

01:27:49:23 - 01:28:27:05

With the applicant. Um, they, they don't work in isolation and they haven't during the production of all of the documents here. So the amount of visibility splay is obviously dictated by the highway requirements. So the extent of that visibility splay, um, would be agreed with Wiltshire Council as part of the detailed design. Um, and then the hedgerow works that would be required in order to facilitate any hedgerow removal required to facilitate that, um, visibility splay would then need to feed into the other strategy in order to comply with the hedgerow removal powers in the DCO.

01:28:27:07 - 01:29:02:06

There may be other works needed to the hedgerow that is not removal of hedgerows. So, for example, it may be sufficient to just reduce the height of the hedgerows or have them cut back rather than actually removing the hedgerows, in which case, obviously it's a different, um, mechanism. But if to the extent there's any hedgerow removal required, um, then once the technical drawing has been the technical extent has been um confirmed, then that hedgerow loss would then be set out in the Ecological protection and mitigation strategy.

01:29:02:08 - 01:29:02:26

Okay.

01:29:03:00 - 01:29:34:04

So it will come back onto the applicants to the council's service teams to also be talking to one another at that point, because obviously, if the access plans coming in through the TMP come to council for for authorisation, then obviously there needs to be a dialogue with, with the cultural and and ecological remits of the council, um, to ensure that they're aligned before one department issues an approval on another.

01:29:36:13 - 01:30:06:25

Um, David Wilkes Council? Um, yes. I mean, we visibility plays. Um, we would from the highways perspective, we would seek to be DMB or a manual for streets compliant or where they're they've done a speed survey and we have confirmed 85th percentile speeds. But obviously, you know, we're not going to accept access at detailed design stage where that's that's substandard. Um, but that is a detailed design design matter.

01:30:06:27 - 01:30:49:26

I know that there are some displays on the indicative plans. Um, in the transport assessment, but obviously there's some work to go through to do that. In terms of your question about what lack of design detail, I think that was a red flag to us from the very beginning. We said, well, that's not sufficient information. The detailed design, um, which is what's really driven the um, so at the moment we're obviously working through. So the way I understand the moment is obviously now we we've got these plans and we work the detailed design up through the protective provisions that basically instructs what drawings we will expect to see road safety audits, um, and other matters, other other documents we may wish to see.

01:30:49:28 - 01:31:23:18

So that's moved on in a sense. Um, I appreciate the applicant said. Oh, it's all the detailed designs, all covered in the outline construction management plan. And without wishing to appear like a stuck record. You know, we always take the view that whatever's been done in other dsos, it'd be unusual for us to approve the detailed design of permanent works through a construction management plan. But we do have this other mechanism in place now, um, in terms of what my ecological colleagues would say, if we suddenly suggested that a whole line of hedgerow was to be removed.

01:31:23:20 - 01:31:42:19

I think, yes, we would have that discussion internally. You know, maybe a case where, you know, we can accept a slight, um, degree of substantiveness if it meant, you know, we're not going to take a large oak tree out to improve the visibility display by, you know, another five meters. So. So that discussion does take place.

01:31:42:21 - 01:31:43:27

Okay, good.

01:31:46:20 - 01:31:47:15

Miss Jones.

01:31:48:00 - 01:32:19:04

Thank you. Madam. Um, Karen Jones, Wiltshire Council. Um, this is also something that we have been discussing with the applicant offline in terms of the how those different management plans are brought forward and the timing and the sequencing of those, and also the council's ability, should it seem necessary to identify a other plan that has already previously been discharged as a need for amendment? Should something change in another one of the an effective management plan, and that is a conversation that we're having with the applicants team offline.

01:32:19:06 - 01:32:49:09

Yeah, it could easily be lost in the process, couldn't it? As one document needs an update and goes to one department. And yes, the other document isn't being updated yet. I can, I can see, but it seems you've got that in hand. Um, so that's good. We're still on traffic. Um, and we'll come to article 16, which is traffic regulation measures. Now, you may tell me that all this is resolved.

01:32:49:11 - 01:32:59:21

This shall be so before I read anything out from from my notes. Are you about to tell me that everything's been agreed with the applicant, and I don't need to, to run through anything?

01:33:01:28 - 01:33:08:20

Um, that'd be Wiltshire Council. Um, I don't know that it has been resolved.

01:33:08:22 - 01:33:11:12

That's fine. I can come into my notes now.

01:33:11:17 - 01:33:22:20

Um, but, I mean, if if the applicant feels differently and thinks it has been happy to hear from them, but I'm not aware that it has been resolved. Okay.

01:33:23:04 - 01:33:47:17

Um, so I understand then that, uh, it's timescales in, in this particular article, 165, um, where the undertaker must not exercise the powers in paragraphs one and two unless it is given not less than four weeks notice. Um, and then the subsequent part is a seven day, um,

01:33:49:03 - 01:34:22:00

newspaper notice. So I understand that those are of concern to the council. Um, and then in your submission, which was rec 3142, um, the council advise this should be eight weeks and not four. Um, and then article 165 be should be two weeks and not seven days. And I'm assuming that's the position that you're still holding on that. So can I ask, um, I think what you'd said in your rep. 3142 is this would allow for full consultation and advertising twice.

01:34:22:02 - 01:34:27:00

And I just wonder why consultation and advertising needs to be done twice.

01:34:28:05 - 01:34:33:15

Um, I'd sure. Toby. Wiltshire Council. This might be one for Mr. Cheerleader who's online.

01:34:35:18 - 01:34:36:03

Yes.

01:34:36:05 - 01:35:06:06

Uh, Kevin. Cheerleader. Wiltshire Council. Um, yes. I standard practice at the moment nationally is you've got to advertise, uh, your intent to make an order and then, uh, a week later, um, and definitely a week prior to the commencement of work, you're supposed to do a second advert in the newspaper saying, here is the order. So the first one is, is we intend to make an order.

01:35:06:14 - 01:35:16:06

It gives the people time to object. Um, and then the second one is. Here is the order. Does that make sense?

01:35:17:01 - 01:35:24:27

So are you suggesting then, that the timescales that are in, um, article 16 don't allow for that?

01:35:25:27 - 01:35:59:24

Yeah. Kevin. Cheerleader watch. Counsel. Yes. Um, I mean, this this really sort of ties in with the permits as well because, uh, with such a big scheme, we would expect sort of probably sort of fortnightly, um, uh, meetings to, to sort of check progress against, uh, the plan. Um, but uh, with the permit scheme as well. Any, um, permit with a road closure actually comes under a major permit, uh, classification, which actually requires 12 weeks.

01:35:59:26 - 01:36:33:16

Now, we can give early starts to those. So, so just none of these timeframes are really tying up, but it just allows for proper planning. Uh, you know, when passenger transports involved, we don't know whether it's going to be affecting a diversion route for some other works, for instance. So, um, um, we do require these timescales. We can bring it down from 12 to 8 weeks and still fulfill our duties, but, um, four weeks is just, um.

01:36:33:27 - 01:36:43:27

Yeah, it's it's too short and but it should be achievable, um, through constant dialogue. And then it ties in with the permits as well.

01:36:45:29 - 01:36:59:07

Yeah. So, so I suppose what you're saying is if the standard is, is 12 weeks, you're sort of meeting the applicant halfway here. It's they've proposed for you've proposed eight. Um, it's a middle ground. Is that your position.

01:37:00:06 - 01:37:02:23

Eventually the village council. Yes it is. Yes.

01:37:02:25 - 01:37:03:10

Okay.

01:37:03:12 - 01:37:08:11

So coming to the applicant then why would the middle ground not be acceptable?

01:37:10:26 - 01:37:51:05

Clare project for the Atkins. So there's two different again. So this provides a statutory power to put in place traffic regulation measures under the DCO rather than using a separate statutory regime. Um, so there are two different elements that the applicant can do. And I think their numbering may have gone awry there, but in 16 subparagraph one rather than 17 as it's got up there. Um, there are a number of different types of measures that we can that we can do that are typical, um, traffic regulation measures, all of the points listed in um, 161.

01:37:51:11 - 01:38:24:09

We need to obtain the written consent of the written of the traffic authority before doing any of those types of traffic regulation matters. And that's controlled by subparagraph four in respect of, um, subparagraph two. You? Um, there are some very minor activities that can be undertaken, and that's in relation to placing traffic signs and signals to the extent set out on the plans. And in that respect, um, then, um, it is not necessarily under this statutory power.

01:38:24:11 - 01:38:54:29

Just to be clear, it's um, uh, the notification procedures, in addition to that, and to reiterate the point again, the construction traffic management plan also contains provisions relating to um, traffic management regulation matters which require any signs or signals to actually have been submitted and approved. So whilst there isn't a statutory provision saying approval, that approval has to be done under the construction traffic management plan.

01:38:55:01 - 01:39:29:17

So it's not a case of the, um, uh, Highway Authority only having, um, notice of what is being done, which of these provisions? There is an approval under those other measures. It's just in addition to it being approved. We then have to also give notice of doing so. And that's notice both to the police and notice to um, the highway authority. But they will obviously already be aware of the works because they'll have approved them under the construction traffic management plan.

01:39:29:20 - 01:40:00:06

And then there's a requirement to obviously publish those approved details in the newspaper so other people are aware of them. So the applicant considers that there is an approval mechanism for the

highway authority to approve all of the works that we need to do. So I don't I think the concerns about timescales, um, have perhaps missed the fact that we have to have the works approved under the construction traffic management plan, the measures approved before we can even notify anybody of them.

01:40:01:21 - 01:40:09:14

Okay. I'll come back to the council to sort of gauge if they have misunderstood the provisions.

01:40:10:21 - 01:40:14:20

Um, I don't know if Mr. Cheerleader has anything in response to that.

01:40:15:06 - 01:40:29:12

Yeah. Kevin Wiltshire Council um, I still haven't heard anything. Why? Um, our reasonable adjustment to eight weeks and two weeks. Um, with all of that approval process can't be achieved.

01:40:31:26 - 01:40:32:24

Like ping pong.

01:40:33:24 - 01:40:34:09

Uh.

01:40:34:18 - 01:40:52:15

But there's. This isn't the approval process. It's a notification of what's already been approved. Yeah. And of which they have ten weeks to approve the construction traffic management plan under schedule 16. So we have more time, um, to do it.

01:40:52:17 - 01:40:53:20

Yeah. Okay.

01:40:54:08 - 01:40:59:06

Um, shall be Wiltshire Council. Maybe that's something we can take away and have a further think about.

01:40:59:19 - 01:41:17:26

So, just for my own benefit. Um, as you've said, the approvals sit within the construction traffic management plan that under schedule 16. That's a ten week approval. So just this particular article then is not subject to article 47, which is the six weeks deemed consent.

01:41:20:20 - 01:41:23:13

Uh Clare project, uh, for the applicant. Um.

01:41:25:26 - 01:41:47:02

Because the detail of it is subject to schedule. So you have consent from a, from a sort of a highway in terms of compliance with the audit needs to be consented. Um, so it's just making it clear that consent is required. The mechanism for consenting to it is via the construction traffic management plan, which is the ten week approval process.

01:41:50:01 - 01:42:21:09

So we could I can't see it ever happening. But in theory we could apply for consent under this provision. and article 47 would apply. But we still can't do the works because we have to have them approved under the construction traffic management plan. So it's not a scenario that would arise because a consent under this provision doesn't actually enable us to do put in place any of the measures if we haven't got them approved via the construction traffic management plan.

01:42:23:24 - 01:43:19:21

And I do appreciate this is not Wiltshire Council's typical way of doing it, but it is part of trying to put all of the things that are required for this scheme, um, in one place. Um, and as has been said, the reality is, is not in the applicant's interest to just submit plans that it's not had any discussion with the Council and its highway authority about before it submits those plans, because the risk of refusal is just too high for the applicant, so that, as is always the case, um, with these sorts of projects, there would have been detailed discussions on draft plans, draft measures in advance of it then being submitted for final approval because it's just not in the applicant's interest to risk waiting ten weeks and then having it refused because it didn't contain the level of detail that was required, because then we'd have to wait another ten weeks to get it done.

01:43:20:21 - 01:43:23:04

Okay, Miss Jones.

01:43:23:28 - 01:43:44:09

Thank you. Karen Jones for your council. Um, we were going to raise this under the discharge of requirements at schedule 16. In terms of what Miss Broderick has just said, in terms of the consultation and the the discussions that were ongoing with the local planning authority, local highway authority, prior to discharge. Would you prefer for me to raise my point? Then under that agenda item.

01:43:44:11 - 01:43:48:22

We will be coming on to schedule 16. So yeah, if you could. Thank you, Mr. Gazelka.

01:43:50:22 - 01:44:23:20

Um, thank you, Madam Daniel Gazelka, for. Stop lying down. Um, assuming that's the end of the discussion about timing and the the approach to actually getting these approvals. I get up two small points to raise under this heading. Um, so the first relates to um 165, which have a notice provisions. Um, I wanted to suggest that a SAC might be suggested under A and B, which is the provision of notices on the site. Um, the reason I raise that is that's provided for in the spring.

01:44:23:22 - 01:44:55:03

Well, DCO um, and it just seems to me it's, it's another provision of notice that would be sensible. Um, and give locals the awareness of, of changes that are, um, ongoing. And I only suggest that because it is present in a, in other DCO, I take a point about we could all find DCO to support our position. Um, and then my second question relates to, um, it may actually be about control documents. I'm prepared for the answer to be it will be discussed when we talk about the TMP at some point in the future.

01:44:55:10 - 01:45:31:11

Um, reading article 16. It's directed to construction, maintenance and decommission of the authorized development. Um, and my concern was about parameters such as how long this, you know, tourers are being made under this provision last for by which I think of an example, you know, we've got roads which will be used for most of the length of this, um, scheme for construction. And does this power and what can be approved result in a situation where you apply a tourer for two years.

01:45:31:13 - 01:46:07:27

And I wondered whether actually what this provision was really aimed at was specific bits of construction or specific bits of maintenance, or specific bits of decommissioning in certain locations, um, and whether that should be constrained in that way. Now, the answer may well be that's what's intended, and it'll be managed under the TMP. Um, if that's the case, then it might be something that needs wording in 2.4.1. Because 2.4 of the tmp is pretty light on detail, and it's not really clear what parameters the Highway authority are applying when thinking about what to consent under 161.

01:46:08:00 - 01:46:22:04

Um, so that's a long way of saying it. May need some more detail about how you provide this provision to give you satisfaction, but it won't be used in a way which, um, really significantly changes the highway in a way that you've not assessed as VQA. Yeah.

01:46:23:29 - 01:46:32:21

Yeah, I think I'd say at this point I think they're both quite valid. Um, the applicant, you don't need to respond now. We will look for an update.

01:46:33:06 - 01:47:04:15

Er, Clare, project the applicant. Um, obviously there's a range of different traffic regulation measures that could be in place, and some of them could be in place for the duration of construction. So not closures or anything like that, but potentially a reduction in speed limit might be something that could be near an access point, might be something that could be considered appropriate. I don't that level of detail. Um, we need to allow for there potentially to be a particular form of measure that's in place for the duration of it.

01:47:04:17 - 01:47:36:06

So I think a provision in the actual, um, article itself restricting that wouldn't necessarily be appropriate, but I think it may be a case where we'll just have another look at the whether some further detail can go in the outline management plan just to, um, say that, you know, that that level of detail, um, obviously the duration would need to be a factor as part of the, the details that have been that are being provided. Um, we will also have a look at the spring well, drafting, um, and see whether that can be incorporated.

01:47:36:08 - 01:47:55:24

Great. Thank you. We will similarly do the same. Okay. Um, I'm going to come on to article 41, and then I'm just going to break for ten, 15 minutes before we come on to requirements. But let's get through the last of the articles that was on the agenda. And that's article 41. Felling or lopping trees covered by a CPO.

01:47:57:14 - 01:47:59:08

Just find it here.

01:48:03:02 - 01:48:35:06

So I'm sure that the applicant gathered from our first written question, DCO 1.28, that the WSA are concerned about the extent of powers contained in article 41 and the ability to undertake the ability of the Undertaker to fail, lop or cut back any tree covered by a TPO without any notification to the local authority or any consent required. Um, I note the Council suggested an overhaul of the wording to this article and its response to that question, and that's in rep 3142.

01:48:35:08 - 01:49:11:11

At least I think I've got the rep number right. Um, and I would welcome the applicant's view on this submission. Before I do come to the article, I do note, um, and don't want to cherry pick orders, but there are other orders which do require the Undertaker to give the planning authority at least 14 days notice prior to any activity taking place. Um, except in relation to dead or dangerous trees. Of course. We're only five days notice has been required in some other orders, but that would allow the local authority to be able to monitor the process if required, or indeed the extent of the works.

01:49:11:13 - 01:49:20:25

So I don't want to say I've come to a formal position on this article, but I think it's a blanket long term permission

01:49:22:17 - 01:49:32:15

for future operational maintenance decommissioning works, and I just don't think it's unreasonable. Unreasonable for for notice to be given to the to the council.

01:49:37:15 - 01:50:09:09

Uh, the applicant. Um, yes, we definitely take the point away in terms of the notice requirement. I think obviously there's different elements in relation in the in the event that um, trees would need to be removed for the purposes of, of construction. Um, then obviously that needs to be, um, set out in detail within the um, ecological management plan. So the identification of any trees that are required to be removed is controlled through that mechanism.

01:50:09:11 - 01:50:39:12

What this, um, uh, is seeking to do is obviously to give a statutory power, um, for those works, albeit than they are then, um, then controlled. Um, I think we'd mentioned in our response to the question that there are some areas, um, that do have some TPO, so it is looking to um, apply both to, um, those existing types that have been identified and assessed and then would be controlled by the management plan.

01:50:39:15 - 01:51:01:25

Um, and then it's also making sure that should a TPO, and be made between now and when the applicant is looking to do some work so that it's not prevented from doing works that's required to protect its operators as a result of that DPO coming to point. But we definitely take away the point about the notice periods and have a look at, like I said, I haven't.

01:51:02:16 - 01:51:19:10

You know, certainly I'm talking for saying I but my colleagues and I, we haven't formed a firm position on this, but it does seem that this unfettered power, um, just seems a little bit too much of a stretch given the length of the order of the order.

01:51:19:15 - 01:51:50:14

Um, er, if they can. Um. That's correct. I would just note that there are wide ranging powers under the Electricity Act for felling and lopping of trees to and be undertaken by licence holders, which the applicant is as well. So it's not there are there are already existing other statutory provisions that enable works to trees to ensure protection of electrical apparatus that would also apply. So I would just want to check um consistency of approach.

01:51:50:16 - 01:52:02:02

But I think the notification provision doesn't sound unreasonable. So we will look look at that. Yeah. State eight eight Wiltshire Council.

01:52:02:04 - 01:52:37:24

Um yeah. With um statutory undertakers, we still receive um, notice of works that are going to be carried out to protect and in conservation areas, um, and protected trees as well. So whilst we understand that you're working to certain guidelines, namely injure then yeah, we, we are still notified. We are given opportunities to comment. We are given opportunities, um, to request certain works that are carried out or are not carried out. And we generally they don't result in trees being felled. Um, even in a conservation area, let alone, um, you know, troopers have protected trees.

01:52:37:26 - 01:53:08:03

So, um, we would still expect some form of notification that those works are being carried out. We also have to bear in mind as well that we have the orders, so our orders need to be kept updated. We're currently going under a GPO review at the moment where and these orders are. Um, the, uh, the schedules identify the groups or the the individual trees that are on these orders. And if trees have been taken out without us being notified, then we're not able to keep our records up to date.

01:53:08:08 - 01:53:38:28

I think it's quite important. But then when we come to replanting, this is conditioned. We condition the replanting of trees through the application process. If we are not given the opportunity to be able to condition the replanting, then we question who makes that decision, who decides which tree, which species, which location, and you know, it's management. How long is it in the ground for until it's considered established if it needs to be replaced. Those are the, uh, the, the matters.

01:53:39:00 - 01:54:10:04

But in the longer term, you know, the longer sort of scheme of things really, this is going to be going on for many decades now. I don't know about you guys, but I am not planning on being around in about 40 years when the, um, uh, the replacement of the panels are going to go through and, um, we're going to be talking about, um, removal of hedgerows, which can be healed in and then transplanted after construction. You can't do that with trees.

01:54:10:06 - 01:54:39:22

Trees are dynamic. They're changing all the time. So in 40 years time, what we consider now to be a tree that is maybe not worthy of protection at this stage may very well be worthy of protection in 40 years time. I'm really concerned that we are not able to put tree preservation orders on trees, and for those to be, um, considered by, um, laying down solar park. So, um, you know, in the future. To be quite honest with you.

01:54:40:05 - 01:55:19:28

I get shadowed by Wiltshire Council. Yes. I mean, and that is the the point that the applicant raised in their response to SSC one on this, that the trees have been surveyed already, but obviously the condition of the trees now is very different to the condition of the trees in 40 years time. And there may be very different, um, and legitimate protections that the council wants for those trees. And also, just in response to the point made about the Electricity Act. As far as I understand, the powers under the Electricity Act did not not anything like this at all. And this is far more wide ranging and without any kind of statutory process for refusal, for, um, appeals, that there's a, there's very different, much more restricted powers under the Electricity Act.

01:55:20:00 - 01:55:58:04

Yeah. I think it would be helpful to receive some commentary, um, on the Electricity Act point that you're making. Um, because I think if Miss Shelby is correct and I don't know if she is, um, and the powers are narrower, um, than it feels it's been a bit of a misrepresentation. So it would be helpful to us to understand what the powers are there for a statutory undertaker under the Electricity Act. But obviously you are looking to use your powers under the DCO because that's what you're seeking. So it would be helpful. And as an action, if I could get some commentary on that, um, in due course, in light of the fact that it's been been raised.

01:55:58:06 - 01:56:09:07

But can I just ask? I wasn't sure, Miss Tate, if if you felt that no TPO could be served across the order limits, it was. Is that the point that you were trying to make?

01:56:09:15 - 01:56:42:15

But no, that's not the case. The Tate butcher council. Um, I think, um, TPO can be made across the order limits that it can't be considered as a restriction to the works that need to be carried out for the construction or the maintenance of, um, within the, um, uh, the scheme. And I, I don't agree with that to the extent that some of the trees that are on site now that are within the order limits that are a constraint to the scheme. Um, they may very well require additional protections later on.

01:56:42:17 - 01:56:43:05

Okay.

01:56:43:07 - 01:56:43:29

Thank you.

01:56:44:07 - 01:57:20:28

Uh, Claire was the applicant, and. Yes. So we can provide some details on that. Just to be clear. Obviously any works to trees are controlled by the management plans as well. So to the extent that

there are commitments to retain trees in the management plans, um, or the actual any work the carrying out of any works two trees within the order limits, both during construction operation and replacement activities and decommissioning are all controlled by those management plans. So the again, it's a case of reading the article in conjunction with the with the relevant, uh, management plans.

01:57:21:00 - 01:57:53:27

Obviously, those management plans, um, in respect to the Electricity Act powers, that's in the absence of a suite of management plans that need to be complied with. I would I was merely referring to the fact that there are powers relating to trees in the Electricity Act. But we'll provide some more detailed response in writing. But the, um, the point that was mentioned there in terms of trees within the order limits and how they will be managed during or within the sites, and how they will be managed during the operation of the of the scheme.

01:57:53:29 - 01:57:58:07

The intention is for that detail to be in the um, in the, in the management plans.

01:57:58:09 - 01:58:31:26

Yeah. And it's a point you've raised twice now where you have to read the order limits sort of start to finish because there are overlapping controls. Um, and certainly the detail will be in there, but it's still article 41, still says the Undertaker may, if it reasonably believes it to be necessary, um, to prevent the tree from obstructing or interfering to fell lop or cut it back. So irrespective of what's in the management plan, that's quite a unfettered control in which the council has.

01:58:32:27 - 01:58:38:03

It would have no say in. Um. Miss Tate.

01:58:39:06 - 01:59:24:19

Kate Tate. Wiltshire council? Yeah, absolutely. And we're very aware of the management plans that have been submitted. We've consistently requested changes to the, um, um, especially with regards to the agricultural impact assessment and the agricultural method statements, which, um, are within the construction and environmental management plan. And we have consistently asked that these are, um, added to schedule 13 on their on their own merits because of the fact that these are going to be documents that are going to be used by construction workers on a regular basis, these are the documents that are going to be ensuring that the routes, the methods that are going to be used within the route protection areas, making sure that the tree protection is in the correct place on a regular basis.

01:59:25:00 - 01:59:55:19

Um, so yeah, again, that's we are very aware of the management plans and how they evolve? We've used them on numerous occasions, but we want to make sure that due to the extension, the time of this scheme, that it is a long term plan for these these method statements, tree protection plans and impact assessments. Um, and, you know, we need to be talking about regular surveys in the future for the the order limits because like I say, you know, they do change.

01:59:55:21 - 01:59:59:05

So that is something that needs to be built into, um, schedules.

01:59:59:07 - 02:00:30:18

I think just before I close out this item. I do, however, have an element of sympathy for the applicant over this type of article because if they had to come to the council every time they wanted to take some limbs off a tree because it was potentially impeding their the, you know, the operation or safety of their equipment, I mean, that would become very burdensome. Um, so it is, it is it is a difficult thing to in to, to manage.

02:00:30:25 - 02:00:40:15

Um, but there's potentially more that could be done around notification and involvement of the council. Um, unless it were emergency works, which is a very different scenario.

02:00:40:18 - 02:01:11:05

Okay. Take watch council. Absolutely. And obviously from our point of view, we have our own day jobs as well. So you know, we're looking at an awful lot of trees. Um, and uh, potentially we, you know, we don't want to create more work for the applicant as far as, um, uh, informing us it's concerned. Neither do we want to do that for ourselves, but we do want to make sure that it is robust. And at the moment, we don't feel that it is. Um, and we are, you know, the whole purpose of us being here is that we are making sure that these trees are going to be in place for a very long time.

02:01:11:07 - 02:01:43:12

We cannot we cannot relocate these trees during construction. They have to be well managed and well protected. And this is not just protection. Now, during this construction we're talking about in 40 years time, we're talking when, um, you know, Either during decommissioning. So I was like I said, how many of us are actually going to be working here in a 40 or 60 years time? It's it's a huge. So these, these plans and these documents are going to be pushed, forwarded for trees that are going to be 60, 40 or 60 years older later on.

02:01:43:14 - 02:02:24:06

Or and they are going to be needing different forms of management. And legislation will have changed as well, which we have to consider because at the end of the day, um, the, the, the materials, the management, the um methods are all going to be have changed. And so that needs to be a consideration as well. So it's not just that, it's not that we're dismissing the management plans or the strategies or anything like that at all. We understand that it has to work through that, but we need to make sure that what's in those plans is robust enough to cover the whole of the term of the solar park, not just the construction and the siting of the solar panels.

02:02:24:08 - 02:02:28:22

So yeah, I mean, it is it's not. We are looking at the long term plan.

02:02:28:24 - 02:02:37:06

I appreciate your passion. And the trees should really outlive us all, shouldn't they? Um, I'm Miss Broderick. Did you want to come back on anything before we just go for a break?

02:02:37:13 - 02:03:10:27

Uh, Claire was the only to say that all of those points are noted. And that has very much the intention of the management plans. And if there is any specific drafting, um, that the council would like to see added to the outline management plans, then please do provide it and we can consider adding it in. But monitoring and reporting and all of those protections that have been mentioned are set out in those management plans. But we obviously heard what is said and a need for further detail to go in there. And so we welcome those more detailed discussions. But if there's specific wording they would like to see, then we do really need to see the wording in order to.

02:03:10:29 - 02:03:26:22

And it may well be that sorry, on that particular point. It's been provided. I just I haven't got my I got it here. So apologies if it has, but I would just say if you want to see particular wording in the drafting then please do provide us with that wording and then we can consider including it.

02:03:26:27 - 02:03:28:10

Let's take very final cake.

02:03:28:12 - 02:03:39:26

Take counsel. Yeah I think. Um, yeah. We would like to see the documents in schedule 13 to ensure that they are deemed as standalone documents by documents. Yeah, absolutely.

02:03:39:28 - 02:03:40:13

Yeah.

02:03:40:15 - 02:03:52:20

And shall be. Which counsel will we'll take away and see if we can suggest some alternative drafting in terms of article 41 that achieves the balance between involving the council and not overly involving the council.

02:04:00:10 - 02:04:11:26

I'm just leaving myself some notes. Wonderful. Okay, so could we please break to 1150 and then we'll come back and get on to requirements. Thank you.