



Ministry of Housing,
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Our ref: APP/D1265/W/23/3327692
Your ref: WP/20/00692/DCC

16 September 2024

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY PORTLAND PORT LTD
PORTLAND PORT, CASTLETOWN, PORTLAND, DORSET, DT5 1PP
APPLICATION REF: WP/20/00692/DCC**

This decision was made by Rushanara Ali MP, Parliamentary Under Secretary of State for Building Safety and Homelessness, on behalf of the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the report of Paul Griffiths BSc(Hons) BArch IHBC, who held a public local inquiry between 5 December and 21 December 2023 into your client's appeal against the decision of Dorset Council to refuse your client's application for planning permission for the development of an energy recovery facility with ancillary buildings and works including administrative facilities, gatehouse and weighbridge, parking and circulation areas, cable routes to ship berths and existing off-site electrical sub-station, with site access through Portland Port from Castletown, in accordance with application Ref. WP/20/00692/DCC, dated 3 September 2020.
2. On 30 October 2023, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act (TCPA) 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed, and planning permission granted.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions except where stated, and agrees with his recommendation. She has decided to allow the appeal and grant planning permission. The Inspector's Report (IR) is attached. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and the environmental information submitted before the inquiry opened. Having taken account of the Inspector's comments at IR1.8 and 1.9, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for her to assess the environmental impact of the proposal.

Procedural matters

6. In December 2023, during the inquiry, a revised version of the National Planning Policy Framework ('the Framework') was published. This was not referenced in the Inspector's Report. However, the Secretary of State does not consider that the revised version of the Framework raises any matters that would require her to refer back to the parties for further representations prior to reaching her decision on this appeal, and she is satisfied that no interests have thereby been prejudiced.

Matters arising since the close of the inquiry

7. A list of representations which have been received since the inquiry is at Annex A. The Secretary of State is satisfied that the issues raised do not affect her decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter.
8. On 12 July 2024, the appellant wrote to the Secretary of State and all main parties to provide an update on the energy recovery facility's Environmental Permit. A consultation on the draft permit was held between 12 July 2024 and 11 August 2024. On 16 July 2024, Rule 6 parties wrote to the Secretary of State to provide comments on the appellant's letter. The Secretary of State is satisfied that the issues raised do not affect her decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.
9. On 30 July 2024, the Written Ministerial Statement (WMS) 'Building the Homes we Need' (UIN HCWS48) was published. On that same date, the government launched a consultation to reform the Framework. The Secretary of State does not consider that publication of the WMS and the consultation on the Framework raise any matters that would require them to refer back to the parties for further representations prior to reaching her decision on this appeal, and she is satisfied that no interests have thereby been prejudiced.

Policy and statutory considerations

10. In reaching her decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
11. In this case the development plan consists of the Bournemouth, Christchurch, Poole and Dorset Waste Plan 2019 (WP) adopted in December 2019, West Dorset, Weymouth & Portland adopted local plan (LP) adopted in October 2015, Portland Neighbourhood Plan (NP) and adopted in June 2021 and Bournemouth, Dorset and Poole Minerals Strategy

adopted in 2014. The Secretary of State considers that relevant development plan policies include those set out at IR 5.3 to 5.23.

12. Other material considerations which the Secretary of State has taken into account include the Framework and associated planning guidance ('the Guidance'), and the documents referred to in IR5.25.
13. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

14. The emerging plan comprises Dorset Council Local Plan for which Regulation 18 Options consultation took place in January to March 2021.
15. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. However, due to the early stage of plan production, the Secretary of State considers that no weight should be attributed to the emerging plan.

Main issues

Waste policy and need

16. For the reasons given at IR12.3-12.9, the Secretary of State agrees with the Inspector that subject to the agreed adjustment to Table 7, which pushes the identified shortfall upwards, there is no convincing justification for setting aside the figures in Table 7 of the WP (IR12.8). Like the Inspector, she has therefore proceeded on the basis that the WP, and the figures on 'need' therein, are 'up-to-date' (IR12.9).
17. The Secretary of State had regard to the Inspector's comparative analysis between the proposed site and sites allocated within the WP at Parley and Cranford Magna. For the reasons given at IR12.11-12.13 and IR12.100-109, the Secretary of State agrees with the Inspector that the site at Parley could not cope alone with the residual waste needs set out in the WP 2019, and it is in the Green Belt (12.101). The Secretary of State also agrees that the 'red line' of the planning application at Cranford Magna is well beyond the confines of the allocation which suggests that the allocated site is too small to cope with the residual waste needs in the WP (IR12.104). She further agrees that although the proposal at Canford Magna might well perform better in terms of the spatial strategy in the WP that would have to be balanced against the Green Belt harm and any other harm (IR12.108). Overall, the Secretary of State agrees with the Inspector that the proposal would have clear advantages over the sites allocated within the WP (and the proposals for them) and as such, it complies with Policy 4 of the WP, and further agrees that it accords with Policy 1 (IR12.109). In reaching this conclusion, the Secretary of State has taken into account the representation received from Savills on 13 September 2024 on behalf of the applicant for the proposal at Canford Magna (APP/23/00822/FUL), which draws her attention to the fact that the Canford Magna application, which has been recommended for approval by officers, was due to be determined by the LPA on 12

September 2024, but has been deferred to a later committee. She has also taken into account the representation from Stop Portland Waste Incinerator dated 14 September 2024 which draws the committee report on the Canford Magna proposal to her attention, and the representation from tor&co dated 16 September 2024 which provides a legal opinion on the Canford Magna proposal. The Secretary of State does not consider that this information changes her conclusions on the compliance of the proposal which is the subject of this decision letter with Policy 4 or Policy 1 of the WP, and does not change her decision overall. She further does not consider it is necessary to refer back to parties on this matter before reaching her decision.

Heritage

18. For the reasons given at IR12.15 - 12.25, the Secretary of State agrees with the Inspector that there can be no doubt the proposal would be an insertion of massive scale (IR12.18) but that the proposal would not appear out of scale, or out of place. She agrees that it would take its place as another functional building or structure of significant scale, within the immediate and wider port context (IR12.25).
19. For the reasons given at IR12.27-12.47 the Secretary of State agrees with the Inspector that the proposal would cause no harm to the setting or the significance of most of the heritage assets affected, with the exception of the Dockyard Offices (IR12.53). For the reasons given at IR 12.37-12.39, the Secretary of State agrees with the Inspector that the proposal would interrupt and interfere with what is left of the relationship between the Dockyard Offices and the inner breakwater. She further agrees that while careful design of the switchgear could alleviate this impact to some extent, there would be a detrimental impact on the setting of the listed building and its significance as a result of the presence of such substantial structures between the bay window and the inner breakwater. The Secretary of State agrees that the degree of harm would be 'less than substantial' at the lower end of the scale (IR12.38) and affords great weight to this harm.
20. The Secretary of State agrees with the benefits of the Heritage Mitigation Strategy (HMS) stated by the Inspector in IR12.48 and affords significant weight to heritage benefits of the proposal. Overall, the Secretary of State agrees with the Inspector that the proposal would comply with policies listed in IR12.54.
21. The Secretary of State's conclusion on whether the Heritage Mitigation Strategy meets the test of the Framework and Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010, as amended (CIL Regulations 2010), is at paragraph 32 below. In line with the heritage balance set out at paragraph 208 of the Framework, the Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the Grade II listed Dockyard Offices is outweighed by the public benefits of the proposal. Her conclusion is set out at paragraph 36 below.

Landscape

22. For the reasons given at IR12.56- 12.71 the Secretary of State agrees that the proposed stack would be clearly visible in some views from the Royal Navy Cemetery. However, the Secretary of State also agrees with the Inspector that the stack would not be an injurious presence. She further agrees that the proposal would not appear incongruous in the modern port context, and objectively speaking, the stack, even if the plume from it was occasionally visible, would be seen in that light (IR12.64). The Secretary of State further agrees with the Inspector that the proposal would have no harmful impact on the landscape and scenic beauty, or setting of the Dorset National Landscape, or to the

Heritage Coast (IR12.67). The Secretary of State also agrees with the Inspector that the proposed development would have no injurious effect on the Jurassic Coast World Heritage Site (the WHS), its Outstanding Universal Value, or the setting (experiential or otherwise) of the WHS (IR12.68). Overall, for the reasons given, she agrees with the Inspector that the proposal would sit comfortably in the context of the existing port and would have no harmful landscape or visual effects from receptors on land or at sea (IR12.72 and IR12.98). She further agrees that the proposal would comply with policies listed in IR12.72.

Health

23. The Secretary of State agrees with the Inspector's conclusions at IR12.78 that there is no convincing evidence that the proposal would have detrimental health impacts, and neither is there anything convincing to suggest that the proposal would have a detrimental impact on biodiversity on land or sea, or on water quality. However, for the reasons given at IR12.77-12.78, the Secretary of State agrees with the Inspector that there is a perception that the proposal would be harmful to the health of a population that already suffers disproportionately in these terms, and a perception that the proposal would cause environmental damage. She further agrees that this could have an impact on the quality of life, and mental and physical conditions, of residents. For these reasons, the Secretary of State affords limited weight to the perception of harmful impact to health.

Other matters

24. For the reasons given at IR12.74-12.76, the Secretary of State agrees with the Inspector that the presence of an energy recovery facility in the area should not depress or remove the incentive to recycle (IR12.76).
25. The Secretary of State agrees that the construction and operation of the proposal would have a harmful effect on biodiversity value of the existing site and that this is addressed through the planning obligation, and agrees that the proposal would comply with policy 18 of the WP (IR12.79).
26. For the reasons given at IR12.80-12.81, the Secretary of State agrees with the Inspector that the proposal would create jobs in the construction and operational phases and provide opportunities for local residents through the Employment and Skills Plan. The Secretary of State agrees with the Inspector at IR12.99 that the proposal complies with LP Policy ECON2 and she affords significant weight to job creation.
27. For the reasons given at IR12.82-12.87, the Secretary of State agrees with the Inspector that the proposal would have the ability to improve the limited electricity supply to Portland by producing electricity on Portland itself (IR12.82). She further agrees that because the proposal could power cruise liners directly through the shore power element of the proposal, rather than relying on the grid, Portland would be at a competitive advantage over other potential ports of call (IR12.85) and that if ships coming into the port connect to shore power, thereby allowing their engines to be switched off, then that would lead to an improvement in ambient air quality (IR12.87). The Secretary of State affords moderate weight to electricity generation and the provision of shore power.
28. For the reasons given at IR12.88-12.89 the Secretary of State agrees with the Inspector that the ability to deliver a District Heating Network would have the potential to lower the carbon footprint of HMP The Verne and/or the YOI Portland (IR12.88). The Secretary of State further agrees with the Inspector at IR12.94-12.95 that burning residual waste in

this location would result in lower carbon emissions than the present situation where the Waste Authority disposes of its residual waste partly through landfill, and partly through incineration outside the Waste Plan area, with the consequent waste miles. She also agrees with the Inspector's comments that while the process is in its infancy the proposal has the potential, and importantly the space, to provide for carbon capture and for its transport to storage facilities, by sea. The Secretary of State affords moderate weight to the potential carbon emission reduction benefits from the proposal.

29. For the reasons given at IR12.90-12.91, the Secretary of State agrees with the Inspector that the increase of HGV movements from the proposal would not have any significant impact in highway terms, or in relation to living conditions, or on any other proposals on Portland. She further agrees therefore that the proposal would comply with policy 12 of the WP.
30. The Secretary of State agrees with the Inspector at IR12.92-93 that the location of the facility in a port would allow Incinerator Bottom Ash (IBA) to be removed by sea which would mean that the proposal would generate less traffic overall. The Secretary of State agrees with the Inspector at IR12.99 that the proposal complies with policy 6 of the WP and she affords limited weight to the ability to transport IBA by sea.

Planning conditions

31. The Secretary of State had regard to the Inspector's analysis at IR10.1-10.20, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. She is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework and that the conditions set out at Annex B should form part of her decision.

Planning obligations

32. The Secretary of State has had regard to the Inspector's analysis at IR11.1-11.11, IR12.49-12.52, IR12.79, IR12.81, IR12.88-12.89 and IR12.93, the planning obligation dated 9 February 2024, paragraph 57 of the Framework, the Guidance and the CIL Regulations 2010. For the reasons given she agrees with the Inspector's conclusion that the obligation complies with Regulation 122 of the CIL Regulations 2010 and the tests at paragraph 57 of the Framework.

Planning balance and overall conclusion

33. For the reasons given above, the Secretary of State considers that the appeal scheme is not in conflict with any development plan policies, and is in accordance with the development plan overall. She has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.
34. Weighing in favour of the proposal are the heritage benefits of the proposal which carry significant weight, job creation which carries significant weight, electricity generation and the provision of shore power which carry moderate weight, potential carbon emission reduction which carries moderate weight and the ability to transport IBA by sea which carries limited weight.

35. Weighing against the proposal is 'less than substantial' heritage harm to the Dockyard Offices which carries great weight, and the perception of harm to health which carries limited weight.
36. The Secretary of State has considered paragraph 208 of the Framework. She considers that the public benefits of the proposal outweigh the 'less than substantial' harm to the designated heritage assets and therefore, in her judgement, the Framework's heritage balance is favourable to the proposal.
37. Overall, in applying s.38(6) of the PCPA 2004, the Secretary of State considers that the accordance with the development plan and the material considerations in this case indicate that permission should be granted.
38. The Secretary of State therefore concludes that the appeal should be allowed, and planning permission granted.

Formal decision

39. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex B of this decision letter for the development of an energy recovery facility with ancillary buildings and works including administrative facilities, gatehouse and weighbridge, parking and circulation areas, cable routes to ship berths and existing off-site electrical sub-station, with site access through Portland Port from Castletown, in accordance with application ref WP/20/00692/DCC, dated 3 September 2020.
40. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the TCPA 1990.

Right to challenge the decision

41. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the TCPA 1990.
42. A copy of this letter has been sent to Dorset Council, Stop Portland Waste Incinerator and The Portland Association, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Emma Hopkins
Decision officer

This decision was made by Parliamentary Under Secretary of State for Building Safety and Homelessness, Rushanara Ali MP, on behalf of the Secretary of State, and signed on her behalf

Annex A Schedule of representations

General representations

Party	Date
tor&co	12 July 2024
Maxine Frodsham	13 July 2024
Matt Dunning	17 July 2024
Stop Portland Waste Incinerator and The Portland Association	16 July 2024
Jonathan Tweedle	21 July 2024
Kate Enright	31 July 2024
Portland Town Council	12 August 2024
Russell Ramsey	22 August 2024
Savills	13 September 2024
Stop Portland Waste Incinerator	16 September 2024, attaching a letter dated 14 September
tor&co	16 September 2024

Annex B List of conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1081-01-07 Issue 04 - Site Location Plan; 262701B-TOR-XX-XX-DR-A-P002 - Existing Site Plan; 262701B-TOR-XX-XX-DR-A-P003 - Existing Topographical Plan; 262701B-TOR-XX-XX-DR-A-P004 - Proposed Site Plan; 262701B-TOR-XX-XX-DR-A-P005 - Proposed Aerial Roof Plan; 262701B-TOR-XX-XX-DR-A-P006 - Proposed Floor Plans; 262701B-TOR-XX-XX-DR-A-P007 - Proposed Floor Plans; 262701B-TOR-XX-XX-DR-A-P008 - Proposed Floor Plans: Main Building: Plant Control Area; 262701B-TOR-XX-XX-DR-A-P009 - Proposed Floor Plans: Office Building; 262701B-TOR-XX-XX-DR-A-P010 – Updated (rev B) Proposed Elevations – Sheet 1 Main Plant Building; 262701B-TOR-XX-XX-DR-A-P011 – Updated (rev B) Proposed Elevations – Sheet 2 Main Plant Building & Transformer Compound; 262701B-TOR-XX-XX-DR-A-P012 – Updated (rev A) Proposed Elevations – Sheet 3 Office Building; 262701B-TOR-XX-XX-DR-A-P013 – Updated (rev A) Proposed Site Elevation; 262701B-TOR-XX-XX-DR-A-P014 - Proposed Sections – Sheet 1 Long Section through Main Plant Building; 262701B-TOR-XX-XX-DR-A-P015 - Proposed Sections – Sheet 2 Long Section through Boiler House and RDF; 262701B-TOR-XX-XX-DR-L-P016 - Proposed Landscape Strategy; 1081-02-32 Issue 05 – Powershore Layout; and 1081-02-33 Issue 05 -Powershore Details.
- 3) The developer shall notify the Waste Planning Authority in writing of the date of the start of each material phase of development at least 7 days before each phase commences. The material phases of development shall comprise: Phase A: the commencement of development; Phase B: the commencement of commissioning trials ('commissioning trials' being operations in which waste is processed under specified trials to demonstrate that the development complies with its specified performance); and Phase C: the date when the development becomes operational ('operational' being the point at which commissioning trials have been successfully completed and when the plant begins the treatment of waste for any purpose other than commissioning).
- 4) Before the development enters Phase A, a schedule of materials, finishes, and samples to be used for the external walls (including the profiled steel sheet cladding with louvres to the lower 6m of the walls), roofs, flue stack, and air cooled condenser structure of the proposed building(s), shall be submitted to and approved in writing by the Waste Planning Authority. The development shall be constructed in accordance with the approved details and retained as such thereafter.
- 5) Before the development enters Phase A, final details of the design of the shore power related switch gear, including site layout, appearance and any enclosures, pursuant to drawings Powershore Layout (1081-02-32 Issue 05) and Powershore Details (1081-02-33 Issue 05), shall be submitted to and approved in writing by the Waste Planning Authority. The development shall be constructed in accordance with the approved details and retained as such thereafter.
- 6) Before the development enters Phase A, a Landscaping Scheme with hard and soft landscape proposals, in accordance with the approved Landscape Strategy,

(262701B-TOR-XX-XX-DR-L-P016), shall be submitted to and approved in writing by the Waste Planning Authority. The Landscaping Scheme shall include: a) details of all species (including grass species), planting sizes and nursery stock types, densities, planting method and soil amelioration; b) details of fencing and hard surfaces; c) a programme for implementation and provision for future maintenance. The approved Landscaping Scheme shall be fully implemented in the first growing season following the first receipt of waste for commissioning within Phase B of the development, as defined in Condition No.3. Any planting that fails to establish, is damaged, becomes diseased or dies within 5 years of planting shall be replaced in the next growing season in accordance with the approved Landscaping Scheme.

- 7) Before the development enters Phase A, a Construction and Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Waste Planning Authority. The CEMP shall be consistent with the Framework CEMP (provided in Technical Appendix C to the Environmental Statement) and shall include (but shall not be limited to) details on the following matters: a) the method of construction, including phasing, and material to achieve development levels; b) the method of filling/compaction of below ground voids; c) staff site accommodation, construction compounds and laydown areas; d) details of the construction phase communications strategy which will set out how the developer will provide information to the community during the construction works and include key contact details, the indicative construction programme and appropriate procedures for maintaining good public relations including complaint management; e) dust suppression measures; f) litter control measures; g) measures to minimise and manage waste resulting from construction activities including off-site disposal of waste; h) the use of temporary lighting; i) the erection and maintenance of construction screening/hoardings/security fencing; j) the provision during the construction phase of wheel washing and/or other works required to mitigate the potential impact of mud/dirt on the public highway; k) measures to minimise noise arising from construction activities; l) measures to prevent spills, contamination and mobilisation of sediment on-site or address any spills that might occur; m) a scheme for the management of surface water until the fully operational phase is commenced; and n) measures to prevent accidental damage to heritage assets during construction. Construction of the development permitted herein shall be carried out in accordance with the approved CEMP.
- 8) Before the development enters Phase A, a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the Waste Planning Authority. The CTMP shall include (but shall not be limited to) details on the following matters: a) time limits for heavy goods vehicle (HGV) movements during the construction period which are to be between the hours of 0700 and 1900 on Monday to Friday (inclusive), 0700 and 1300 on Saturday with no HGV movements on Sunday or Public Holidays; b) procedures for approval by the Waste Planning Authority for exceptional HGV movements which would fall outside of the above hours; c) a framework for the management of abnormal loads; d) a scheme of appropriate signage for the HGV route to and from the site; e) a route plan for all contractors and suppliers to be advised of; f) temporary traffic management measures; g) a plan showing areas for the parking for the vehicles of construction staff and visitors; and h) measures to encourage the use of sustainable modes of travel to and from the site by contractors. Construction of the development permitted herein shall be carried out in accordance with the approved CTMP.

- 9) Before the development enters Phase A, details of temporary protection works to the Inner Breakwater (including the commemorative plaque) and Dockyard Offices shall be submitted to, and approved in writing by the Waste Planning Authority. These works shall be fully implemented prior to the commencement of development, and must be retained in their approved form until such time as the development enters Phase C.
- 10) No piling using penetrative methods in relation to the development hereby permitted shall take place until details of any such piling works have been first submitted to and approved in writing by the Waste Planning Authority. Thereafter, the piling works shall be carried out in the form approved.
- 11) In accordance with BS 5228:2009+A1:2014 'Code of Practice for Noise and Vibration Control on Construction and Open Sites,' construction noise shall not exceed 65 dB LAeq,T during the daytime (0700–1900 weekdays and 0700–1300 Saturdays) at the closest accessible points to the curtilages of the nearest sensitive receptors listed below (as identified in Appendix C1 of the Noise Impact Assessment of the ES (Arup Noise Impact Assessment – September 2020 ref. AA/267701-15/R01). These should be measured at a height of 1.2 m to 1.5 m above local ground height, and in free-field conditions (at least 3.5 m away from the nearest reflecting surface other than the ground): a) Location A: Ayton Drive; b) Location B: Castletown; c) Location D: Crabbers Wharf; d) Location F: East Weare Road/Leet Close/Beel Close; e) Location H: Jailhouse Café (HMP The Verne); and f) the Bibby Stockholm Accommodation Barge (in so far as this remains occupied for residential use within the port).
- 12) Outside the hours of 0700–1900 weekdays and 0700–1300 Saturdays, and at any time on Sundays and Bank Holidays, construction noise shall not exceed the levels set out below at any sensitive receptor listed in Condition 11 above (measured at the closest accessible points to the nearest sensitive receptors, at a height of 1.2 to 1.5m above local ground height, and in free-field conditions (at least 3.5m away from the nearest reflecting surface other than the ground): a) during weekday evenings between 1900–2300; Saturdays between 1300–2300 and Sundays between 0700–2300 the maximum noise limit from construction activities when measured at any nearby residential receptor shall not exceed 55 dB LAeq,T; and b) during the night-time on any day between 2300–0700 the maximum noise limit from construction activities when measured at any nearby residential receptor shall not exceed 45 dB LAeq,T. Abnormal construction activities which exceed 55 dB LAeq,T when measured at any nearby residential receptor which cannot reasonably be halted once they have been commenced (such as concrete pouring, bunker construction, turbine installation and so forth) are permitted to over-run into the evening and night-time period subject to the contractor notifying the Waste Planning Authority and obtaining its prior approval in writing, and then taking all reasonable steps to manage the construction timetable to minimise any period of over-run to ensure the activity is completed at the earliest practicable opportunity.
- 13) Before the development enters Phase A, a scheme detailing the establishment of a Community Liaison Committee shall be submitted to and approved in writing by the Waste Planning Authority. This Committee shall include representatives from the site operator, Portland Port, Dorset Council, Portland Town Council, and interested local residents, as deemed appropriate by the chairperson. The scheme shall include provision for: a) the appointment of a chairperson, from or to be nominated by the Waste Planning Authority; b) the appointment of representatives from the site

operator; c) a community complaints procedure, including the prompt notification of complaints to the Waste Planning Authority; d) the production, approval, and publication of minutes of the Community Liaison Committee meetings; e) details of how the Committee will operate, including its terms of reference; and f) an implementation programme. Thereafter, the site operator shall implement and adhere to the scheme in accordance with the approved details for the lifetime of the development.

- 14) The total tonnage of waste received at the site shall not exceed 202,000 tonnes in any calendar year. A calendar year shall be taken to be the period between 1 January and 31 December (inclusive).
- 15) Records of the quantity of waste delivered to the site, the quantity of all residues from the Plant, and the total number of all HGV movements entering and exiting the site, shall be maintained by the site operator. Copies of these records shall be made available to the Waste Planning Authority on request for inspection, within five working days of request. All records must be kept for at least 36 months.
- 16) All HGVs associated with the delivery of waste to the site, and the removal of waste/treated waste materials/products from the site, shall have their loads covered or enclosed so as to prevent spillage or loss of materials on to the public highway, or any other roads.
- 17) The total number of daily HGV movements into and out of the site, which are directly related to the development permitted, shall not exceed 80 movements (40 in and 40 out). As stated in Condition No. 15, records of all such movements are to be maintained and be made available to the Waste Planning Authority for inspection within five working days of request.
- 18) The development is permitted to operate on a 24-hour, 7 days a week basis. HGVs delivering any waste material, process consumables or removing material or residues associated with the operational phase of the development hereby approved shall only take place between the hours of 0700 and 1900 daily. There shall be no delivery of waste, the export of or residues associated with the operational phase or the delivery of consumables on Christmas Day or Boxing Day.
- 19) Before the development enters Phase C, the vehicle and cycle parking/storage shown on the Proposed Site Plan (262701B-TOR-XX-XX-DR-A-P004), including the accessibility spaces and electric vehicle charging spaces, shall be made available in accordance with the approved details and retained as such thereafter.
- 20) Within 6 months of the development entering Phase C, an Employee Travel Plan (ETP) shall be submitted to and approved in writing by the Waste Planning Authority. The ETP shall include details of, and provision for, the following: a) the number of staff travelling to the site and when; b) measures to encourage the use of transport other than cars, including car sharing, cycling, and public transport; c) proposals for staff incentives to encourage travel by alternative means, and on-site facilities to make alternatives more attractive; d) specific targets for reducing dependence on single occupancy cars to travel to the site; e) a monitoring and review regime; and f) the appointment by the site operator of a Travel Coordinator. The approved ETP shall be implemented in accordance with the approved details. The results of the

implementation and monitoring of the ETP shall be kept under annual review, and made available to the Waste Planning Authority upon request.

- 21) Before the development enters Phase B, a Transport Plan for the routing of Heavy Goods Vehicles (HGVs) to and from the site shall be submitted to, and approved in writing by, the Waste Planning Authority. The Transport Plan shall include: a) maps of the proposed route(s); b) details of record keeping; c) details of approved signage and training of drivers in relation to the Transport Plan; and d) details of how the Transport Plan will be managed, including a suitable complaints procedure with appropriate rectification measures. The Transport Plan shall be implemented in accordance with the approved details and adhered to for the lifetime of the development.
- 22) Prior to the receipt of the first waste for commissioning during Phase B, an Odour Dust and Incinerator Bottom Ash (IBA) Management Plan (ODIBAMP) shall be submitted to and approved in writing by the Waste Planning Authority. The ODIBAMP shall include but not be limited to: a) incorporating and operating negative pressure extraction/ventilation systems in the RDF/waste storage and RDF/waste unloading hall; b) the requirement that all vehicular loading doors to the tipping hall / fuel store remain closed other than when vehicles, plant or equipment are passing through; and c) the requirement that all vehicles leaving the operational site, either to travel to unloading facilities located elsewhere within the port, or other off-site destinations, shall be appropriately covered/sheeted to prevent any potential for the escape of IBA material to air or water (notwithstanding any measures that might be imposed through the environmental permit regime). Thereafter, the ODIBAMP shall be implemented as approved for the duration of the development.
- 23) Prior to receipt of the first waste for testing and commissioning during Phase B, a scheme for the monitoring of noise emissions from the Plant in accordance with BS4142:2014+A1:2019 'Method for rating and assessing industrial and commercial sound' (or successor) shall be submitted to and approved in writing by the Waste Planning Authority. The scheme shall include the identification of sensitive receptor monitoring locations and monitoring periods, and how the operational noise criteria will be met at any sensitive receptor locations. The rating sound level from normal operation of the Plant shall be measured in accordance with the approved scheme and shall not exceed representative background sound levels at the relevant time of day (0700 to 2300 hours) or night (2301 to 0659 hours) by more than 5dB(A) at approved monitoring locations. This sound level shall be determined either by direct measurement at the stated locations or, if ambient noise precludes this, by a combination of measurement and calculation. The representative background sound level shall refer to Table 1 of the Noise Impact Assessment report (dated 21 May 2021) or as otherwise agreed by the Waste Planning Authority. Thereafter, the scheme shall be implemented as approved for the duration of the development.
- 24) With the exception of emergency situations, any steam vent safety valve checks and other checks/routine maintenance likely to give rise to noise levels exceeding 85dB(A) @ 1m, shall be carried out during non-sensitive times of the day (that is between 0800-1700 hours Monday to Friday). Noise levels from steam venting should be limited to a sound power level not exceeding 97dB(A) with appropriate silencing.
- 25) Within three months of the development entering Phase C, the operator shall undertake a noise survey to verify compliance with the approved noise limits. A noise compliance monitoring scheme should be agreed in writing with the Waste Planning

Authority prior to commencement of the noise survey. The results of the noise survey shall be submitted to the Waste Planning Authority for approval in writing. Should the results of the noise survey suggest that further mitigation measures are necessary, these shall be identified within the report and implemented within a reasonable timescale to be agreed and approved in writing by the Waste Planning Authority.

- 26) The loading doors to the tipping hall/fuel store shall only be opened when required to allow HGV movements or mobile plant into and out of buildings, for maintenance, or in an emergency. The loading doors shall be fitted with a fast-acting closing system that ensures they are closed rapidly following the passage of each vehicle into and out of the building. Doors which allow the movement of personnel into and out of the buildings shall be fitted with self-closing mechanisms that ensure closure when people are not passing through.
- 27) All vehicles (excluding private commuter vehicles), plant and machinery operated within the site shall be maintained in accordance with the manufacturer's specification at all times and shall be fitted with and use effective silencers where appropriate.
- 28) Mobile plant machinery used on site must be fitted with broadband noise type reversing alarms at all times.
- 29) In the event that the Waste Planning Authority receives a noise complaint that it considers to be justified, the operator shall, within a period of 30 days of a written request, submit a noise assessment to the Waste Planning Authority to demonstrate compliance or otherwise with the noise limits that have been imposed. If the prescribed noise levels are exceeded, then the operator must incorporate as part of the noise assessment report a scheme of noise mitigation for approval in writing. The noise mitigation scheme shall thereafter be undertaken in accordance with the details approved by the Waste Planning Authority.
- 30) Details of any facilities for the storage of oils, fuels or chemicals shall be submitted to and approved in writing by the Waste Planning Authority prior to the development entering Phase B. Such facilities will be sited on impervious bases and surrounded by impervious bund walls. The bund capacity shall give 110% of the total volume for single and hydraulically linked tanks. If there is multiple tankage, the bund capacity shall be 110% of the largest tank or 25% of the total capacity of all tanks, whichever is the greatest. All filling points, vents, gauges and sight glasses and overflow pipes shall be located within the bund. There shall be no outlet connecting the bund to any drain, sewer, watercourse, coastal waters, or discharging onto the ground. Associated pipework shall be located above ground where possible and protected from accidental damage.
- 31) Before the development enters Phase A, further evidence shall be submitted to the Waste Planning Authority to show that a full CCTV survey of the existing surface water outfall has been carried out along with any remedial work to ensure that the surface water outfall pipes have the required capacity and are in an acceptable condition to manage the necessary surface water discharges from the site into the sea.
- 32) Before the development enters Phase A, a detailed surface water drainage and management scheme shall be submitted to and approved in writing by the Waste Planning Authority. The details shall be consistent with the principles set out in the

submitted Preliminary Drainage Strategy (PDL-101 Rev D) provided in the Flood Risk Assessment Addendum (August 2021). The surface water drainage and management scheme shall be fully implemented in accordance with the approved details before the development enters Phase B, and shall be retained as such thereafter for the life of the development.

- 33) Before the development enters Phase A, a scheme to deal with the risks associated with contamination of the site shall be submitted to, and approved in writing by, the Waste Planning Authority. This scheme will include the following components: (1) a preliminary risk assessment that has identified a) all previous uses; b) potential contaminants associated with those uses; c) a conceptual model of the site indicating sources, pathways and receptors; and d) potentially unacceptable risks arising from contamination at the site; (2) subject to the findings of (1), and if required, a site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site; (3) the results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, and if required, an options appraisal and remediation strategy giving full details of the remediation measures required, how they are to be undertaken and a programme for the works, which for the avoidance of doubt may extend beyond or take place subsequent to the development entering Phase A; and (4) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The approved scheme shall be implemented and adhered to as approved.
- 34) In the event that previously unidentified contamination is found at any time during the construction of the development hereby permitted, this must be reported in writing promptly to the Waste Planning Authority and in any event within 10 working days. Further investigation and risk assessment, conducted in accordance with recognised good practice, and a proposed remediation measure (a 'Remediation Measure'), if required, shall be submitted to the Waste Planning Authority for consideration and approval. Following completion of any Remediation Measure(s) a verification report shall be submitted to the Waste Planning Authority for approval.
- 35) Before the development enters Phase A, a scheme to address land stability, building on the Preliminary Slope Stability Assessment (ES Addendum Appendix 7.1 dated July 2021) shall be submitted to, and approved in writing by the Waste Planning Authority. The scheme shall include an investigation and assessment report to identify the extent of any land stability matters, the remedial measures (if any) to be taken to render the land fit for its intended purpose and long-term monitoring of slope movements during operation (if any). Land stabilisation must be carried out in accordance with the approved scheme.
- 36) Prior to the development entering Phase B, details of the works proposed within the Framework Heritage Mitigation Strategy, dated August 2021, shall be submitted to and approved in writing by the Waste Planning Authority. This strategy will include the following components: a) a programme for the implementation of the heritage mitigation works to be put in place before the development enters Phase C; b) methodology for scrub/vegetation clearance at E Battery in accordance with structural engineer's recommendations for avoiding further damage; c) specification of works to be carried out at E Battery to address such repairs as are identified by suitably

qualified professional(s) after a further appropriately detailed survey; d) confirmation of those responsible for ongoing maintenance and survey programmes at E Battery, as well as the procedure for, and frequency of, curated visits; e) details of other approvals or consents that may be required; f) text and other content of proposed interpretation boards for A-E Batteries; and g) design of proposed information boards including sample of proposed material. Thereafter, the agreed works shall be implemented in accordance with the agreed programme for such works specified in the approved heritage mitigation strategy. For the avoidance of doubt, details of the Off-site Footpath, which forms part of the Heritage Mitigation Strategy, is addressed in the s.06 planning obligation.

- 37) The railway tracks of the Breakwater Branch Railway present on site shall be retained in situ.
- 38) Before the development enters Phase A, a Habitats and Biodiversity Plan shall be submitted to, and approved in writing by the Waste Planning Authority. This plan shall set out the measures that will be implemented to avoid and minimise impacts on biodiversity and cover measures identified in the Dorset Natural Environment Team Portland ERF Biodiversity Plan (dated and certified on 19th October 2020), including specifying the measures and long-term management strategy for the proposed habitats and ensure a net biodiversity gain of 10% or more above existing baseline. The development shall be carried out in accordance with the approved Habitats and Biodiversity Plan.
- 39) Before the development enters Phase C, the developer shall submit an Emergency Plan and an appropriate Flood Warning and Evacuation Plan to the Waste Planning Authority that specifies how the plant and its operators will collaborate with the emergency services and Portland Port to ensure that the plant approved by this planning permission integrates with existing emergency plans and shall provide copies of the same to future occupants.
- 40) No permanent external lighting shall be installed on the development until a detailed External Lighting Scheme has been submitted to and agreed in writing by the Waste Planning Authority. This scheme shall specify: a) illumination levels on and off the site; b) the siting, height, design and position of lighting; c) how floodlights will be aligned so there is no direct line-of-sight to nearby neighbouring residential premises; and d) any other controls to prevent the light impacting on the amenity of neighbouring residents. The External Lighting Scheme shall be implemented and maintained as approved for the life of the development, and no additional external lighting shall be installed.
- 41) Before the development enters Phase A, details of any proposed stack lighting shall be submitted to and approved in writing by the Waste Planning Authority. All stack lighting shall be installed and maintained in accordance with the approved stack lighting scheme.
- 42) Within 6 months of the end of the calendar year in which the development entered Phase C, and thereafter on each annual anniversary of this date for the duration of the life of the development, the operator shall submit to the Waste Planning Authority verification that the facility has achieved R1 Status for the previous year through certification from the Environment Agency.

- 43) If within a period of 12 months of the development entering Phase C, the Plant has not commenced the export of electricity to one or more electrical distribution systems, including private export to local users and/or shore power, the Plant shall immediately cease operations. The Plant will only be able to recommence operations once the equipment required for the export of electricity to an electrical distribution system is functioning, including private export to local users or shore power. The Waste Planning Authority will be provided with evidence that the connection is functioning prior to the recommencement of operations. Appropriate connection shall be maintained as installed throughout the lifetime of the development to allow the export of electrical power generated by the Plant.
- 44) Prior to the development entering Phase A, a Shore Power scheme for the supply of power to ships moored in Portland Port, which shall confirm the detailed routes for the supply of power to the specified quays at the Port, the details of the necessary electrical infrastructure and the key operational aspects of the provision of shore power, shall be submitted to and be approved in writing by the Waste Planning Authority. The Shore Power scheme will be fully implemented and operated in accordance with a programme and for a duration to be agreed with the Waste Planning Authority and thereafter retained for the life of the development or the agreed duration.
- 45) The developer shall ensure the Plant is constructed in such a manner that it would be capable of supplying available heat to a future district heating network (DHN) serving off-site users or process or space heating, including steam pass-outs and/or hot water pass-outs.
- 46) Prior to the development entering Phase A, a scheme shall be submitted to and approved in writing by the Waste Planning Authority which identifies a detailed route for the supply of heat from the Plant to the boundary of the site. Thereafter, the proposed route of the heat connection to the boundary of the site shall be safeguarded throughout the operational life of the development unless an alternative safeguarded route is subject to prior written agreement by the Waste Planning Authority. For the avoidance of doubt, the discharge of this condition does not relate to the approval of any future district heating system.
- 47) Within 30 days of final cessation of the operation of the development hereby permitted, the operator of the development shall inform the Waste Planning Authority in writing that all operations have ceased. Within 6 months of the final cessation of the operations, a scheme of restoration for the site shall be submitted to the Waste Planning Authority for approval in writing. The scheme shall include the removal of all buildings, chimney stacks, associated plant, machinery, waste and any material left on the site and shall set out details of restoration of the site following the removal of all such structures. The site shall thereafter be restored in accordance with the approved scheme of restoration, within 24 months of the date of approval by the Waste Planning Authority.
- 48) Copies of any final site condition environmental report(s) provided to the Environment Agency pursuant to the site Environmental Permit shall be submitted to the Waste Planning Authority within 10 working days of its finalisation.



Report to the Secretary of State

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State

Date 24 June 2024

The Town and Country Planning Act 1990

Appeal by

Powerfuel Portland Ltd

Against the decision of

Dorset Council

Inquiry Opened on 5 December 2023

Portland Port, Castletown, Portland DT5 1PP

File Ref: APP/D1265/W/23/3327692

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List of Abbreviations

2013 LCA: Weymouth and Portland Landscape Character Assessment 2013

AONB: Area of Outstanding Natural Beauty (now National Landscape)

APCR: Air Pollution Control Residue

Appellant: Powerfuel Portland Ltd

CCS: Carbon Capture and Storage

CHP: Combined Heat and Power

CMP: Conservation Management Plan

DHN: District Heating Network

EA: Environment Agency

EfW: Energy from Waste

EIA: Environmental Impact Assessment

ERF: Energy Recovery Facility

ES: Environmental Statement

e-in-c: Evidence in chief

Framework: The National Planning Policy Framework

GLVIA3: Guidelines for Landscape and Visual Impact Assessment 3

Ha: Hectare

HE: Historic England

HMP: His Majesty's Prison

IBA: Incinerator Bottom Ash

JCT: Jurassic Coast Trust

LACW: Local Authority Collected Waste

Local Plan: West Dorset, Weymouth and Portland Local Plan 2011-2031

LVIA: Landscape and Visual Impact Assessment

MBT: Mechanical Biological Treatment

MoJ: Ministry of Justice

Neighbourhood Plan: Portland Neighbourhood Plan

NPPG: National Planning Practice Guidance

NPPW: National Planning Policy for Waste

OUV: Outstanding Universal Value (of a WHS)

RDF: Refuse Derived Fuel

re-e: Re-examination

RFA: Royal Fleet Auxiliary

SoCG: Statement of Common Ground

SoS: Secretary of State

SPWI: Stop Portland Waste Incinerator

The Council: Dorset Council (as Waste Authority)

TPA: The Portland Association

tpa: Tonnes per Annum

UKWIN: UK Without Incineration

Waste Plan 2019: Bournemouth, Christchurch, Poole and Dorset Waste Plan

WDI: Waste Data Interrogator

WHS: World Heritage Site (Jurassic Coast)

x-e: Cross-examination

YOI: Youth Offenders' Institution

ZTV: Zone of Theoretical Visibility

Appeal Ref: APP/D1265/W/23/3327692
Portland Port, Castletown, Portland DT5 1PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Powerfuel Portland Ltd against the decision of Dorset Council.
- The application Ref.WP/20/00692/DCC, dated 3 September 2020, was refused by notice dated 24 March 2023.
- The development is the proposed development of an energy recovery facility with ancillary buildings and works including administrative facilities, gatehouse and weighbridge, parking and circulation areas, cable routes to ship berths and existing off-site electrical sub-station, with site access through Portland Port from Castletown.

Summary of Recommendation: That the appeal be allowed, and planning permission granted

1. Procedural Matters

- 1.1 The Inquiry opened on 5 December 2023 and closed on 21 December 2023 after a total of eleven sitting days. Aside from the appellant and the Council, two Rule 6(6) Parties, The Portland Association and Stop Portland Waste Incinerator¹ appeared jointly and took a full part in proceedings. Many members of the public and elected representatives addressed the Inquiry too².
- 1.2 A Case Management Conference took place on 17 October 2023 where various matters relating to the Inquiry were discussed. Based on that discussion, a programme for the Inquiry was agreed that involved heritage and landscape issues being dealt with first on a 'topic' basis, before the remainder of the Council's evidence, the evidence of the Rule 6 parties, and finally, the appellant's remaining evidence, with third party submissions allotted a specific time slot as set out above.
- 1.3 It was also agreed that there would be benefit in a pre-Inquiry accompanied site visit. This took place on 23 November 2023 and took in various heritage assets in and around the Port, and further afield, and some landscape viewpoints. Further accompanied site visits took place after the Inquiry closed. On 15 January 2024, a boat trip was set up that took in the harbour and the breakwaters, and Balaclava Bay. This proved most useful in terms of gaining an impression of the impact of the proposal from the adjoining waters. After the boat trip was completed, there was a further visit to the Jailhouse Café, and other viewpoints towards Abbotsbury. On 16 January 2024, there was an accompanied visit that took in heritage assets in and around the Port.
- 1.4 As agreed with the parties, I also carried out an unaccompanied site visit to the existing complex of waste management facilities at Canford Magna, near Poole. There is an application for a what is described as an energy from waste combined heat and power facility on this site which is currently before Bournemouth Christchurch & Poole Council for decision³. I deal with this below. Afterwards, I revisited (alone) the Portland Royal Navy Cemetery and a number of landscape viewpoints that form part of the evidence.

¹ Referred to hereafter as TPA and SPWI

² The afternoon and evening of 14 December 2023 were allocated for third party submissions

³ The application ref.APP/23/00822/F was received on 17 July 2023

- 1.5 Before the Inquiry opened, the appellant and the Council prepared and signed a Statement of Common Ground that covered a series of headings⁴. As indicated below, I have used this document as the basis for various descriptive and factual matters. The appellant, Council and Rule 6 parties also agreed a series of Core Documents that I refer to throughout this report. Along with the various Proofs of Evidence, Appendices, and Rebuttals, and documents submitted in the course of the Inquiry, these can be found at: <https://www.dorset.council.gov.uk/portland-port-castletown-portland-dorset-public-inquiry-core-documents>. I have listed these documents in Annex B.
- 1.6 The proposal underwent a series of changes while it was with the Council. The original submission documents are catalogued in the Core Documents⁵, as are the post-submission documents⁶. In the lead up to the Inquiry, the appellant put forward three further changes to the overall proposal. The first of these is the manner in which the building would be clad while the second relates to the inclusion of a permissive footpath, with associated fencing, linking two existing footpaths, and giving access to Battery E which would undergo clearance and other works of mitigation (the Heritage Mitigation Strategy)⁷.
- 1.7 All parties to the Inquiry had the opportunity to consider these changes well before the Inquiry opened. Details of the cladding could be made subject to a suitably worded condition, and the provision of the Heritage Mitigation Strategy is the subject of an Obligation under s.106. No-one would be prejudiced if the proposal was considered with these changes included.
- 1.8 The third change relates to the precise specification of the input fuel for the energy recovery facility. Largely, this is a matter for the environmental permitting regime which is the responsibility of the Environment Agency⁸ but it was confirmed that the changed input fuel would make no difference to the content of the Environmental Statement. Again, this proposed change was canvassed well before the Inquiry opened and there has been ample opportunity for it to be considered in evidence. On that basis, it can be taken into account in the determination of the appeal.
- 1.9 That leads on to two further matters. An application for an Environmental Permit for the operation of the proposal is, as I write, before the EA. Consideration of the application is taking place in the context of the input fuel originally proposed but I was told that once a Permit is issued, this could easily be varied to take account of the revised fuel specification. The second point is that the proposal constitutes EIA development for the purposes of the relevant regulations and the application was accompanied by an Environmental Statement⁹. The ES was updated and corrected in the course of the application, as indicated above. As updated and corrected, and augmented by evidence to the Inquiry, and my site visits, I am satisfied that it accords with the relevant Regulations and provides an adequate basis for decision-making.

⁴ CD11.05 – referred to hereafter as SoCG

⁵ CD1.01 to CD1.37t inclusive

⁶ CD2.01 to CD2.39 inclusive

⁷ This element of the proposal was withdrawn before the Council made its decision

⁸ Referred to hereafter as the EA

⁹ CD1.36a-1.36t, CD2.17a-2.17p, CD2.18-2.24, and 2.29a-2.31 - referred to hereafter as ES

- 1.10 My attention has been drawn to a letter dated 4 April 2024 from the Minister of State for Food, Farming, and Fisheries, the Rt. Hon. Sir Mark Spencer MP, addressed to the Chief Executive of the EA, regarding environmental permitting and waste incineration facilities. The letter includes a Direction to the EA, under regulation 62 of the Environmental Permitting (England and Wales) Regulations 2016, to temporarily pause the determination of environmental permits for new waste incineration facilities¹⁰, including Energy from Waste and Advanced Thermal Treatment. This applies, we are told, to proposed developments that do not yet hold an environmental permit for waste incineration, regardless of whether they hold planning permission from the relevant planning authority. The purpose of the Direction is to allow a short period for officials in Defra to lead a piece of work considering the role of waste incineration in the management of residual wastes in England. As this review is taking place in the context of the permitting regime, it has no bearing on whether planning permission should be granted for the proposal at issue. Whether or not the permitting regime is the correct context for a review of this kind is not a matter for me.
- 1.11 As set out in the evidence, the Council refused planning permission for the proposal for three reasons relating, in very broad terms, to the approach to waste treatment in the development plan, the landscape and the setting of the nearby World Heritage Site, and the impact on a series of heritage assets¹¹. The Rule 6 parties, and third parties raised a number of other issues too. All have underpinned the main issues I identified in advance of, and at, the Inquiry. I refer to these in detail below.
- 1.12 The appeal was recovered for determination by the Secretary of State on 30 October 2023. The reason given was that *'the appeal involves proposals which would have an adverse impact on the outstanding universal value, integrity, authenticity, and significance of a World Heritage Site'*. As I confirmed at the Inquiry, this reason could be read as prejudging an assessment of any impact on the World Heritage Site and I have approached the matter in my analysis below from first principles.

2. The Site and Surroundings

- 2.1 As set out in the SoCG¹², the appeal site lies within the confines of Portland Port on the Isle of Portland¹³. The 'red line' area of the appeal site is complex in shape to cater for proposed cable routes to an electricity sub-station off Lerret Road, via Castletown, as well as to the berths at Queens Pier and the Coaling Pier. The facility itself would be located in the roughly triangular area at the eastern extremity of the 'red line' area¹⁴. The appeal site in its entirety covers an area of 6.29 Ha. The part of the site where the proposal would be located is 2.14 Ha in area. This area is currently vacant and surfaced with a hardstanding that was used for the temporary storage of stone for the construction of the Port's new Deep-Water Berth. The buildings that used to occupy this part of the Port were demolished some years ago.

¹⁰ Initially to a date in May 2024 but then extended to July 2024

¹¹ The Council's decision notice is at CD6.01

¹² CD11.05

¹³ As shown on CD1.01 - Site Location Plan

¹⁴ As detailed on CD1.02 - Existing Site Plan

- 2.2 Access to the appeal proposal would be through Castletown, along Castletown Road, using the main entrance gate to the Port. Once within the port access to the facility would be along Main Road, past a series of Port buildings up to the site of the ERF which is bound by Incline Road, Canteen Road, and Balaclava Road which faces Balaclava Bay.
- 2.3 Portland Harbour was controlled by the Royal Navy until 1997 but is now in private hands. The harbour, and the Port are on the north and north-east coastline of the Isle of Portland. Chesil Beach and the causeway which carries the route into Portland – the A354 - is to the west. Weymouth is to the north.
- 2.4 The Port, and the appeal site, are close to, but not within, the confines of the Jurassic Coast World Heritage Site. This runs along the Chesil Beach and around the coast of the Isle of Portland up to King's Pier (approximately) on the east coast. There is then a gap before the designation resumes on the western edge of Bowleaze Cove, to the north-east of Weymouth. The Port itself, and the Isle of Portland are home to many heritage assets – designated and non-designated. I deal with these in some detail below.
- 2.5 It is also relevant to note that the Isle of Portland is home to HMP The Verne and HMP/YOI Portland both overseen by the Ministry of Justice¹⁵.

3. The Proposal

- 3.1 This is set out in full in the SoCG¹⁶ but put very simply, the proposal is a thermal treatment plant for the recovery of energy from waste¹⁷ and has been referred to as an energy recovery facility¹⁸. It is a conventional, single-line, moving grate combustion plant for the recovery of energy from non-hazardous residual waste, including Refuse Derived Fuel¹⁹.
- 3.2 The proposal would include two main buildings. The larger one would house the ERF plant while the smaller one would contain offices and welfare facilities. There would be ancillary buildings and structures too.
- 3.3 The ERF has been designed as a 'merchant plant' which would recover energy from the controlled combustion of up to 202,000 tonnes of non-hazardous residual waste, including RDF, in each year of operation. It is expected that some of the input will be local authority collected waste, and some will be from commercial and industrial sources. Combustible fractions of the construction and demolition waste stream might also be included.
- 3.4 RDF could be delivered by sea in the form of wrapped bales, and/or by road using HGVs, in loose or baled form. There would be two main residues resulting from the process – Incinerator Bottom Ash²⁰, and air pollution control residue²¹. Both would be taken away from the site by road, or by ship (in the case of IBA) for specialist reprocessing.

¹⁵ Hereafter the MoJ

¹⁶ CD11.05

¹⁷ Referred to as EfW

¹⁸ Referred to as ERF

¹⁹ Referred to as RDF

²⁰ Referred to as IBA

²¹ Referred to as APCR

- 3.5 The ERF is intended to export power to the national grid under conditions imposed by an export agreement. A new 33kV sub-station to be built as part of the proposal would serve as the connection point to the distribution network. Alongside that, facilities would be provided to allow the facility to provide a shore-based power system for ships berthed at the port, including visiting cruise ships, and the Royal Navy's Royal Fleet Auxiliary²² vessels that are stationed at the port. Moreover, the proposal has been designed in a way that offers potential for the future export of heat to a local heat network and it will be equipped to offer combined heat and power²³. There is the potential for the plant to provide a district heating network that could serve the two prisons on the island. The facility has been designed so that Carbon Capture and Storage²⁴ could be added to it at a later date should this be a viable option.
- 3.6 As referred to above, the proposal also includes a 'Heritage Mitigation Strategy'. This includes vegetation clearance, repairs, and the removal of risk factors at 'E' Battery. This battery is a Scheduled Ancient Monument and a Grade II listed building which is on the Historic England Heritage at Risk Register. The strategy will include the provision of public access through the provision of a permissive footpath that will join up with other footpaths to provide an 'around the island' circuit, as well as enhanced opportunities for public appreciation through the provision of interpretation facilities for the group of batteries, and other, related heritage assets at East Weare²⁵.

4. Planning History

- 4.1 The planning history of the site and surroundings is fully catalogued in the SoCG²⁶ but in brief, Portland Port was constructed between 1837 and 1890 to provide a harbour of refuge and then a coaling station for the (then) steam-powered navy. In 1923, Portland and the harbour were designated as HM Naval Base Portland. The naval base and major weapons research establishments in and around it were closed in 1995/1996 and at that point, the site sat within an area under transition into a commercial port.
- 4.2 The appeal site has a long history of development relating to its place within a naval base, and subsequently, a commercial port. Amongst a range of planning decisions, it is relevant to note the 2010 decision of the then Weymouth and Portland Borough Council to grant planning permission for an energy plant²⁷ and subsequent dealings in relation to conditions covering the proposed fuel source. This scheme was begun (and thereby implemented), but never completed.

5. Planning Policy

- 5.1 This is fully covered in Section 5 of the SoCG²⁸ so I deal with here, in detail, with the aspects that I consider most relevant.

²² Referred to as RFAs

²³ Referred to as CHP

²⁴ Referred to as CCS

²⁵ CD2.16, CD2.36 and CD3.05 trace the development of this part of the proposal

²⁶ CD11.05

²⁷ Ref.09/00646/FULES and 09/00648/LBC

²⁸ CD11.05

- 5.2 The development plan for the area includes the Bournemouth, Christchurch, Poole and Dorset Waste Plan²⁹, adopted in December 2019, the West Dorset, Weymouth and Portland Local Plan 2011-2031³⁰, adopted in October 2015, the Bournemouth Dorset and Poole Minerals Strategy 2014³¹, adopted in 2014, and the Portland Neighbourhood Plan³², adopted in June 2021.
- 5.3 As set out in the SoCG, there are many policies within these documents that bear upon the proposal. However, in dealing with the development plan as a whole in the SoCG, the appellant and the Council have highlighted the policies they consider most relevant to the determination of the application. On my analysis, this highlighting is accurate, and broadly, it is those policies that I consider in full below.
- 5.4 Policy 1 of the Waste Plan 2019 refers to sustainable waste management and sets out that in considering development proposals, the Waste Planning Authority³³ will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework³⁴, and work proactively with applicants to promote the circular economy and find solutions which mean that proposals can be approved where appropriate to secure development that improves the economic, social and environmental conditions in the area.
- 5.5 Under Policy 1, proposals for the development of waste management facilities must conform with, and demonstrate how they support the delivery of, the key underlying principles of the Waste Plan 2019. These relate to firstly the Waste Hierarchy – facilities that contribute to moving waste up the waste hierarchy and demonstrate that waste is being managed at the highest appropriate level; secondly Self-Sufficiency – facilities that enable the Bournemouth, Christchurch, Poole and Dorset area to move towards net self-sufficiency; and thirdly Proximity – facilities that adhere to the proximity principle through being appropriately located relative to the source of the waste.
- 5.6 Policy 3 of the Waste Plan 2019 identifies allocated sites for waste management facilities to address the shortfall in waste management capacity and identified needs for new and improved waste management facilities. The appeal site is not allocated in the Waste Plan 2019 but, amongst a range of allocated sites, it is correct to identify Inset 8 – Land at Canford Magna, Magna Road, Poole as being of particular relevance. The reasons for that will become clear later in this report.
- 5.7 Waste Plan 2019 Policy 4 deals with applications for waste management facilities on sites, like the appeal site, that are not allocated. These will only be permitted where it is demonstrated that: (a) there is no available site allocated for serving the waste management need that the proposal is designed to address or the non-allocated site provides advantages over the allocated site; (b) the proposal would not sterilise, or prejudice the delivery of, an allocated

²⁹ CD7.01 – referred to hereafter as the Waste Plan 2019

³⁰ CD7.02 – referred to hereafter as the Local Plan

³¹ CD7.03

³² CD7.04 – referred to hereafter as the Neighbourhood Plan

³³ And I take that to include others applying the policy, such as Inspectors, and the SoS

³⁴ Referred to hereafter as the Framework

- site that would otherwise be capable of meeting waste needs, by reason of cumulative or other adverse impacts; (c) the proposal supports the delivery of the Spatial Strategy, in particular contributing to meeting the needs identified in the Waste Plan 2019, moving waste up the waste hierarchy and adhering to the proximity principle; and (d) the proposal complies with the (other) relevant policies of the Waste Plan 2019.
- 5.8 On top of all that, proposals should be located (e) within allocated or permitted employment land which allows for Class B1, B2 and/or B8 uses; or (f) within or adjacent to other waste management and/or complementary facilities where the proposed use is compatible with existing and planned development in the locality; or (g) on previously-developed land suitable for employment or industrial purposes.
- 5.9 Waste Plan 2019 Policy 4 goes on to say that waste management facilities may be suitable within an agricultural setting where the proposed use and scale is compatible with the setting, provides opportunities to utilise outputs from the process in the locality, and provides advantages over the locations specified in (e) to (g). Of direct bearing on the proposal at issue, other locations will only be permitted if no suitable site meeting those criteria is available. Finally, sites will only be permitted where it has been demonstrated that possible effects (including those related to proximity, species, and displacement of recreation) that might arise from the development would not adversely affect the integrity of European and Ramsar sites either alone, or in combination with other plans or projects.
- 5.10 Waste Plan 2019 Policy 6 deals with recovery facilities. Proposals for the recovery of non-hazardous waste, including materials recovery, mechanical biological treatment, thermal treatment, anaerobic digestion, and biomass facilities, will be permitted where it is demonstrated that they meet all of a series of criteria: (a) the operation of the facility will support the delivery of the spatial strategy, contributing to meeting the needs identified in the Waste Plan 2019; (b) they will not displace the management of waste which is already managed, or likely to be managed, by a process that is further up the waste hierarchy than that being proposed, unless the Waste Planning Authority is satisfied that the proposal would result in benefits sufficient to outweigh the displacement; (c) proposals will provide for all operations including the reception, handling, processing and storage of waste to take place within an enclosed building unless there would be no proven benefit from such enclosure and demonstrate that the proposed operations will be compatible with existing or proposed neighbouring uses; (d) where energy is produced, they provide combined heat and power, or if this is demonstrated to be impracticable they recover energy through electricity production and are designed to have the capacity to deliver heat in the future; (e) where gas is produced, it is injected into the grid, used for fuel or is refined for use in industrial processes, unless this would not be practicable; and (f) possible effects (including those related to proximity, species, and displacement of recreation) that might arise from the development would not adversely affect the integrity of European and Ramsar sites either alone, or in combination with other plans or projects.
- 5.11 Moreover, any residues arising from the facility must be managed in accordance with the waste hierarchy and the proximity principle. Processing facilities for IBA must be located at or close to the source of the waste arising.

- 5.12 Waste Plan 2019 Policy 14 addresses landscape and design quality. Proposals for waste management facilities will be permitted where they are compatible with their setting and would conserve and/or enhance the character and quality of the landscape. This should be achieved through (a) sympathetic design and location; (b) appropriate use of scale, form, mass, layout, detailing, materials, and building orientation; and (c) avoidance, or if this is not practicable, acceptable mitigation of adverse impacts on the landscape.
- 5.13 It is then confirmed that great weight will be given to conserving the landscape and scenic beauty of Areas of Outstanding Natural Beauty and the Outstanding Universal Value³⁵ of the World Heritage Site³⁶, and their settings. Reference is then made to Policy 19 that I deal with below. The policy goes on to note that permission will only be granted for waste developments where it is demonstrated to the satisfaction of the Waste Planning Authority that they will not result in unacceptable adverse impacts upon the special qualities that underpin the relevant designation.
- 5.14 Policy 14 also addresses proposals for development in such areas (Areas of Outstanding Natural Beauty and/or the World Heritage Site) and the West Dorset Heritage Coast and the Purbeck Heritage Coast. This part of the policy is not relevant given that the appeal site is not within the confines of any of these designations. Any impact on the setting of these designated areas can be dealt with through the first part of the policy, as outlined above.
- 5.15 Waste Plan 2019 Policy 19 is directed at the historic environment. Proposals for waste management facilities will be permitted where it is demonstrated that heritage assets and their settings will be conserved and/or enhanced in a manner appropriate to their significance. Great weight will be given to the conservation (protection and enhancement) of designated heritage assets including listed buildings, conservation areas, historic parks and gardens, scheduled monuments, and non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments. Proposals resulting in harm to the significance of a designated heritage asset will only be permitted if this is justified, having regard to the public benefits of the proposal and whether it has been demonstrated that all reasonable efforts have been made to mitigate the extent of the harm to the significance of the asset affected.
- 5.16 In relation to proposals affecting non-designated heritage assets, the Waste Planning Authority will have regard to the scale of any harm to, or loss of, the significance of the asset. Where harm can be fully justified, archaeological excavation and/or historic building recording as appropriate will be required, followed by analysis and publication of the results.
- 5.17 While the Council and the appellant have (understandably) identified policies in the Waste Plan 2019 as those most relevant to the determination of the appeal, there are other parts of the development plan that merit attention too.
- 5.18 Policy INT1 of the Local Plan gives voice to the presumption in favour of sustainable development that forms the backbone of the Framework.

³⁵ Referred to hereafter as OUV

³⁶ Referred to hereafter as WHS

- 5.19 In simple terms, Policy INT1³⁷ sets out that there will be a presumption in favour of sustainable development that will improve the economic, social, and environmental conditions in the area.
- 5.20 Reference has also been made to Local Plan Policy ENV1³⁸ which deals with landscape, seascape, and sites of geological interest. It says, in summary, that the Plan area's exceptional landscapes and seascapes and geological interest will be protected, taking into account the objectives of the Dorset AONB Management Plan, and the WHS Management Plan. Development that would harm the character, special qualities or natural beauty of the Dorset AONB (now National Landscape), or Heritage Coast, including their characteristic landscape quality and diversity, uninterrupted panoramic views, individual landmarks, and sense of tranquillity and remoteness, will not be permitted.
- 5.21 Moreover, development should be located and designed so that it does not detract from, and where reasonable, enhances local landscape character. Proposals that conserve, enhance and restore distinctive landscape features will be encouraged. Development that significantly adversely affects the character or visual quality of the local landscape or seascape will not be permitted. Appropriate measures will be required to moderate the adverse effects of development on the landscape or seascape.
- 5.22 Local Plan ENV4³⁹ refers to heritage assets and, in brief, requires the impact of development on designated or non-designated heritage assets and their settings, to be thoroughly assessed against the significance of the asset. Any harm to the significance of a designated or non-designated heritage asset must be weighed against the public benefits of the proposal.
- 5.23 The Neighbourhood Plan contains Policy Port/EN4 which takes a similar approach to local heritage assets as the Waste Plan 2019 and the Local Plan. Policy Port/EN5 supports proposals that protect, conserve and/or enhance historic piers. Policy Port/EN7 sets out that development proposals will be expected to be of a design that complements the prevailing size, height, scale and mass, materials, layout, density and access of the existing surrounding development.; be of high-quality design and use locally appropriate materials and colours; and demonstrates that the development reflects and reinforces, as far as possible, the existing character of the locality⁴⁰.
- 5.24 On my analysis, there is nothing in this suite of policies, or the development plan as a whole, that is not in compliance with the Framework, or the National Planning Policy for Waste⁴¹ of October 2014. These outlines of Government policy are very important material considerations, obviously.
- 5.25 Other material considerations are set out in full in the SoCG. I highlight the Jurassic Coast Partnership Plan 2020-2025, and the Dorset AONB Management Plan 2019-2024 in particular.⁴²

³⁷ CD7.02 Page 16

³⁸ CD7.02 Page 20

³⁹ CD7.02 Page 33

⁴⁰ CD7.04 Pages 30, 31 and 34

⁴¹ Referred to hereafter as NPPW

⁴² CD12.09 and CD12.25

6 The Case for Dorset Council as Waste Authority

- 6.1 This is set out in full in opening and closing statements to the Inquiry and in evidence⁴³. What follows is the case presented in closing, but it is imperative that the Council's evidence is read in full in order to gain a proper appreciation of the case presented.
- 6.2 The Council relies on its three reasons for refusal in resisting the appeal, each of which has been supported by evidence heard during the Inquiry. These are dealt with in the order presented.

Heritage

Introduction

- 6.3 The heritage context of the appeal site is unique. The site sits within the setting of an array of different heritage assets that not only include individual assets of the highest significance, but which collectively inter-relate to produce a group value that is agreed also to be of the highest significance⁴⁴. Indeed, the appellant has accepted that we are dealing with a 'very, very remarkable' collection of built heritage assets⁴⁵. They form a nationally significant group and the range of assets, and their level of survival is exceptional⁴⁶.
- 6.4 The asset group in Portland is particularly remarkable due to its time depth, completeness, and inter-relationships⁴⁷. The assets span the early post-medieval period and fortifications commissioned by Henry VIII in the 1500s right through to the modern period and the important role played by Portland in WWII. Collectively, they illustrate the historical development of Portland Harbour, demonstrating its strategically important location, its growth as a commercial port, and its history as a harbour for the Royal Navy⁴⁸. That history includes the construction of the inner and outer breakwaters, to provide the first safe anchorage for a naval steam-driven fleet which, when built, created the largest man-made port in the world. It also includes a range of naval defences specifically designed to protect the harbour, reflecting advances in military technology and use cross the two world wars⁴⁹.
- 6.5 In terms of the completeness of the group, and the inter-relationships, the Council's evidence has demonstrated the various functional relationships and deliberate sight-lines between the different assets, noting that the group value is duly reflected in a number of the list descriptions. These are matters which will be returned to in relation to the individual assets, along with the particular scale of these assets, and how this bears on their significance⁵⁰.

Legal and Policy Framework

- 6.6 There is no material dispute around the legal and policy framework.

⁴³ AD04 and AD17, PPF22 to PPF32, and R06 to R09

⁴⁴ Dr Filmer-Sankey x-e

⁴⁵ Dr Filmer-Sankey e-in-c

⁴⁶ PPF26 Paras 3.9 and 8.1

⁴⁷ Ms Kelly e-in-c

⁴⁸ PPF26 Para 3.1

⁴⁹ PPF26 Para 8.1

⁵⁰ Ms Kelly e-in-c and PPF27

- 6.7 The statutory duties in sections 66 and 72 of the Planning (Listed Buildings and Conservations Areas) Act 1990, and the need to apply 'considerable importance and weight' to any harm to a listed building or its setting, or the character or appearance of a conservation area are reflected in the Framework⁵¹. Paragraph 205 says that great weight should be given to the asset's conservation, and the more important the asset, the greater the weight should be. Any harm to a designated heritage asset requires clear and convincing justification. Within this context, where development proposals lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. The various policies in the development plan align with the approach of this national policy⁵².

The Methodology of Competing Heritage Assessments

- 6.8 The decision-maker will need to reach their own conclusions on the heritage harm arising from the development proposed. However, there are a number of heritage assessments that seek to guide that exercise – the ES assessment, the appellant's assessment prepared for the appeal, the assessment prepared on behalf of the Rule 6 parties, and that prepared for the Council.
- 6.9 It is clear through the testing of the appellant's case that its assessment lacks any sound or appropriate methodology. It is largely descriptive of the timeline of the assets and, given its flaws, provides no sure guide as to the contribution that setting makes to their significance. In consequence, it cannot materially assist in assessing the effects of the appeal proposals on that significance.
- 6.10 The bold claim⁵³ that a 'best-practice based methodology' has been followed is entirely unsupported by the substance of the evidence which provides no detail of the methodology employed at all. Notably, and by contrast, the ES had set out a clear methodology⁵⁴ which aligned with the guidance for a staged approach to the assessment of harm set out in GPA3⁵⁵. The appellant accepts that the ES methodology was robust but for reasons that remain unclear, this methodology was not adopted in the evidence presented to the Inquiry.
- 6.11 No comparable details of what (if any) methodology was adopted. This is in stark contrast to the Council's evidence. The only real information provided⁵⁶ is skeletal at best and well short of the standard of assessment these exceptional assets require. For a number of reasons, the level of detail and analysis required to enable proper scrutiny of the findings is simply lacking.
- 6.12 First, the conclusions on harm only include findings of 'no harm', 'negligible impact', and 'very minor impact', such that all of them fall below even the level of 'minor' harm⁵⁷. The reader is told nothing about the potential levels of harm beyond 'very minor' or what it would take for an impact to reach the level of

⁵¹ CD9.01 and PPF26 Paras 2.9 – 2.18

⁵² CD7.01 Policy 19 in particular

⁵³ PPF07 Para 7.8

⁵⁴ CD1.36(h) Figures 7.4-7.6 on Page 30 Chapter 7 (Cultural Heritage)

⁵⁵ CD9.30

⁵⁶ PPF07 Pages 52-53 – the table 'Potential Impact on Significance of Assets'

⁵⁷ Dr Filmer-Sankey x-e

for example, 'moderate' or 'significant' harm (assuming these terms would appear on the appellant's scale of effects). As a result, the conclusions drawn cannot be contextualised.

- 6.13 This lack of contextualisation is particularly concerning where, as here, assets that are closer to the appeal site and would clearly be much more directly impacted by the appeal proposals, such as the breakwaters or the Verne Citadel, are ascribed the same very low level of harm (very minor) as assets that are considerable further away, such as Portland Castle and the Casteltown sub-area of the Underhill Conservation Area. Indeed this issue was bluntly highlighted when no indication would be given of the level of harm that would be caused to Portland Castle by the introduction of the cement silo⁵⁸. It is impossible to second-guess from the 'potential impacts' table what level of harm this might be afforded other than 'very minor'.
- 6.14 Secondly, this table of effects is entirely unclear⁵⁹ as to what is meant by the respective categories of 'inter-visibility' and 'wider context'. It seems that the 'wider context' category refers to situations where it is possible to see both the heritage asset and the proposed development from the same viewpoint, even though the observer might not be able to see one from the other. However, none of this was explained in the written evidence, nor is it clear how this distinction has fed into the assessment of the contribution that setting makes to significance, or the overall harm caused, in relation to each individual asset⁶⁰.
- 6.15 Thirdly, and perhaps most notably, the table of effects is entirely silent on a number of obviously relevant considerations to assessing the contribution that setting may make to the significance of a heritage asset. HE guidance in GPA3⁶¹ sets out a non-exhaustive checklist of such considerations. It is accepted that not all of these will necessarily be relevant in all cases, but a number of them are patently relevant to the assets here. These include in relation to 'the asset's physical surroundings': topography; aspect; other heritage asset; orientation; and aspect; functional relationships and communications; and history and degree of change of a time (to name but a few). For the 'experience of the asset', they include: views from, towards, through, across and including the asset; intentional intervisibility with other historic and natural features; visual dominance, and prominence or role as a focal point.
- 6.16 None of these are addressed in the appellant's table. Worse still, nor are they addressed in the written evidence⁶². It was nonetheless maintained that these considerations had been taken into account in the assessment and were kept in mind when considering settings⁶³. Leaving aside the fact that this was incapable of being tested, there is not a hint in the appellant's evidence that the internal cognitive process involved a proper assessment of the contribution that setting makes to the significance of the assets concerned. There is no

⁵⁸ Dr Filmer-Sankey x-e (see Viewpoint 19 in Figure JM16 in PPF05b)

⁵⁹ PPF07 Para 7.6 does not assist either

⁶⁰ PPF07 Para 7.18 provides no real analysis.

⁶¹ CD9.30 Page 11

⁶² Points accepted by Dr Filmer-Sankey in x-e

⁶³ Dr Filmer-Sankey x-e

clearly expressed and non-technical narrative that sets out what matters and why in terms of the heritage significance of the assets affected, together with the impact of the proposal upon them.

- 6.17 So, whilst the appellant has provided a detailed assessment of the history of the assets, and their significance, the evidence cannot be relied upon in relation to the key issues under consideration in the appeal – the assessment of the contribution that setting makes to the significance of the assets, and the level of harm caused by the proposal in light of that.
- 6.18 When scrutinised, it is clear that this assessment is fundamentally flawed due to an over-reliance on the port context of the appeal site. By wrongly assuming an ‘overall commonality of setting’ for all the heritage assets within an ‘overall context of change and development’ at the port⁶⁴, context has erroneously been conflated with setting. These are entirely separate concepts⁶⁵. For the purposes of the appeal, context is the port, but the setting of each individual asset needs to be assessed individually and will relate to the asset’s function and particular intervisibility, and the surroundings in which it is experienced. This confusion between context and setting, and the over-reliance on the port context, effectively airbrushes out and detailed analysis of the GPA3 considerations and thus seriously underestimates the effects of the appeal proposal on the significance of the various assets affected.
- 6.19 This is shown by the appellant’s assessment of the impact on the setting and thereby the significance of the Dockyard Offices. It is agreed⁶⁶ that this building was built to oversee the creation of the breakwaters and it was designed to facilitate views out over them. In other words, there was designed intervisibility between the assets, and this is reflected in the list description for the Dockyard Offices⁶⁷. Yet nowhere in the appellant’s evidence is this intervisibility recognised. Indeed, the most detailed description of the setting of the Dockyard Offices⁶⁸ still groups the asset along with the breakwaters without mention of intervisibility.
- 6.20 Overall, in light of all that, no material weight can be given to the appellant’s heritage evidence.
- 6.21 In stark contrast, the Council has provided a clear methodology for their assessment⁶⁹ of which no real critique was made. The staged approach in GPA3 has been followed and each individual asset has been assessed, transparently, in terms of the contribution that setting makes to significance, following the GPA3 checklist. Group value has been considered too. This evidence should be preferred.

Impact on Relevant Heritage Assets

- 6.22 With all that in mind, the most relevant heritage assets fall to be considered, including their significance, and the contribution setting makes to that

⁶⁴ PPF07 Paras 6.19-6.20 and 7.17-7.20

⁶⁵ Agreed by Dr Filmer-Sankey in x-e and CD9.30 Para 7

⁶⁶ Dr Filmer-Sankey x-e

⁶⁷ PPF27 Page 6

⁶⁸ PPF08 Appendix WFS1 Page 37 (Page 33 of the Heritage Assessment)

⁶⁹ PPF27 Pages 1-2

significance. What follows is a summary as the detailed analysis has been presented in evidence⁷⁰.

- 6.23 In assessing the impacts of the development, the proposals must be considered in their entirety. This includes not just the ERF building and stack but also its associated development, including the 4m high switchgear that would be located next to the Dockyard Offices⁷¹. It was explained how such an assessment had duly factored in the consideration of impacts on the Dockyard Offices and views of the breakwaters⁷². It was quite obvious that the appellant had, by contrast, focussed solely on the ERF building and the stack. It was accepted that it was 'fair to say' that the appellant was not as aware of the switchgear as they ought to have been until relatively recently⁷³. Again, this seriously undermines the robustness of the appellant's approach.

Group Value

- 6.24 The group value of the various assets cannot be overstated. All heritage witnesses agree that this group of assets is particularly special. The Verne Citadel is there because of the breakwaters, and the batteries are there because of the Verne Citadel⁷⁴. There is a functional link connecting these assets to one another and to the military and naval history of the port. That group value adds to the heritage significance of the individual assets.

The Port Context

- 6.25 Finally, as already noted, there is an important distinction between the port *context* of the appeal site and the *setting* of the various heritage assets. The appellant places considerable weight on the former, and its constant evolution. Yet that appeared to be carried to such an extreme that almost nothing would be likely to result in more than minor harm to the significance of the assets. However, the port context, whilst contributing to the significance of the assets, is only part of the contribution that their surroundings make to their significance.
- 6.26 Furthermore, whilst change over time is a normal part of the setting of a heritage asset, there needs to be a more nuanced assessment as to what impact such changes have on significance. HE advice in GPA3 is clear that changes over time, and cumulative change, can be both positive and negative⁷⁵. Here, the changes that have occurred within the port, and to the appeal site itself, have not necessarily had a negative impact on setting and have not resulted in lost or damaged relationships between the assets⁷⁶. In particular, whilst both sides agree that there have previously been buildings on the appeal site, it is also agreed that nothing has previously existed on the appeal site that was comparable in scale to what is now proposed⁷⁷. The

⁷⁰ The evidence of Ms Kelly

⁷¹ See CD1.04 (Proposed Site Plan); CD1.17 (Powershore Layout); and CD1.18 (Powershore Details)

⁷² Ms Kelly e-in-c

⁷³ Dr Filmer-Sankey x-e

⁷⁴ Ms Kelly e-in-c

⁷⁵ CD9.30 Page 4

⁷⁶ Ms Kelly e-in-c and x-e

⁷⁷ Dr Filmer-Sankey x-e and e-in-c

appellant's reliance on the earlier creosote pressure chamber and chimney does not assist⁷⁸ as no party has put forward any evidence to suggest that a similar built form to the ERF has ever existed on the site. Any previous buildings did not raise the same issues of competition in scale with the surrounding heritage assets⁷⁹. The presence of cruise ships does not assist either given that they vary in size, and are transient, and clearly port-related, unlike the ERF. Change over time has made a positive contribution to the significance of the various assets⁸⁰.

- 6.27 Crucially, the fact that the appeal site has changed over time, alongside its surroundings, does not lessen in any way the need for there to be a robust assessment of the heritage impacts of the development.

The Inner and Outer Breakwaters, including the Coaling Shed, Storehouse Jetty, Coaling Jetty, Inner Breakwater Fort and Outer Breakwater Fort

- 6.28 These assets were constructed between 1849 and 1882. The natural harbour at Portland was selected as a site for a safe refuge based on its location between Portsmouth and Plymouth, facing the French naval dockyard at Cherbourg. The formal construction of the Inner Breakwater was marked by a ceremony in which HRH Prince Albert laid the foundation stone on 25 July 1849 (the commemorative stone). The coaling shed, storehouse jetty and coaling jetty were also constructed in the mid-19th Century as part of the breakwaters' development. The construction of the Inner and Outer Breakwaters and associated infrastructure including the Dockyard Offices created the first harbour of refuge specifically designed to act as a coaling port for the Royal Navy's fleet of steam driven warships. When completed, the breakwaters formed the largest man-made harbour in the world. As the navy began to use the port, the need to provide associated fortifications was realised with the construction of the Verne Citadel and the East Weare batteries⁸¹.
- 6.29 Their aesthetic, historic and communal heritage value is described in the Council's written evidence⁸² including the fact that the commemorative stone at the western end of the inner breakwater (marking the official start of construction by HRH Prince Albert) has its own historic, heritage value, as does the further plaque added to the gun floor of the inner breakwater fort, commemorating the visit by HRH Prince Philip Duke of Edinburgh in 1999 to celebrate the 150th anniversary of that first stone being laid.
- 6.30 The setting of the breakwaters includes the group value and inter-visibility with the Verne Citadel, the East Weare batteries, and the Dockyard Offices, as well as longer views of Portland Harbour, including its association with Bingleaves Groyne, the North-Eastern Breakwater, and the seascape in which it is experienced⁸³. The Breakwater Railway, a non-designated heritage asset,

⁷⁸ R03 Para 2.12 – Ms Kelly confirmed that while there is evidence that a chimney was located on the site, there is no evidence it was a creosote factory chimney (Kelly x-e)

⁷⁹ Ms Kelly e-in-c

⁸⁰ Dr Filmer-Sankey x-e

⁸¹ PPF26 Paras 3.6, 3.9 and 3.11

⁸² PPF26 Para 3.11

⁸³ PPF26 Para 3.13

was the Admiralty's branch railway linking the breakwaters to the Weymouth and Portland Railway and the Admiralty Incline Railway. The continuation of the railway and incline are also within the setting of the breakwaters, and this provides a tangible link between the breakwaters and other assets in the group. These elements of the asset's setting are a key aspect of its special interest and setting makes a significant positive contribution to the heritage value of the breakwaters. The visual prominence of the breakwaters, their enormous scale, and their role as a focal point further contributes to their heritage value⁸⁴.

- 6.31 The development would be located immediately adjacent to the listed building in this group of assets⁸⁵. The scale, of what would be a substantial building, would detract from the visual prominence of the breakwaters; scale being a really important aspect of their heritage value⁸⁶ and introduce a detracting element in views of and from the breakwaters from the surrounding area and towards associated assets⁸⁷. It would impact on the important intervisibility between the Dockyard Offices and the breakwaters, as well as with the Verne Citadel, and the East Weare Batteries⁸⁸.
- 6.32 Overall, it is the Council's view that there would be a medium/high level of effect resulting in less than substantial harm to the significance of these assets, at the higher end of that category.

Dockyard Offices

- 6.33 The Grade II listed Dockyard Offices were built in 1848 specifically to oversee the construction of the breakwaters. It is described in the list description as the focal point of the breakwater construction with group value as part of a naval base of considerable importance⁸⁹. The projecting bay to the east end of the building was designed specifically to provide views of the breakwaters and the intervisibility and group value between the Dockyard Offices and the breakwaters is very clearly a key element of the heritage value of the asset. Further details of aesthetic and historic interest are provided in the Council's evidence⁹⁰.
- 6.34 The setting of the Dockyard Offices includes their intervisibility and association with the assets referred to above, and with Portland Harbour and the port within which they are experienced. Intervisibility between the Dockyard Offices and the various structures of the breakwaters and the views over Portland Harbour and Balaclava Bay make a considerable contribution to the heritage value of the asset and the relationship between the Dockyard Offices and the breakwaters is a key element of its special architectural and historic interest⁹¹.
- 6.35 Whilst the latter 20th Century alterations to the building have detracted from the original design, they do not obscure the view between it and the

⁸⁴ PPF26 Para 4.1

⁸⁵ PPF26 Para 4.1

⁸⁶ Ms Kelly e-in-c

⁸⁷ PPF26 Para 4.3

⁸⁸ PPF26 Para 4.5

⁸⁹ PPF26 Para 3.5

⁹⁰ PPF26 Para 3.14

⁹¹ PPF26 Para 3.16

breakwaters, with the orientation of the Dockyard Offices towards the breakwaters remaining readily apparent. Overall, setting makes a significant positive contribution to the heritage value of the asset⁹².

- 6.36 The scale of the proposed development would detract from views of the Dockyard Offices by introducing a building of significantly greater scale and mass in its immediate surroundings, and in views of and from the building⁹³. The main building, and the associated switchgear would significantly detract from the ability to appreciate and understand the important intervisibility between the Dockyard Offices and the breakwaters, and the views between them⁹⁴. Overall, the Council considers that there would be a medium/high level of effect resulting in less than substantial harm at the high end of that category.

The Verne Citadel

- 6.37 The Verne Citadel is staggering in terms of its built form and formidable in scale⁹⁵. This is unsurprising as it was designed to defend the harbour, having been built between 1858 and 1885 under the supervision of the Royal Engineers⁹⁶. It is, itself, an asset of the highest value (as a Scheduled Monument) and includes three Grade II* listed buildings – the north entrance, the south entrance, and the south-west and south-east casemates (fortified gun emplacements). It has aesthetic value as an imposing and significant mid to late 19th Century military citadel, historic value, both associative through its links to Captain Crossman of the Royal Engineers, and illustrative as a rare example of a purpose-built late 19th Century defensive citadel, and communal value as part of a series of monuments that form the largely complete naval base and social value derived from the military history of the area⁹⁷. It is a rare example of a mid-late 19th Century fortification associated with a Royal Navy port, and its prominent position and visual dominance contribute to its high value⁹⁸.
- 6.38 Its setting includes the surroundings in which it is experienced and the expansive views from it, particularly towards Portland Harbour which it was built to defend. The visually prominent north entrance can be seen from Castletown and Portland Port and despite modern development, the asset remains a prominent and dominant feature of Portland. The relationship between Portland Harbour, the East Weare batteries, and the Verne Citadel is readily evident in views of and from the Citadel. Indeed, the relationship between the Verne Citadel, the defensive structures of the batteries and East Weare Camp, and the breakwaters and the harbour that the Verne Citadel was seeking to defend is a key element of the special interest of the Verne Citadel. Overall, setting makes a positive contribution to its significance⁹⁹.

⁹² PPF26 Para 3.18

⁹³ PPF26 Para 4.6

⁹⁴ PPF26 Para 4.7

⁹⁵ Ms Kelly e-in-c

⁹⁶ PPF26 Paras 3.25 and also 3.8

⁹⁷ PPF26 Para 3.26

⁹⁸ PPF26 Para 3.27

⁹⁹ PPF26 Para 3.28

- 6.39 The proposed development would evidently detract from views of and from the Verne Citadel by introducing a building of considerable scale and mass, along with a 80m high stack. This includes views from the north towards and including Portland Harbour and the breakwaters which the Verne Citadel was built to defend. These views were accepted to be key parts of the asset's significance¹⁰⁰. The scale of the development proposed would detract from the ability to appreciate and understand this important intervisibility and also, to a degree, the visual dominance of the citadel¹⁰¹. In light of this, the Council takes the view that there would be a medium level of effect, considered to be less than substantial harm in the mid-range of that category¹⁰².

East Weare Camp and the Batteries

- 6.40 The East Weare Batteries are a series of five former gun emplacements built between 1862 and 1869 to protect Portland Harbour as the safe refuge created by the construction of the Inner and Outer Breakwaters¹⁰³. They were built on the north-east slope of Portland to overlook the harbour and the gun emplacements are orientated to the port and Balaclava Bay. The batteries were part of the defences associated with the Verne Citadel. East Weare Camp is an associated detention barracks built between 1870 and 1880. It provided secure accommodation for the gunners and garrison of the East Weare Batteries. Further details of the individual assets, their status as designated or non-designated heritage assets, and their historic, evidential, aesthetic, and communal value have been set out in the Council's evidence¹⁰⁴.
- 6.41 Overall, East Weare Batteries A, C and E and East Weare Camp have high heritage value reflected in their status as Grade II listed buildings, and a Scheduled Monument (Battery E), an asset of the highest value. They also have considerable group value, particularly with the breakwaters, and value associated with their significant part in British military history, and the development of Portland. Batteries B and D (non-designated heritage assets) are also considered to have moderate value, recognising that they contribute to an appreciation of this nationally significant grouping¹⁰⁵. Setting makes a significant positive contribution to the historic, aesthetic and communal heritage values of these assets¹⁰⁶. In particular, the relationship between the batteries, East Weare camp, the Verne Citadel, and the breakwaters, is a key element of the special interest of these assets. Views towards Portland Harbour are particularly significant to an understanding of the location and purpose of these assets; and the assets' surroundings have a maritime and naval character that reflects the history of the assets and provides context for the area's historical development¹⁰⁷.

¹⁰⁰ Dr Filmer-Sankey x-e

¹⁰¹ The limitations of the viewpoint in Figure JM10 (Viewpoint 16) of PPF05b are shown by the photograph at PPF27 Page 27 and PPF24 Page 26 Photograph C

¹⁰² PPF26 Paras 4.14 and 4.15

¹⁰³ PPF26 Para 3.20

¹⁰⁴ PPF26 Paras 3.21-3.22

¹⁰⁵ PPF26 Para 3.23

¹⁰⁶ PPF26 Para 3.24

¹⁰⁷ PPF26 Para 4.9

- 6.42 Again, the introduction of the development, with its significant scale, height and mass, would change the skyline and detract in views of and from the assets, particularly in views towards Portland Harbour to which the batteries were specifically orientated, but also in views of the assets from the Verne Citadel and Portland Harbour¹⁰⁸. The development would detract from the ability to appreciate and understand the important intervisibility and group value, notwithstanding the presence of vegetation.
- 6.43 For the batteries, the Council considers that here would be a medium level of effect, considered to be less than substantial harm in the mid-range of that category¹⁰⁹. For East Weare Camp, recognising that intervisibility with the breakwaters contributes less to the asset's significance than it does to that of the batteries (which were specifically oriented to protect the harbour), there would be a minor level of effect, which equates to less than substantial harm at the low end of that category¹¹⁰.

Underhill Conservation Area and the Grade II Listed No.1 Castletown

- 6.44 Castletown, within the Underhill Conservation Area, was the site of wharves and a pier associated with the Portland stone industry before becoming the gateway to the naval base following the construction of the breakwaters¹¹¹. No.1 Castletown, a former customs house, situated within the Underhill Conservation Area, demonstrates particularly the clear links between the settlement of Castletown and the port. In the list description, the building is considered to be part of the naval base building group, shown by its documented historic uses and the stone shield with the carved Royal monogram 'VR' illustrating the support shown by Queen Victoria and Prince Albert to the creation of the harbour of refuge. The link between No.1 Castletown and Portland Port is a key element of its special interest, therefore¹¹².
- 6.45 In terms of their settings, views along Castletown allow for intervisibility between the port and No.1 and the eastern extent of the conservation area and convey an area with a maritime and naval character, which makes a positive contribution to appreciating their historic value¹¹³.
- 6.46 The development will have an impact on views along Castletown towards Portland Port, that include the harbour and the breakwaters. However, it is recognised that such intervisibility is part of wider views and will be limited by intervening built form. As such, the Council concludes that there would be a minor level of effect, resulting in less than substantial harm at the lower end of the scale¹¹⁴.

¹⁰⁸ PPF26 Paras 4.9-4.10

¹⁰⁹ PPF26 Para 4.12

¹¹⁰ PPF26 Para 4.13

¹¹¹ PPF26 Para 3.17 and Paras 3.3-3.4 for more details

¹¹² PPF26 Paras 3.4 and 3.17

¹¹³ PPF26 Para 3.19

¹¹⁴ PPF26 Para 4.17

Mulberry Harbour Phoenix Caissons (Grade II Listed)

- 6.47 The two Phoenix Caissons (sections of the structure known as a Mulberry Harbour) are moored in-line to the north of Castletown Pier. They have a military history that is considerable¹¹⁵ including their use in creating a harbour to supply the Allied invasion of Normandy following the D-Day landings. The two caissons sit as a visually prominent monument to that military heritage. The Council's written evidence provides further details as to their aesthetic, historic, and communal value¹¹⁶.
- 6.48 Having been moored at Portland for over 70 years, their setting within Portland Harbour makes a positive contribution to their heritage value as part of Portland's naval history¹¹⁷. They also contribute to an appreciation of Portland as an embarkation point for the D-Day landings and their scale is important to appreciating their heritage value as an innovative feat of engineering, evident in views of them across Portland Harbour. The intervisibility with Portland Port is part of the asset's setting and contributes positively to its significance as does the visual prominence of views of the asset¹¹⁸.
- 6.49 The development would be situated in views that include the Caissons and the significant scale and mass of the proposal would detract from, and compete with, their visual prominence¹¹⁹. However, again it is recognised that the impact of the development would be in wider views and that a number of views of and from the Caissons would be unaffected. On that basis, the Council considers that there would be a minor level of effect resulting in less than substantial harm at the low end of the scale¹²⁰.

Portland Castle

- 6.50 Portland Castle is a Grade I listed building and a Scheduled Monument and therefore an asset of the highest significance. It was built as an artillery fort for Henry VIII in 1539-1541. It acted together with Sandsfoot Castle to guard the natural anchorage known as the Portland Roads. The two forts were situated on either side of that anchorage and are intervisible. That intervisibility, and the location of the forts is a key aspect of their special interest¹²¹. Further details of aesthetic, evidential and historic value can be found in the Council's written evidence¹²².
- 6.51 In terms of its setting, a degree of intervisibility remains across Portland Harbour with Sandsfoot Castle, notwithstanding more modern interventions¹²³. Views across Portland to Balaclava Bay make a positive contribution to appreciating the strategic location chosen as the site of Portland Castle, and

¹¹⁵ PPF26 Para 3.29

¹¹⁶ PPF26 Para 3.30

¹¹⁷ PPF26 Para 3.31

¹¹⁸ PPF26 Para 4.18

¹¹⁹ PPF26 Paras 4.17-4.18

¹²⁰ PPF26 Para 4.18

¹²¹ PPF26 Para 3.2

¹²² PPF26 Para 3.32

¹²³ PPF26 Para 3.33

also subsequent periods of military defensive developments in this strategically important location¹²⁴.

- 6.52 Whilst the development would be sited in a small range of wider views from and of Portland Castle, it would not impact the key elements of special interest of the asset, and as such, the Council concludes that there would be a negligible level of effect, resulting in less than substantial harm at the lowest end of the scale¹²⁵.

Overall Conclusion on Impacts

- 6.53 In the light of all this, there are two key heritage impacts that would result from the proposed development. First, while views would not be severed completely, the development would detract from both from intervisibility between and from views of and from the assets, resulting in detracting from the group value of the assets, in a context in which intervisibility is a key part of their special interest. This intervisibility is fundamental to an understanding and appreciation of the functional relationships between the assets in the group. Secondly, the development would detract from the deliberate and appreciable scale of some of the assets affected, in particular the Verne Citadel and the breakwaters¹²⁶.

6.54 *The Heritage Mitigation Strategy*

- 6.55 The benefits offered by the Heritage Mitigation Strategy through the provision of a permissive path and scrub clearance to Battery E, enabling its removal from the 'at risk' register are recognised but there are limitations.
- 6.56 In relation to the path, while this would open up public access and views of the batteries and the breakwaters, with the potential for interpretation boards, any benefit¹²⁷ arising from this is severely limited by the 2m tall palisade fence that will need to be installed along its length. The assets would be viewed through a fence which, however sensitively designed, will limit its benefit. As a public benefit, this can only be given very limited weight.
- 6.57 In terms of the works to Battery E, not only is the extent of scrub clearance proposed unclear, but crucially, the suggested works were not the result of a proper Conservation Management Plan (CMP) process which would have justified the proposed mitigation by reference to the heritage priorities judged by reference to the group of assets as a whole. In the absence of this, it is not possible to gauge how the proposed mitigation can be justified as mitigation for harm across the whole scheme¹²⁸. It was explained how a CMP would usually come first in order to guide mitigation coming forward¹²⁹. Here, there is no CMP which explains how the works to Battery E can somehow be said to address all of the (considerable) levels of heritage harm. So, from the information available, it can only be assumed that these would be mitigation for harm to Battery E, not for harm further afield. It also needs to be borne in

¹²⁴ PPF26 Para 3.33

¹²⁵ PPF26 Para 4.19

¹²⁶ PPF05b Figures JM21 and JM22

¹²⁷ And any benefit is a public rather than a heritage benefit

¹²⁸ HE also called for a CMP in their consultation response of 9 March 2023 (CD4.89)

¹²⁹ For this reason, this cannot be dealt with through a condition

mind that the threshold for removing an asset from the 'at risk' register is not a high one. This is especially so in relation to Scheduled Monuments.

- 6.58 Ultimately, in relation to the mitigation strategy, the Council's view is that it is difficult to see how these limited benefits could outweigh the totality of the harms to the multiple assets affected. It was accepted¹³⁰ that the heritage benefits could not be described as 'substantial'. But even if it was accepted that they were 'very significant', the benefits only relate to Battery E. That cannot, on any proper or sensible assessment be said to outweigh all the heritage harms. Whether or not this is assessed as part of a general balancing exercise, as per paragraph 208 of the Framework, or through the more complicated two-part heritage benefit assessment undertaken by the appellant, it simply cannot be correct. The reality is that the appellant has significantly underplayed the heritage harms in this case and seeks to justify causing them by offering self-evidently insufficient heritage mitigation.

Conclusion on Heritage

- 6.59 Overall, the public benefits of the proposal come nowhere near outweighing the significant heritage harm found in this case and in that light, there is conflict with Policy 19 of the Waste Plan 2019, Policy ENV4 of the West Dorset, Weymouth and Portland Local Plan, Policy Port/EN4 of the Portland Neighbourhood Plan, and paragraphs 203 and 208 of the Framework.

Landscape and Visual

Introduction

- 6.60 The appeal site sits within a highly sensitive location in landscape and visual terms¹³¹. It is situated at the foot of the slumped cliffs of the Weare, on the northern skyline of Portland, visible from a myriad of viewpoints in the Dorset and East Devon Coast World Heritage Site¹³², the West Dorset Heritage Coast that includes Chesil Beach (or Heritage Coast), the South West Coast Path, and the Dorset Area of Outstanding Natural Beauty (now known as the Dorset National Landscape).
- 6.61 The landform of the Island of Portland has been described aptly, as iconic, reflecting its unique profile in views from Chesil Beach and the north-west. There can be no question that the introduction of the proposal – its mass, scale and height – will disturb that profile. Notably, the Council's second reason for refusal encompasses not only the impact of the development on this iconic landform, but also its 'significant adverse effect on the quality of the landscape' more generally within the setting of the WHS, particularly in views from the north and north west when viewed from the South West Coast Path, and across Portland Harbour, including from views within the WHS and the Heritage Coast.
- 6.62 A key focus in the assessment of landscape and visual impacts must be on the experiential impact of the development. This is because it is not just Portland's landform that is iconic. So too is the unique experience of crossing to and

¹³⁰ Dr Filmer-Sankey x-e contrary to PPF07 Para 7.31

¹³¹ Mr Williamson e-in-c

¹³² Also referred to as the Jurassic Coast WHS

leaving the island across a landscape where the island skyline and the wildness of the coast is a key characteristic. That is a notable part of the journey¹³³ and any impacts on this experience must be fully considered.

- 6.63 Overall, it is agreed that the appeal proposal will be of a mass and scale larger than any built development currently within the port¹³⁴. It will obviously break the skyline and be silhouetted in a number of views, particularly from the north-west along Chesil Beach, the South West Coast Path, the Heritage Coast, and the WHS. The appellant's ES World Heritage assessment recognised that there would be significant adverse effects on the setting and the significance of the WHS in this respect¹³⁵. As with its heritage assessment, the appellant's LVIA seeks to downplay the effects of the proposal. However, in the Council's view, its assessment is entirely unconvincing.

Evidence and Methodology

- 6.64 Of course, the decision-maker will make their own judgments of the landscape and visual impacts of the proposal. But, as with heritage, there are competing professional assessments that act as a guide. For a number of reasons, the weight to be given to the appellant's appeal assessment evidence¹³⁶ should be limited.
- 6.65 First, as one of a number of qualified landscape architects to have assessed the proposal¹³⁷, the appellant's appeal LVIA is the only one to conclude that the impacts would be so limited as to result in just one significant effect. It is an outlier¹³⁸.
- 6.66 Secondly, the methodology used provides no clear basis for the judgment as to the significance of effects and is not in keeping with the Guidelines for Landscape and Visual Assessment (GLVIA3). Where categories of harm are used, such as 'moderate' or 'minor', GLVIA3 expects a clear explanation as to which of these are considered significant, and which are not¹³⁹. On any reading the appellant's appeal LVIA does not do that¹⁴⁰. Whilst concluding that effects greater than 'moderate' are 'more likely' to be significant, no clarity is provided as to why, in the very sensitive context here, such a level of effect is significant whilst the level of effect judged significant by the ES (moderate to slight) is not. The indicative threshold level chosen by the appellant for significant effects (greater than moderate) has now been set two notches above that set by the original LVIA (slight to moderate or above) without any explanation having been given¹⁴¹. This is in a context where the appellant judges a number of adverse impacts to be 'moderate'; but only one of them to be 'significant'. It ultimately leaves all this to a judgment call without proper

¹³³ Mr Mason x-e and Mr Williamson e-in-c

¹³⁴ Mr Mason x-e

¹³⁵ CD1.36n Paras 13.737 and 13.76

¹³⁶ PPF04 - PPF06

¹³⁷ For example, the Terence O'Rourke LVIA, Mr Williamson, as well as responses from Officers of Dorset Council

¹³⁸ Mr Mason x-e (PPF04 Table 6.1 for summary – compare with R07 Tables 3 and 4)

¹³⁹ GLVIA3 Para 3.34 – accepted by Mr Mason in x-e

¹⁴⁰ PPF04 Para 6.4.3 and to similar effect PPF05a Appendix JM3 Para 2.3.7

¹⁴¹ Mr Williamson e-in-c and R07 Paras 4 to 9

explanation for how that judgment has been exercised. This lacuna was made clear when the appellant's evidence was tested.

- 6.67 Thirdly, a number of the appellant's judgments are unexplained or confused. For example, for the viewpoint at Sandsfoot Castle (VP9) the appellant's assessment expressly refers¹⁴² to there being a strong degree of integration for the ERF with the existing development at the port (which plainly there would not be) but fails to make any mention of this for the viewpoint at Rodwell Trail above Castle Cove Sailing Club (VP25) notwithstanding that one would expect this point to be more relevant here as VP25 is closer to the port. No explanation could be given for this¹⁴³.
- 6.68 There are then some serious question marks as to how the appellant has reached judgements, in a context where the evidence is an outlier. There are other issues too¹⁴⁴ but this headline point gives a good reason why the Council's evidence should be preferred. The Council's landscape witness has methodically reviewed the ES LVIA and explained why a different view has been reached. Overall, the LVIA underestimates the extent and degree of adverse landscape and visual impact¹⁴⁵. The evidence is clear and transparent and uses the same matrix-based methodology as the LVIA itself¹⁴⁶; an LVIA considered sound and reasonable by the appellant¹⁴⁷. Given the high sensitivity of the site, the significance threshold chosen by the LVIA (slight to moderate) is reasonable¹⁴⁸. In any event, the Council explained how even if the significance threshold was raised a notch (that is to moderate or above¹⁴⁹) this would not change the conclusions¹⁵⁰.
- 6.69 The Council has also identified, correctly, a number of omissions in the LVIA, most notably the failure to assess the two most directly relevant Landscape Character Areas (LCAs)¹⁵¹ – the Chesil Beach, the Fleet and the Causeway LCA and the Portland Peninsula LCA, as well as a number of relevant viewpoints¹⁵². The erroneous and under-representative nature of the ES has led to effects of the scheme being underplayed. The appellant obviously agrees with the Council that there are omissions in the ES as its landscape witness has now assessed these two LCAs and eleven new viewpoints, but only within the context of their methodology which appears designed to understate the significance of effects. For all these reasons, the Council's evidence on this matter should be preferred.

¹⁴² PPF05a Appendix JM2 Page 19 under the bullet point: Degree of contrast/integration

¹⁴³ Mr Mason x-e

¹⁴⁴ For example, the fact that PPF04 does not cover relevant planning policies

¹⁴⁵ PPF23, PPF24, PPF25 and R07 explain how and why

¹⁴⁶ CD1.36(j) Part 1 Page 83 onwards Figures 9.1-9.3 (landscape) and 9.4-9.6 (visual)

¹⁴⁷ PPF04 Para 6.2.2 and x-e

¹⁴⁸ Mr Williamson e-in-c

¹⁴⁹ Which Mr Williamson considers would also be reasonable – R07 Para 11

¹⁵⁰ R07 Tables 3 and 4

¹⁵¹ The LVIA uses the 2017 Isle of Purbeck Heritage and Character Assessment (CD12.31) when it ought to have used the 2013 Weymouth and Portland Landscape Character Assessment (CD12.30)

¹⁵² Unsurprising in the light of the deficiencies in the LVIA's ZTVI mapping (PPF23 Paras 4.3-4.8 and 4.9-4.17)

Viewpoints and Visuals

- 6.70 Representations of landscape and visual impact should be relied upon only as an indicative guide to likely effects. On-site judgement is central to the assessment in this case and must take into account different weather conditions, the track of the sun, and the wide range of receptors affected. To take one example, the Jailhouse Café (VP16), it is self-evident that the appellant's photo-montage¹⁵³ only shows the impact of the development if the viewer looks straight ahead towards the horizon. If the viewer were to look outwards and downwards (which would be the more natural line of vision), the impact of the proposal would undoubtedly be far greater¹⁵⁴.
- 6.71 In terms of the accuracy of the photomontages, the Council has reviewed the 'viewpoint verification note' submitted to the Inquiry¹⁵⁵ in response to the apparent inconsistency in the stack height shown in the photo-montages from VP15 (E Battery) and VP17 (Royal Naval Cemetery). It seems from the diagrams presented that the precise location chosen for VP15 is not where the development would be most visible from Battery E. In contrast to VP17, which shows a downwards line of vision, the line of vision for VP15 is perpendicular meaning that only a small proportion of the stack would be visible. The topography is such that if the viewpoint had been sited just a short distance to the north, then the angle would be similar to VP17 with a similar proportion of the stack being visible. The land rises as one moves further inland away from the wall such that there are multiple viewing points which would afford a similarly wide visibility angle to VP17. The selection of VP15 offends the basic principle of LVIA assessment that viewpoints should be selected to show a worst-case scenario.

The WHS

- 6.72 The fact that the appeal involves proposals that could have an adverse impact of the Outstanding Universal Value (OUV), integrity, authenticity and significance of a WHS is the reason why the case has been recovered. Overall, the evidence shows that there will not only be an adverse impact on the setting and thereby the significance of the WHS, but that the impact would be a significant one¹⁵⁶.
- 6.73 The Council and the appellant agree that the WHS is designated as a natural, and not a cultural heritage asset. The WHS Nomination Document¹⁵⁷ records that the WHS was inscribed under criterion (i): The Dorset and East Devon Coast provides an almost continuous sequence of Triassic, Jurassic, and Cretaceous rock formations spanning the Mesozoic Era, documenting approximately 185 million years of Earth history. It also includes a range of internationally important fossil localities – vertebrate and invertebrate, marine and terrestrial – which have produced well-preserved and diverse evidence of

¹⁵³ PPF05b Image JM10

¹⁵⁴ PPF24 Appendix 5 Photograph C – it was confirmed during e-in-c that this photograph was taken at eye level but looking downwards

¹⁵⁵ AD81

¹⁵⁶ PPF23 Para 4.68

¹⁵⁷ CD12.06

life during Mesozoic times. It is also agreed that whilst the appeal site lies outside the WHS, it would be visible from and within the setting of the WHS¹⁵⁸.

- 6.74 The WHS is of the highest significance being internationally designated as one of the world's most valuable assets. WHSs are so valuable to humanity their conservation has been deemed to be our collective responsibility. UNESCO's Guidance and Toolkit for Impact Assessments in a World Heritage Context (2022)¹⁵⁹ reiterates that WHSs 'should always be considered as a highly sensitive environment' and that the international importance of the OUV of a WHS 'needs to be considered when evaluating the significance of any potential impacts'¹⁶⁰.
- 6.75 This document further stresses the importance of protecting the 'wider heritage' of a WHS beyond its OUV¹⁶¹. Notably the document states right at the outset that 'changes both within and outside World Heritage properties need to be managed in line with the Convention's objectives' reflecting the fact that developments outside the WHS may well impact on its OUV and significance. In line with this approach the differences between the WHS property, its buffer zone, and its wider setting, are recognised and the need to consider impacts on the 'wider setting' ensuring that the WHS is not 'viewed in isolation'.
- 6.76 The value of this 'wider setting' is further emphasised through its definition¹⁶²: *The wider setting of a World Heritage property may relate to the property's topography, natural and built environment, and other elements such as infrastructure, land-use patterns, spatial organisation and visual relationships. It may include related social and cultural practices, economic processes and other intangible dimensions of heritage, such as perceptions and associations. The wider setting might also play an essential role in protecting the authenticity and integrity of the property, and its management is related to its role in supporting the Outstanding Universal Value.*
- 6.77 In line with this approach, all parties accept the different concepts of (i) OUV; (ii) buffer zone; and (iii) wider setting apply to the WHS in Dorset. No buffer zone has been established here because none was needed. That is due to the fact that existing designations (including both the National Landscape and the Heritage Coast) and notably the local and national policy protections that apply to them¹⁶³ confer sufficient protection without the need for a separately designated buffer zone. That is reflected in the WHS Nomination Document¹⁶⁴, the Jurassic Coast Partnership Plan 2020-2025 (the Partnership Plan)¹⁶⁵, and in the Examining Authority's recommendation on the Navitus Bay development¹⁶⁶.

¹⁵⁸ CD11.05 Para 7.23

¹⁵⁹ CD12.07

¹⁶⁰ CD12.07 Page 27 Para 6

¹⁶¹ CD12.07 Page 44 Para 6.9

¹⁶² CD12.07 Page 63

¹⁶³ Emphasised by Mr Williamson in x-e

¹⁶⁴ CD12.06 Pages 9-10

¹⁶⁵ CD12.09 Page 17

¹⁶⁶ CD12.08 Paras 9.1.4 and 9.3.14

- 6.78 But, whilst there is no buffer zone, it is simply wrong to suggest, as the appellant does, that there is no setting to the WHS¹⁶⁷. The setting of the WHS must be separately considered and conserved and enhanced¹⁶⁸. The extent of that setting will be informed by a variety of components, requiring the application of judgment¹⁶⁹ but such considerations are not limited to impacts on the National Landscape (or Heritage Coast) on the basis that these form part of the reason why no separate buffer zone exists¹⁷⁰. Whilst both these designations form part of the setting of the WHS, the setting of the WHS is wider and extends also to areas protected by local landscape policies, beyond the designations.
- 6.79 Moreover, that setting includes the experiential setting which is critical to the WHS as an undeveloped coastline; a point that must be considered in relation to the appeal. That is evident from the Partnership Plan¹⁷¹ and is fully appraised in the Navitus Bay report¹⁷² in which the Examining Authority rejected an attempt to disassociate the 'special qualities marking the coastal stretches of the AONB' from the 'experiential aspects of the WHS', and instead concluded that 'the high expectations of a tranquil setting comprising an exceptional undeveloped coastline and an open seascape is as much part of enjoying the WHS as it is a perceptual experience of the AONB or Heritage Coast'.
- 6.80 The Panel ultimately concluded that¹⁷³:*....the surroundings in which the Jurassic Coast WHS is experienced extends beyond its immediate vicinity, and includes the natural settings of the coastal edges of the AONB, the Heritage Coast and the seascape. The setting therefore makes a positive contribution to the WHS and the Panel considers contributes to its significance as [sic] whole.*
- 6.81 This is entirely in keeping with the UNESCO Toolkit¹⁷⁴ and led to a conclusion that the offshore wind farm proposed in that case¹⁷⁵: *would result in marked changes to the surroundings of the WHS and the way it would be experienced in those surroundings to the point of harming the Site's significance.* In terms of approach, the same one should be applied in this case.
- 6.82 The Jurassic Coast Trust (JCT) recognises that it does not have the expertise to appraise the effects of proposed development on the experiential setting of the WHS as opposed to its functional setting. However, it has raised four concerns in relation to the disruption of the profile of Portland on landscape character, the disruption of the prominence of visible stratigraphy by the scale of the development, distraction from the appreciation of the wider coastline and its natural qualities, and the increased prominence of urban aspects serving to disrupt the connectivity of this part of the WHS to the wider, more natural, coastline¹⁷⁶. These concerns chime with those of the Council.

¹⁶⁷ R02a Para 1.6.7

¹⁶⁸ CD12.09 Partnership Plan Page 48 Strategic Aim 2

¹⁶⁹ Accepted by Mr Mason in x-e

¹⁷⁰ Mr Williamson x-e

¹⁷¹ CD12.09 Page 22

¹⁷² CD12.08 and Para 9.3.20 in particular

¹⁷³ CD12.08 Para 9.3.22

¹⁷⁴ Accepted by Mr Mason in x-e

¹⁷⁵ CD12.08 Paras 9.3.24 and 9.3.25

¹⁷⁶ CD4.12

Impact of the Development

- 6.83 Here the proposed development will undoubtedly have a significant impact on the setting of the WHS, including its experiential setting¹⁷⁷. The sensitivity of the WHS is high and the introduction of the development will clearly impact on landscape character and on a number of viewpoints in the WHS itself, in particular viewpoints along Chesil Beach, and north of the harbour around Sandsfoot Castle. These effects can be seen for example in VP9 (Sandsfoot Castle)¹⁷⁸; VP21 (South West Coast Path adjacent to Portland Beach Road)¹⁷⁹, VP22 (Chesil Beach)¹⁸⁰, VP23 (South West Coast Path, south of Ferry Bridge Marina)¹⁸¹, VP24 (south west end of Rodwell Trail)¹⁸², and VP25 (Rodwell Trail, north west of the Castle Cove Sailing Club)¹⁸³. Moreover, the development of a large-scale ERF would negatively affect the perception and quality of experience for visitors, in conflict with the Partnership Plan¹⁸⁴.
- 6.84 Notably, these conclusions align with those in the ES¹⁸⁵. It should also be noted that these impacts affect the WHS as a whole and it is not appropriate, to suggest, as the appellant does, that these impacts are confined to parts of the WHS¹⁸⁶. The appellant's evidence is the outlier in concluding (wrongly) that there would be no significant harm.
- 6.85 The error is to fail to recognise that the location of the appeal proposal, coupled with its scale, would disrupt the existing profile of Portland in multiple views from the north-west. The ERF would be seen as a visible, sky-lining extension to the landform, disrupting its profile. It is of a different height and scale to any existing development at the port, and the Cement silo, if built, would not have the same sky-lining impact on the landform because it would be backdropped by the island to a far greater extent. Indeed, the proposed ERF is of such a scale that the ES and the Council's evidence identify significant adverse effect 4.5km away. It would, even with no plume, be an obviously distracting feature which will impact significantly and harmfully on the appreciation of the wider coastline and its natural qualities which persist notwithstanding existing development. It would also undoubtedly extend a very urban influence well beyond that exerted by the existing built development at the port and weaken the perception of connectivity of the WHS to the more natural coastline.
- 6.86 Underlying the appellant's erroneous conclusions is that, having accepted that the Chesil Beach, the Fleet and the Causeway LCA is of high value and the Portland Peninsula is of medium value¹⁸⁷, reflective of the fact that they both possess many positive landscape characteristics, the principal focus is on

¹⁷⁷ PPF23 Paras 4.68, 4.88 and 5.5

¹⁷⁸ PPF05b Figure JM6

¹⁷⁹ PPF05b Figure JM20

¹⁸⁰ PPF05b Figure JM22

¹⁸¹ PPF05b Figure JM24

¹⁸² PPF05b Figure JM26

¹⁸³ PPF05b Figure JM28

¹⁸⁴ PPF23 Paras 4.84-4.88

¹⁸⁵ CD1.36(n) Para 13.76 on Page 17 Chapter 13

¹⁸⁶ R02a Para 1.6.2

¹⁸⁷ PPF05a Appendix JM1 Pages 2-6

identifying how the appeal proposal would integrate with the identified detrimental features. That effectively airbrushes out the key characteristics which in both cases include skylines, exposure, and open and extensive views. As a result of downplaying sensitivity to the change which the ERF would bring about, the appellant concludes that the effects on landscape character would not be significant. When properly assessed, the Council considers that the effects would be both significant, and unacceptable¹⁸⁸.

Heritage Coast

- 6.87 This receptor is of high sensitivity¹⁸⁹ and having regard to the totality of views from it (including those from Chesil Beach only a short distance from the site) there would be a moderate adverse effect that is significant¹⁹⁰. This reflects the fact that there would be a notable change to the skyline due to the presence of the development at the foot of the landform, projecting built development outwards and disturbing the iconic form of the island¹⁹¹.

Chesil Beach, the Fleet, and the Causeway LCA

- 6.88 This receptor is one of the iconic features of the south coast¹⁹² and the appellant agreed that its value is high¹⁹³, notwithstanding the various detrimental features listed in the Weymouth and Portland Landscape Character Assessment 2013 (2013 LCA)¹⁹⁴ such as the heavy traffic on the A354 and the urbanising influence of Osprey Quay¹⁹⁵.
- 6.89 The appellant's contention¹⁹⁶ that the sensitivity to change is only 'low to medium' reflects an over-reliance on the more urbanised northern and southern ends of the Causeway and insufficient attention being paid to the more open, natural, and exposed character of the land in-between¹⁹⁷. It also reflects an unjustified over-emphasis on the influence of transient and irregular (both temporally and in terms of size) cruise ships¹⁹⁸. The Council maintains that the sensitivity is high.
- 6.90 The magnitude of change would be small to medium due to the obvious breach of the skyline in views from the north west and visible intensification of industrial activity, whilst in the port context.
- 6.91 Overall, this results in an effect that the Council assesses as moderate adverse and significant. It is further noted that, on the assumption that the Harbour/Wetland/Lagoon landscape character area assessed in the LVIA falls outside the Chesil Beach, the Fleet and the Causeway LCA, it too would

¹⁸⁸ PPF23

¹⁸⁹ PPF23 Para 4.67 in line with the assessment in the LVIA

¹⁹⁰ PPF23 Para 4.67 and confirmed in x-e

¹⁹¹ Mr Williamson x-e by reference to VP22 (Chesil Beach) PPF05b Appendix JM4 Figure JM22

¹⁹² Accepted by Mr Mason in x-e

¹⁹³ PPF05a Appendix JM1 Page 2

¹⁹⁴ CD12.30 Para 6.5

¹⁹⁵ Mr Mason x-e

¹⁹⁶ PPF05a Appendix JM1 Page 2

¹⁹⁷ Recognised in para 6.1 of the 2013 LCA (CD12.30)

¹⁹⁸ Expanded upon in R07 Para 12

experience a significant effect, with the level of effect being moderate to slight adverse¹⁹⁹.

Portland Peninsula LCA

- 6.92 The Isle of Portland forms a dramatic and distinctive wedge-shaped peninsula at the end of Chesil Beach. It is characterised by open skylines with sweeping views along the coast, but it is recognised that the influence of man-made structures intruding into these open skylines has a detrimental effect on character²⁰⁰. This LCA has an exceptionally strong identity, with parts of it designated as WHS and Heritage Coast, but the character varies with parts being subject to considerable man-made influence (including the port)²⁰¹.
- 6.93 Overall, the receptor value is high, the susceptibility to change is medium, the sensitivity is medium to high, and the magnitude of change would be medium adverse, with a conspicuous new, industrial element breaking the skyline, and altering the iconic profile of the rugged limestone island. All this results in a moderate adverse effect that the Council views as significant²⁰².

Residential Receptors and the South West Coast Path

- 6.94 In a number of respects, the LVIA downplayed the effects on residential receptors, primarily in Weymouth, but also in Portland itself. There are lots of residential receptors in Weymouth who enjoy valuable coastal views over the harbour towards Portland that would be impacted by the development. There would be significant adverse effects on visual amenity for large numbers of residential receptors²⁰³.
- 6.95 In terms of the South West Coast Path, the Council agrees with the assessment of sensitivity in the LVIA (high) but the assessment of the magnitude of change was seriously underestimated (small to negligible) and should instead be moderate, resulting in a substantial adverse (and therefore significant) effect on the visual amenity of users of the South West Coast Path²⁰⁴.

Overall Landscape and Visual Impacts

- 6.96 In the interests of brevity, the Council has not summarised every finding of significant landscape and visual impacts, focussing only on some of the key findings²⁰⁵. In summary, the evidence shows that there would be a significant effect on three landscape receptors²⁰⁶: (i) harbour/wetland/lagoon – moderate to slight adverse; (ii) Chesil Beach, the Fleet and the Causeway – moderate adverse; and (iii) Portland Peninsula – moderate adverse.

¹⁹⁹ PPF23 Para 4.34

²⁰⁰ PPF23 Para 4.42

²⁰¹ Mr Williamson e-in-c

²⁰² Mr Williamson e-in-c and PPF23 Para 4.42

²⁰³ PPF23 Paras 4.47 to 4.51

²⁰⁴ PPF23 Para 4.52 and PPF24 Appendix 5, Photographs F, G, H, J and K

²⁰⁵ PPF23 Paras 4.43 and 4.69, PPF24 Appendix 4 Tables 1 and 2 and R07 Tables 3 and 4 give a complete summary of the Council's findings

²⁰⁶ PPF23 Para 4.43

- 6.97 There would be significant effects on eleven visual receptors²⁰⁷: (i) South West Coast Path – substantial adverse; (ii) Sandsfoot Castle – substantial adverse; (iii) residential areas of Weymouth and Portland – moderate/substantial adverse; (iv) walkers and cyclists on the A354 – moderate/substantial adverse; (v) Port/Marina/Harbour – moderate adverse; (vi) PRoW S3/68, 70, 72 and 81 – moderate adverse; (vii) Nothe Fort – moderate adverse; (viii) West Dorset Heritage Coast – moderate adverse; (ix) Jurassic Coast WHS – moderate adverse; (x) Weymouth beachfront – Moderate/slight adverse; and (xi) PRoW south of Littlemoor – moderate/slight adverse.
- 6.98 On visual effect, it is noted that the ES also found significant effects on a number of visual receptors²⁰⁸. This is despite the serious deficiencies in the number of viewpoints it chose to assess²⁰⁹.
- 6.99 Overall, the Council considers that the development would introduce a major new built form into the port (larger than anything that exists at the port currently²¹⁰) which would be visible from a myriad of views, including at great distances, and with significant effects extending to at least 4.5km from the site²¹¹. Those impacts cannot on any sensible basis be said²¹² to be 'localised' or 'very localised'. The development would obviously break the skyline, and be silhouetted, in many of the views assessed, particularly from the north west²¹³ and it would detrimentally affect the iconic landform of the Isle of Portland.
- 6.100 Consequently, in the Council's view, there would be a failure to comply with Policy 14 of the Waste Plan 2019, Policy ENV1 of the Local Plan, Policy Port/ENV7 of the Neighbourhood Plan, and paragraph 180 of the Framework²¹⁴. The extent of harm to the setting of the WHS is such that the appeal proposal is unacceptable on landscape grounds²¹⁵.

Waste Management

Need

- 6.101 It is not only reasonable, but entirely appropriate that the Council has provided an updated assessment of the need for residual waste management capacity in the Waste Plan 2019 area. As explained in opening²¹⁶, given the age of the Waste Plan 2019 forecast (2018) and the data on which it relies (2015 baseline), it is important that the decision-maker has a current assessment of need to weigh in the planning balance. In fact, this is the first time, since the adoption of the Waste Plan 2019, that the validity of its forecasts and capacity gap estimates have been tested and the Waste Plan 2019 requires in the proposals on unallocated waste sites, to be supported by contemporary data.

²⁰⁷ PPF23 Para 4.69

²⁰⁸ CD1.36(j) Part 1 Table 9.3 and Paras 9.144-9.145 Page 78 and 9.148-9.149 Page 79

²⁰⁹ PPF23 Para 4.3 to 4.17

²¹⁰ Accepted by Me Mason x-e

²¹¹ PPF23 Para 5.3

²¹² CD11.01 Paras 2.55, 2.57-2.59, 4.1 and 4.8

²¹³ See for example PPF05b Appendix JM4 VP9, VP21, VP22, VP23, VP24 and VP25

²¹⁴ PPF23 Paras 4.71-4.83

²¹⁵ PPF28 Appendix 1 Paras A1.3-A1.12 gives further reasons why the Waste Plan 2019 forecasts, but not the Waste Plan 2019 itself, are considered to be out of date

²¹⁶ AD.04 Para 6

In that context, it would not be appropriate to rely on the dated 2018 forecasts²¹⁷.

- 6.102 The fact that the Council has provided an updated assessment of the capacity gap forecasts does not mean that the Council considers the Waste Plan itself to be 'out of date', notwithstanding the appellant's contrary assumption²¹⁸. The Waste Plan 2019 is careful to stress that the Table 7 assessment of potential residual waste arisings and capacity should be seen only as a guide²¹⁹ and assumes that the Annual Monitoring Report (AMR) will provide up to date data on both the quantities of waste arising and existing or permitted capacity. There has, however, been no recent monitoring, hence the Council's decision to commission an updated assessment²²⁰.
- 6.103 Overall the Council's updated assessment shows the following: (a) projected need (that is the capacity gap) for residual waste management facilities in the plan area is considerably less than that which is set out in Table 7 and is expected to continue falling over the Plan period; (b) at an early point during its operating lifetime, the capacity of the appeal proposal will significantly outstrip the predicted needs of the Plan area²²¹ regardless of the numerous sensitivity tests applied – indeed in three of the five scenarios tested, there will be insufficient waste in the Plan area to exclusively feed the plant from the very outset²²²; (c) as the proposed facility is a merchant facility, with a fixed minimum demand for waste throughout its operational life, it would be expected to draw in waste from beyond the Plan area in such circumstances²²³; and (d) not only does the appeal proposal challenge the spatial strategy of the Waste Plan 2019, it also challenges the objective of driving waste up the Waste Hierarchy.

Competing Evidence on Need

- 6.104 Forecasting future residual waste arisings is complex and cannot be done with certainty. All assessments will be sensitive to certain parameters and assumptions, including baseline arisings, growth rates, and recycling rates that are difficult to predict. In this context, there are two key reasons why the Council's analysis should be preferred.
- 6.105 First, the Council's expert²²⁴ has presented an assessment in a fully transparent and replicable way, providing all necessary details of the methodology employed, and data inputs including screenshots of the dataset relied upon²²⁵. This means it can be properly scrutinised and tested. By contrast, the appellant's expert²²⁶ relies solely on an assessment carried out by

²¹⁷ PPF28 Appendix 1 Para A1.23 records that while an AMR was produced in 2020, this acknowledged that waste management capacity had yet to be tested (CD12.41 Table 4)

²¹⁸ PPF01 Paras 3.1.13 and 3.4.35(i)

²¹⁹ CD7.1 Para 7.72 Page 54

²²⁰ Ms Hart x-e

²²¹ Mr Potter e-in-c

²²² Mr Potter e-in-c

²²³ PPF01 Para 3.2.4 recognises this

²²⁴ Mr Potter

²²⁵ PPF29 and R08 Appendices 1-5

²²⁶ Mr Roberts

Tolvik with extra input on certain assumptions, without providing and proper explanation for the derivation of the raw data inputs²²⁷ or presenting details of the underlying methodology that enables that assessment to be independently scrutinised and tested. No witness from Tolvik attended the Inquiry to be cross-examined. We are being asked to accept what the appellant says Tolvik has told them, very little of which can be scrutinised.

- 6.106 This is a diversionary approach. In reality the attack on the Council's witness narrowed down to his original acceptance of the position of the Waste Plan 2019 that the capacity of Canford Magna²²⁸ ought to be counted as recovery capacity in Table 7 and his exclusion of bulky waste from the wastes that would be suitable as feedstock for the proposed ERF. Neither undermine the principal conclusions. There was also a suggestion that the assessment of the component wastes in residual waste arisings from Dorset include incorrect figures in relation to EWC 20 03 01²²⁹; the suggestion being that the Council's figures were out by 11,832 tonnes per annum²³⁰ (tpa).
- 6.107 In relation to Canford Magna, the Council reviewed the position on receipt of the appellant's evidence and accepted that 95,000 tpa of the stated capacity of the Mechanical Biological Treatment (MBT) facility should not be included and the Council's analysis was adjusted accordingly. That is not indicative of a lack of objectivity. In relation to bulky wastes, the fraction of the coded waste which will be suitable for incineration over the forecast life of the EfW cannot be ascertained with any certainty. Either the whole figure is included, which is likely to exaggerate the forecasts, or it is wholly excluded, which results in an under-estimate. Neither the appellant nor the Council added caveat to the figure, reflective no doubt of the acknowledgement that this element is understood to be uncertain. Whether it is included, or not, it does not begin to explain the very high residual waste tonnage identified by Tolvik as suitable for combustion.
- 6.108 As to the claimed EA's Waste Data Interrogator (WDI) residual waste tonnage error, the Council's evidence accurately reflects the content of the WDI for EWC 20 03 01²³¹. No source for the appellant's alternative figure was advanced and it should be rejected. Also to be rejected is the contention that the Council's assessment of the tonnage of combustible waste ignores the evidence of the refuse derived fuel which leaves Canford²³². The Council has accounted for this waste separately and it is clearly set out as the export of RDF from Canford²³³.
- 6.109 The suggestion made by the appellant that there was uncertainty as to how the Council had extracted data from the WDI should also be rejected. The Council's assessment can be replicated precisely²³⁴, including the screenshots.

²²⁷ As would be expected in an NPPG compliant assessment

²²⁸ Stated in the Waste Plan 2019 to be 125000 tonnes per annum (CD7.1 Table 7 Page 55)

²²⁹ Mr Roberts e-in-c

²³⁰ R08 Table 1 Page 4 Line 2 – Mixed Municipal Waste 26,129 and 20,261; Mr Roberts claimed the figures should be 36,507 and 21,715

²³¹ R08 Table 1 and PPF29 3 Page 5

²³² EWC Code 19 12 10 Table 1 entry 20,932 – the claim being that 54,800 tpa has been ignored

²³³ PPF29 Page 9 and PPF28 Table 3 Line 3 Page 20

²³⁴ PPF29

It was suggested that one cannot tell what filters were applied from the screenshots, but they are obvious from the outputs. The appellant has identified no errors.

- 6.110 The reality is that there is a large difference between the parties²³⁵ despite claimed reliance on the same data source. The difference cannot be explained by reference to bulky waste alone and given the transparent nature of the Council's figures, the most likely source of error is Tolvik. When the reasons behind the difference advanced by the Council are considered, that conclusion becomes stronger still.
- 6.111 To be clear, the Council asked for the appellant's source data on a number of occasions so that it might better understand the Tolvik figures²³⁶. It was ultimately the appellant's choice not to disclose full details of their workings to the Inquiry.
- 6.112 This lack of information matters and a few examples illustrate the point. The appellant relies on a table showing the residual waste quantities generated, and its fate, in 2022²³⁷. Yet there remains little clarity as how any of these figures were derived or where they come from. The appellant sets out that 'certain adjustments' have been made but there is a want of detail and no way of testing whether they are appropriate to this Plan area and justified by the evidence²³⁸. We know that these figures do not align with the figures the Council has arrived at using its empirically-based, transparent methodology²³⁹. Nor do we know what EWC Waste Codes were included in the appellant's definition of 'residual waste' when assessing the Council's WDI data²⁴⁰. This is crucial to a determination of the baseline starting value²⁴¹. It appears from the appellant's evidence²⁴² that they include the same four principal EWC codes relied on by the Council²⁴³ but then another 70 EWC codes generate arisings of 4,469 tpa. This is a relatively small tonnage, but one that cannot be tested.
- 6.113 In relation to the other adjustments made by Tolvik²⁴⁴, the Council has demonstrated that none are justified having regard to the specific circumstances of this Plan area, and other evidence²⁴⁵. The Tolvik assumption that 70% of the landfill input of EWC 19 12 12 is combustible²⁴⁶ has little evidential basis compared to the Council's figure of 50% which has been justified²⁴⁷. There is no evidence that there is any under-reporting of RDF for export with more waste shown to be going to incineration plants from the Plan

²³⁵ 76,095 tpa

²³⁶ Mr Potter x-e and re-e

²³⁷ PPF01 Table 3.2

²³⁸ PPF01 Para 3.4.28 and R01

²³⁹ Mr Potter x-e and R08 Para 2.4

²⁴⁰ R08 Table 1

²⁴¹ R08 Para 2.3

²⁴² Mr Roberts e-in-c

²⁴³ Not 3 as Mr Roberts suggested – they are 20 02 01, 19 12 10, 20 03 01, and 19 12 12

²⁴⁴ PPF02 Appendix NR08 Table 3.2 Lines 2, 3, and 4

²⁴⁵ R08 Pages 21 and 22

²⁴⁶ Which Mr Roberts asserted explained 7,735 tpa of the difference

²⁴⁷ CD12.40 refers

area than is reported as leaving waste sites in the Plan area²⁴⁸. In relation to uncoded waste, the date for waste not coded at sub-region level shows very little unaccounted for waste of the codes that might be suitable for incineration²⁴⁹. Finally, in relation to Tolvik's addition of 34,444 tpa reflecting the mass loss at Canford, it is simply not appropriate to add that into the table as it is waste that is being managed in an existing facility.

- 6.114 Similar problems of transparency arise with the newly submitted document²⁵⁰. The appellant presents a starting value of 258,275 tpa (2022) for tonnes of commercial, actually Municipal Commercial and Industrial (C&I) waste derived from the Tolvik forecast²⁵¹. That figure is apparently a national residual waste value that Tolvik has generated apportioned down to the Plan area but with no indication of how it has been apportioned, and no apparent cross-check with the actual WDI data. No-one is any the wiser about how those figures were actually derived. The appellant's forecasts are also undermined by the use of inappropriate recycling rates for Local Authority Collected Waste (LACW). These show forecast rates lower than rates already being achieved in the Bournemouth, Christchurch and Poole (BCP) Council area which simply cannot be right. This further undermines confidence in the Tolvik work.
- 6.115 Ultimately, the Council's assessment uses the EA's WDI 2022 inputs to calculate baseline arisings. This is the best available data source²⁵². The WDI inputs provide granularity of data that cannot be rivalled by Tolvik's (undisclosed) methods. Whilst, as with any data set, it has limitations, the potential weaknesses have been explored by the Council and found not to warrant the adjustments made by Tolvik for the Plan area²⁵³. Overall, nothing has occurred at the Inquiry to alter the position that the WDI figures are to be preferred in terms of establishing the baseline arisings for the purposes of forward planning²⁵⁴.
- 6.116 By contrast, we do not know what data sources the appellant's assessment has actually relied upon or whether they have been correctly reported. A long list of potential information sources that Tolvik can draw upon has been provided²⁵⁵ but we are told nothing about which of these actually fed into their assessment, nor to what extent²⁵⁶. The Council's reliance on WDI inputs must be preferred to the appellant's untestable 'basket' of inputs.

The Council's Assessment of Need

- 6.117 In order to correct for the Canford capacity adjustment, the Council has re-run its WDI based approach but discounting the capacity at the Canford Magna MBT down to the values proposed by the appellant. Following this

²⁴⁸ R08 Appendix 2

²⁴⁹ R08 Appendix 3

²⁵⁰ AD05 – Appellant Amendment of Table 5 of Mr Potter's Rebuttal Proof (R08)

²⁵¹ PPF02 Appendix NR9

²⁵² NPPG on Waste Para 035 – planned provision of new capacity and its spatial distribution should be based on robust analysis of best available data

²⁵³ R08 Pages 20-22 and in x-e

²⁵⁴ Mr Potter re-e

²⁵⁵ PPF01 Para 3.4.23

²⁵⁶ Mr Potter x-e

reassessment, the total residual waste arisings in the Plan area suited to combustion is within the range of 161,900 tpa to 184,100 tpa, depending on whether the appellant's position on transfers is accepted, or not²⁵⁷. This shows that even without any additional recycling being achieved in the Plan area, there are already insufficient residual waste arisings to support an incinerator of the capacity proposed. Growth in waste arisings will not support the facility as recycling rates are expected to accelerate at a faster pace²⁵⁸.

- 6.118 This assessment also needs to factor in additional Government measures, particularly the Environment Act 2021 target to halve residual waste by 2042, which had reduced the capacity gap requirement (in the Council's original assessment²⁵⁹) to 62,000 tpa (2023) falling to 25,000 tpa (2033)²⁶⁰. The Environment Act 2021 target has been set in the context of a clear expectation that residual waste will reduce. Defra's Third Annual Monitoring Report for the Resource and Waste Strategy (November 2022)²⁶¹ concluded that in 2017 'an estimated 53% of residual waste consisted of readily recyclable materials, with only 8% being completely unavoidable' which 'represents a significant opportunity to further decrease the amount of residual waste produced in England'. That advice must be heeded as the Government's latest advice on forecasts of waste arisings and the proportion of waste that can be recycled that the NPPW 2014²⁶² requires waste authorities to consider when formulating their waste plans²⁶³. The appellant's scepticism about whether these Government targets will be met²⁶⁴ is telling. It ignores the reality that these targets (even if they are stretching) have now been set through legislation, are binding, and that we should plan for success, not failure²⁶⁵.
- 6.119 Applying reasonable growth and recycling rates, the Council's assessment identifies a residual waste arisings figure of 155,600 tpa (2025) and 109,400 tpa (2050)²⁶⁶.
- 6.120 The final line of challenge to the Council's assessment of need was to seek to argue that there was a significant mismatch between the assessment of waste arisings and the tonnage of residual LACW waste identified as being managed²⁶⁷. As was explained²⁶⁸, there is no significant mismatch in the Council's evidence for total residual waste²⁶⁹. The Council has clearly explained²⁷⁰ why these figures do not equate. And any difference is not a significant one, having regard to the uncertainties inherent in waste data gathering.

²⁵⁷ R08 Table 9 Page 18

²⁵⁸ R08 Figure 2 Page 16

²⁵⁹ PPF28

²⁶⁰ PPF28 Appendix 1 Table 5 Page 21

²⁶¹ CD12.38 Page 25

²⁶² CD9.02 Para 2

²⁶³ Mr Potter x-e

²⁶⁴ PPF01 Paras 3.4.17(iv) and 3.4.19

²⁶⁵ Mr Potter x-e

²⁶⁶ R08 Table 9 Page 18

²⁶⁷ By reference to PPF28 Table 1

²⁶⁸ Mr Potter e-in-c

²⁶⁹ PPF28 Table 1 Page 13 v Table 3 Page 20

²⁷⁰ Mr Potter e-in-c

- 6.121 The Council further assessed both regional need in the south-west and national need, concluding that there was sufficient capacity to meet need within the Region²⁷¹, even without factoring in the Government targets set out above²⁷². There is no compelling need case nationally as current operational capacity has been found to be sufficient to meet the projected residual waste capacity requirement²⁷³. It is accepted that primacy must be given to maximising the extraction of materials for recycling over their burning as residual waste. It is also understood that where the supply of residual waste is marginal (as has been shown to be the case here), plants with a fixed long-term requirement for feedstock will compete for waste that might otherwise be recycled²⁷⁴.
- 6.122 In terms of national need, the appellant boldly claims that in 2021, circa 10Mt of waste in the UK, suitable for ERF treatment, went to landfill²⁷⁵. However, only a fraction of that will be suitable for combustion. When that is duly considered, the actual amount of total UK waste going to landfill is (at worst) 7Mt or less²⁷⁶ which of course needs to be distributed across England (for which the south-west accounts for just under 7%). This also only reflects the current position without regard to recycling targets. Further the appellant is simply wrong to state that the Government's ambition of eliminating biodegradable waste from landfill by 2028 would 'significantly' increase ERF demand²⁷⁷. The Government's aim is to achieve the near elimination of biodegradable waste to landfill by 2028 by separately collecting the bulk of the waste and using it to generate biogas; not to divert it to incineration. Examination of the Council's waste data tables²⁷⁸ shows how little other biodegradable waste is actually going to landfill from the Plan area.
- 6.123 In terms of existing ERF capacity reaching the end of its design life and closing, this is a straw man fallacy. The example given of the Edmonton ERF in North London (planned to close in 2025) will be replaced with a much larger facility²⁷⁹. Overall, the Council's analysis of national need remains robust.
- 6.124 The Council has also sought to test the Tolvik assessments to the extent possible without the underlying source data. Whilst this sensitivity analysis shows that there would be greater levels of residual waste arisings in the early life of the facility, and sufficient for it to run, at 2031 the position changes and suitable Plan area residual waste arisings are predicted to decline to levels representing just 67% of the plant capacity²⁸⁰.
- 6.125 Overall, the results of this sensitivity testing have not undermined the Council's primary position that there is insufficient need in the Plan area to fully supply the proposal for its operational life. In only 2 out of the 5 scenarios tested will there be sufficient waste to feed the facility in 2025 and in all cases,

²⁷¹ PPF28 Appendix 1 Tables 6 and 7 and A1.24-A1.27

²⁷² PPF28 Appendix 1 Para A1.27

²⁷³ PPF28 Appendix 1 Paras A1.28-A1.33

²⁷⁴ The risk recognised in EN-1 Para 3.3.40 (CD9.03) and EN-3 Para 2.7.29 (CD9.04)

²⁷⁵ PPF01 Para 3.4.17(v) and R01 Para 2.1.11(i)

²⁷⁶ If the appellant's position that 70% of wastes going to landfill are combustible is accepted

²⁷⁷ R01 Para 2.1.11(ii) and R08 Paras 2.17-2.18

²⁷⁸ R08 Table 1

²⁷⁹ Mr Potter x-e

²⁸⁰ R08 Table 5 Page 13 – 2042 – 136,520 tpa

the amount of suitable residual waste forecast to be available from the Plan area is significantly less than the capacity of the plant by 2040²⁸¹. The Council maintains that the 'bottom up' approach²⁸² relying on the WDI is the most accurate method as it draws on actual data, rather than hypotheticals.

- 6.126 As to the issue of capacity, in assessing the capacity gap, the recent grant of permission on the Parley site²⁸³ for up to 60,000 tpa should be included in capacity. It is clear from the NPPG on Waste that consideration of capacity can include more than just existing operational capacity including consented developments due to come online at a later date²⁸⁴. Judgment needs to be applied and the Council explained why this permission should be included – it is recent; it involves an allocated site; and has been granted to an operator of long-standing. The 10,000 tpa of this capacity for the pre-sorting of recyclables should also be counted towards residual waste management capacity.
- 6.127 Further, the potential for other allocated sites to deliver the more limited capacity which the updated needs assessment has identified must also be taken into account. The four allocations for residual waste management facilities have in the four years since the adoption of the Waste Plan 2019 facilitated two applications for residual waste management capacity in the form of energy recovery facilities. That shows the benefit of both allocating sites and according them priority in policy as opposed to non-allocated sites. Whilst the appellant spent a lot of time criticising the proposed MVV ERF on the Canford Magna site, the merits of that proposal will be for BCP Council to assess. The site does suffer from constraints both in terms of ecology and its Green Belt location, but the acceptability of the proposal will fall to be considered in the context of the planning application.
- 6.128 However, all of the sites in the Waste Plan 2019 were identified as having realistic potential to deliver residual waste management capacity over the Plan period and the original assessment took account of the constraints which they are subject to. The examining Inspector found these allocations to be sound (subject to some modifications). It is correct that this analysis did not assume the extent of capacity proposed in the current application and which will no doubt be tested with BCP Council having regard to the Council's updated needs assessment in the planning balance in that case, just as it has been relied upon in this appeal. Certainly, a smaller scale facility would be more consistent with the original assessment that resulted in the inclusion of the site in the Waste Plan 2019 and also with ensuring that waste is driven up the Waste Hierarchy (in accordance with the spatial strategy).
- 6.129 The Council is not satisfied that the appeal site's stated advantages outweigh those of the allocated sites having regard to their far greater proximity to the focus of the Plan area waste arisings, when regard is had to what would actually be secured through the Agreement under s.106 in this case. In particular, Canford Magna as a location appears to offer the potential to deliver

²⁸¹ Mr Potter e-in-c

²⁸² R08 Table 9 Line C

²⁸³ Allocated Site 7 in the Waste Plan 2019 (CD7.01)

²⁸⁴ NPPG Annex 2 refers to 'planned capacity'; the NPPW (CD9.02) does not rule out consented capacity and EN-3 (CD9.04) Para 2.7.44 refers to capacity 'in development'

Combined Heat and Power (CHP) and also IBA processing through co-location. While the appeal site may be able to offer shore power, the weight that can be accorded to that is limited, given the uncertainty associated with its actual delivery.

Spatial Strategy

- 6.130 The proposed development is a merchant facility. It will not be required to process local waste and can be expected to compete with other ERFs to attract waste. Consequently, there is a real risk – in a context where local waste arisings will not be sufficient to ‘feed’ it – that such competition will drive down gate fees and as a result compromise local recycling initiatives²⁸⁵. The risk of ERF sites, such as this, prejudicing recycling rates and the waste hierarchy is widely recognised across the UK. Most recently, the revised NPS for Renewable Energy Infrastructure (EN-3)²⁸⁶ reflects this concern through its requirement that applicants demonstrate any NSIP ERFs are fit for the future, do not compete with greater waste prevention, re-use, or recycling and do not result in an over-capacity of EfW waste treatment provision at a local or national level, as well as conform with the Waste Hierarchy²⁸⁷.
- 6.131 Wales has gone so far as to impose a moratorium on permitting new ERFs with a capacity of over 10MW in order to address the threat to recycling rates and proposals below 10MW are required to address need²⁸⁸. Further recognition of the inherent tension can be found in the Examining Authority’s recommendations for the Kemsley DCO²⁸⁹. The appellant’s attempts to somehow disassociate ERF capacity from recycling rates runs up against all of this and must be rejected.
- 6.132 There is also harm to the spatial strategy of the Waste Plan 2019. There is no dispute that Dorset’s adopted spatial strategy is focussing on directing new ERF capacity to south-east Dorset and that this proposal would not align itself with that focus²⁹⁰. The appellant went so far as to say that this focus needs to change²⁹¹ seemingly on the basis of the current situation, including movements to Bridgwater. But this ignores the fact that the spatial strategy of the Waste Plan 2019 is a long-term, locally endorsed solution to Dorset’s waste needs, and one that has recently been found to be sound. It reflects the collective vision of the area in line with national policy²⁹². The appellant may well disagree with it, and it may not say what the appellant would like it to say in support of the proposal but there is no escaping the fact that this is the planned approach, and the proposal does not comply with it.
- 6.133 Likewise, in terms of self-sufficiency, the Waste Plan 2019 chooses to define it by reference to the concept of net self-sufficiency²⁹³. Given that the appellant

²⁸⁵ Mr Potter e-in-c – see also WRAP 2022-23 Gate Fees Report Page 66 (CD12.82)

²⁸⁶ CD9.04

²⁸⁷ CD9.04 Paras 2.7.29, 2.7.43 and 2.7.102

²⁸⁸ R08 Appendix 6

²⁸⁹ CD12.84 Paras 4.10.109, 4.10.132-133, and 4.10.144

²⁹⁰ CD7.01 Page 27

²⁹¹ Mr Roberts e-in-c

²⁹² NPPW (CD9.02) Paragraphs 3 and 7

²⁹³ CD7.01 Policy 1 Page 20 and Objective 2 Page 24

accepts that, then regardless of their views as to this approach or whether it is mandated through national policy, it forms a key part of the Waste Plan 2019 and it must be had regard to in that context in determining the appeal.

- 6.134 Whilst from a legal perspective, the Proximity Principle operates at a national level, it is entirely appropriate for Waste Planning Authorities to require, through local policy, that waste facilities be located as close as possible to the main sources of waste arisings which they will serve, and this approach was endorsed by the examining Inspector. Waste from outside the Plan area, which the plant would increasingly be reliant upon as Plan area arisings fall, is likely to travel beyond the nearest appropriate facility due to competition attracting them to the site on Portland²⁹⁴. The appellant allows for a wide catchment effectively equating to a travel time to the appeal site of 3 hours²⁹⁵ which extends well beyond the Plan area²⁹⁶.
- 6.135 The Council's waste miles assessment concludes²⁹⁷ - applying a more granular assessment to the averages used in the appellant's Revised Carbon Assessment - that there would be over 4 million additional waste miles travelled to reach the appeal site as opposed to a facility on one of the allocated sites in the Waste Plan 2019²⁹⁸. To be clear, the Council's assessment compares the appeal site to the Plan's spatial strategy, not what is currently happening in practice²⁹⁹. That has to be the right approach. It is true that compared to the Bridgwater site, the appeal site offers an advantage, in terms of receiving Dorset's waste³⁰⁰,. But the allocated sites allow for this need to be addressed, if appropriate, in locations that are much better suited for the long-term management of residual waste arisings in the Plan area. Again, it is the spatial strategy, not the current spatial reality³⁰¹ that the Plan is intended to deliver and against which proposals such as this need to be assessed in the interests of the long-term planning of the area.

Conclusion

- 6.136 Overall, granting permission for this development would irreparably damage the spatial strategy in the Waste Plan 2019 and the planned approach to residual waste management capacity provision. Contrary to the NPPW and Waste Management Plan for England³⁰² this would be a facility of the wrong type³⁰³, in the wrong place³⁰⁴, and at the wrong time³⁰⁵.

²⁹⁴ Mr Potter e-in-c

²⁹⁵ PPF01 Para 3.4.38

²⁹⁶ Mr Potter e-in-c - Mr Roberts arbitrarily limits the study area to certain WPA boundaries - PPF01 Para 3.4.38(a)

²⁹⁷ PPF28 Table 1 Page 13

²⁹⁸ The assessment uses Canford Magna MBT as a proxy for the allocated sites

²⁹⁹ PPF28 Figure 1 Page 10

³⁰⁰ Mr Potter x-e

³⁰¹ Mr Roberts x-e

³⁰² CD9.07 Page 41

³⁰³ An ERF requiring up to 202 ktpa residual waste up to 2065 assuming the usual 40 year lifespan (Potter e-in-c)

³⁰⁴ A non allocated site at a considerable distance from the principal sources of waste arisings in the Plan area

³⁰⁵ Binding Government targets requiring residual waste to be halved by 2042 and almost eliminated by 2050

Development Plan Compliance and the Planning Balance

- 6.137 In view of the above, the proposed development would not accord with the development plan, taken as a whole. In heritage terms, it would conflict with Policy 19 of the Waste Plan 2019, as well as Policy ENV4 of the Local Plan, and Policy Port/ENV4 of the Neighbourhood Plan. In landscape terms, it would conflict with Policy 14 of the Waste Plan 2019, Policy ENV1 of the Local Plan, and Policy Port/EN7 of the Neighbourhood Plan. In light of the evidence on waste need, it would not support the delivery of the Spatial Strategy, and in particular contributing to meeting the needs identified in the Waste Plan 2019, moving waste up the waste hierarchy, and adhering to the proximity principle, nor the delivery of the key, underlying principles of the Waste Plan 2019 that is those relating to the waste hierarchy, self-sufficiency, and proximity. As such, there would be conflict with Policy 1, Policy 4(c) and Policy 6(a) and (b) of the Waste Plan 2019. As a result, there would also be conflict with Policy 4(d) of the Waste Plan 2019.
- 6.138 Furthermore, when the advantages of the appeal site are properly weighed, they are not such as to outweigh the priority accorded by Policy 4 of the Waste Plan 2019 to the allocated sites such that there is also non-compliance with Policy 4(a). Again, the correct comparator for Policy 4(a) is the 'allocated site' not any particular application for development on an allocated site³⁰⁶. The appellant is simply wrong to contend otherwise³⁰⁷. The policy requires an unallocated site such as here³⁰⁸ to provide an overall advantage compared to the allocations, bearing in mind that those allocations have successfully gone through the process of examination and been found sound³⁰⁹.
- 6.139 To be clear, even if the appellant's case on need is accepted, meaning that there would be compliance with Policies 1, 4 and 6 of the Waste Plan 2019, the proposal would still not accord with the development plan as a whole because of the significant landscape and heritage harms. Indeed, the three reasons for refusal put forward by the Council each individually justify a refusal of planning permission and stand on their own terms.
- 6.140 Due to the obvious failure to accord with the development plan, planning permission must be refused unless other material considerations indicate otherwise. Whether considered individually, or in combination, the benefits of the appeal proposal come nowhere near to outweighing the development plan conflict.

Benefits

- 6.141 The appellant relies on a host of claimed benefits for the scheme. Yet, they are either very uncertain, with some not even forming part of the application, or with no guarantee of delivery, or are overstated. Dealing with each in turn:

Shore Power

³⁰⁶ R06 Para 2.34

³⁰⁷ Mr Roberts x-e

³⁰⁸ This is the express wording used in Policy 4(a) of CD7.01

³⁰⁹ CD7.01 Para 6.11 Page 33

- 6.142 The appellant relies heavily on the potential of the facility to deliver shore power to vessels visiting the port, both cruise ships and the RFA vessels, but places far greater emphasis on it in the course of the appeal, than at the time of the application³¹⁰. Yet, there remains no certainty as to whether there would be any shore power take up, let alone how much and over what period of time³¹¹. Even if shore power were to be offered, the port cannot dictate that visiting vessels use it³¹² and ultimately, whether such power is supplied at all, and/or, if so, is taken up, depends entirely on decisions that will be taken by the operators of the ERF or cruise or other ships. It depends on the price at which the power will be offered – to be determined by the future merchant operator, not the port³¹³. This will, in turn be affected by various commercial factors, not least the comparative price of marine diesel and the price which the ERF operator can secure for electricity supplied to the grid³¹⁴. The extent to which shore power is made available and/or taken up rests on commercial considerations and what best serves the particular interests of both the supplier (the ERF operator) and the customer (the operator of the vessel)³¹⁵, none of which can be guaranteed. To suggest otherwise would be commercially naïve.
- 6.143 Moreover, experience elsewhere suggests that caution is needed in predicting shore power uptake. The actual uptake of shore power at Southampton by cruise ships has so far been poor, with the key barrier being high electricity prices³¹⁶. There can be no confidence that this would not be a similar deterrent at Portland³¹⁷ particularly where a future ERF operator can choose to supply straight to the grid in light of such prices³¹⁸. Whilst at Southampton the source of the shore power was the grid, the potential to secure higher prices for electricity supplied to the grid poses a material risk to shore power supply from this ERF, It is also noted that the ERF will need to shut down annually for a 4.5-5 week period. Shut down periods usually take place in the summer (that is cruise ship season) and it is unclear how this would impact on shore power delivery³¹⁹.
- 6.144 In light of all this uncertainty, it is surprising, to say the least, that there has been no assessment of supplying shore power through battery storage. It is an obvious alternative³²⁰. The port has simply not investigated it and there is no evidence that it could not be viably delivered³²¹. Indeed, the appellant accepts

³¹⁰ PPF10 Para 2.3.1 – Mr Roberts in x-e said it was a 'key facet' of the scheme

³¹¹ Mr Othen x-e

³¹² Mr Othen x-e

³¹³ Mr Othen x-e

³¹⁴ Mr Othen x-e

³¹⁵ Mr Othen x-e – the letter from Carnival PLC dated 15 December 2022 (CD11.01 Appendix E) makes it clear that any commitment to using shore power at the port is 'subject to the power being made available on commercially viable terms'

³¹⁶ PPF31 Para 3.2

³¹⁷ Mr Othen e-in-c

³¹⁸ For RFA vessels Mr Norton points out that these have a record of supplying their own shore power through batteries PPF31 Para 3.12

³¹⁹ PPF31 Para 5.4 – if the ERF were shut down in winter, it is unclear how this would impact on any District Heating Network

³²⁰ PPF31 PoE Paras 3.16-3.20

³²¹ Mr Othen x-e

that it is technically feasible, subject to grid capacity, and that a number of companies are constructing comparable systems in the UK, showing that they are commercially viable³²². Any constraint imposed by current grid capacity serving the port could be remedied by seeking an upgrade to the grid.

- 6.145 This need not be the 25 MVA upgrade that the port has previously applied for. SSE has confirmed to the port that lesser upgrades can be provided in a much shorter time than the 2037 date associated with a circuit with a continuous 25 MVA rating³²³ and in this context it is noteworthy that the appellant has secured a connection agreement for a 5MW upgrade applied for in 2019 and expects the proposed ERF to be operational in 2027. There is no reason why the port should not be similarly proactive in developing an alternative solution to the ERF for the delivery of shore power. Whilst the appellant may speculate on its expense, without any actual assessment and meaningful evidence from the port on the sources of finance available to it, the potential for the benefit to be delivered in another way cannot be discounted. This must affect the weight that can be attached to this benefit.
- 6.146 Further, battery storage would link the grid which would benefit from its ongoing decarbonisation with the expectation of full decarbonisation by 2050. Indeed, the Council estimates³²⁴ that grid supplied shore power would result in a reduction of 18,935 tCO₂e which is equivalent to the ERF supplied shore power emissions reductions in the appellant's revised carbon assessment³²⁵.
- 6.147 This is in a context where we know that 4.2MW grid supply could be available to the port even without the ERF³²⁶. The appellant refers to the fact that the port currently uses diesel generators to supply crane operations, and that diesel engines are used to supply the Bibby Stockholm³²⁷ but that fact is not inconsistent with there being 4.2MW of spare capacity to the island.
- 6.148 There may be particular within-port power constraints, or there may be a short-term cost benefit analysis within the port, favouring the use of diesel generators. However, there is no firm indication that the grid supply situation on the island has changed since the Port's earlier assessment.
- 6.149 It is perhaps not surprising that, with the appeal in progress, and the possibility that the appellant might ultimately fund electrical improvements in the port, alternative sources of supply are currently being used. The Bibby Stockholm is a particular short-term project and there may be a host of technical and commercial reasons why a packaged diesel solution has been chosen to supply its energy quickly. None of this indicates that there are capacity constraints preventing the port from access to the 4.2MW of grid power.
- 6.150 In any event, even if shore power were to be supplied and used, this would only constitute a very small fraction of the annual power generated by the ERF

³²² Mr Othen x-e

³²³ PPF02 Appendix NR2 Page 14

³²⁴ Through Mr Norton, and Mr Othen agreed in x-e

³²⁵ PPF31 PoE Para 3.21

³²⁶ CD12.81 – the letter from Portland Port dated 23 November 2020 Page 1

³²⁷ PPF02 Appendix NR2 – the letter from the port dated 6 November 2023

– estimated at only 1.5-3%³²⁸. The appellant takes no issue with the Council's evidence on this point³²⁹. It is a de minimis proportion, illustrating the significant mismatch between the scale of the ERF and the shore power offering³³⁰.

- 6.151 In the light of all this, the potential delivery of shore power cannot be afforded substantial weight. It attracts moderate positive weight at best³³¹.

District Heating Network (DHN)

- 6.152 The provision of a functioning DHN forms no part of the application. The scheme will only be CHP ready and any future delivery of a DHN will need to secure all the necessary permissions and consents. There are no proposals before the Inquiry to show how a CHP system could be delivered³³².
- 6.153 The Obligation under s.106 relating to a DHN secures very little³³³. It requires the exercise of 'reasonable endeavours' to 'progress discussions' with large heat offtakers in the vicinity of the development in respect of a connection to a DHN and in any event, that obligation will fall away in the event that, for example, delivery of a DHN is not viable or after 10 years of operation if no off-taker is found. That 10-year limitation reflects the fact that if the installation of a DHN will be a significant cost and so will need to operate for a relatively long period to ensure it is financially viable. A connection after 10 years into the lifespan of the development simply would not have a sufficient lifespan remaining to justify the cost.
- 6.154 It is quite obvious that a DHN will only be provided if it is in the developer's commercial interests to provide it. Again, this is entirely unknown. Indeed, despite the fact that the appellant was investigating external financial support as early as September 2020, no interested DHN provider has yet been found³³⁴.
- 6.155 Even the details that have been provided to the Inquiry on the potential for DHN in this area do not stand up to scrutiny. Two legs to a possible network have been assessed (northern and southern) that will need to be hydraulically separated³³⁵. But when one properly looks at those legs, neither is shown to be economically viable³³⁶.
- 6.156 For the northern leg, the appellant accepts that two of the three identified off-takers (Osprey Leisure Centre and Portland Hospital) are unlikely to be suitable³³⁷ and the third (Comer Homes) is unlikely to be able to retrofit its

³²⁸ PPF31 Paras 3.9-3.10

³²⁹ Mr Othen x-e

³³⁰ PPF31 Para 3.11

³³¹ R06 Table 1 Page 8

³³² Mr Othen x-e

³³³ AD11 (Draft) and AD82 (Final)

³³⁴ CD1.27 - CHP Heating Plan Para 5.1

³³⁵ Mr Othen e-in-c agreeing with PPF31 Para 4.10

³³⁶ PPF31 Paras 4.12 and 4.23-4.24

³³⁷ Mr Othen x-e

existing properties to accommodate a new heating supply³³⁸. It is agreed that without these three off-takers, the northern leg is not viable³³⁹.

- 6.157 For the southern leg, whilst there is great reliance on the prisons being potential off-takers, the appellant advances a scheme in which both retain their own alternative heat sources through existing boilers and therefore, they will retain the choice on whether to connect to any DHN³⁴⁰. That is again, commercially naïve. Further, whatever high-level support there has been from the MoJ, fundamentally there are no contracts or obligations requiring any of the proposed off-takers to take ERF heat. Possible support, given the uncertainties surrounding the proposal, should be given no material weight.
- 6.158 But there is more. The identified route for the southern leg is also unclear. A new route was identified by the appellant in evidence³⁴¹ but as was explained³⁴² this will need a series of further consents (traversing as it does a SAC and running through the Verne Citadel Scheduled Monument). Contrary to the previous route suggested, it also does not run entirely under existing roads³⁴³. It will also breach the moat of the Verne Citadel and require a visible pipe bridge³⁴⁴. No costings for this have been provided and neither has there been any landscape, heritage, or geological assessment³⁴⁵. To the extent that a further (third) route is now being suggested by the appellant (first introduced in oral evidence), that too is subject to constraints, and again there are no adequate details before the Inquiry to ascertain whether it would be feasible, or acceptable in planning terms.
- 6.159 Policy 6(d) of the Waste Plan 2019 required ERFs to 'provide combined heat and power or if this is demonstrated to be impracticable [to] recover energy through electricity production and [be] designed to have the capacity to deliver heat in the future'. The proposal does not conflict with this policy but certainly, in the light of the matters referred to above, no weight can be given to the potential of future CHP delivery when there is no guarantee of success. That is why the Council affords this benefit only neutral weight³⁴⁶.

Grid Supply

- 6.160 The development will supply electricity to the grid that will be in part renewable. That contribution should be accorded weight and might usually be accorded significant weight. However, that weight must be tempered in this case by the fact that, if the shore power is the benefit which the port and the appellant contend for, then, contrary to its assertions, that will not be non-intermittent, dependable baseload energy generation³⁴⁷. Baseload power

³³⁸ Mr Othen x-e accepting that the appellant has not sought further advice on the prospect of any further new homes being constructed as part of the Comer Homes development

³³⁹ Mr Othen x-e

³⁴⁰ Mr Othen x-e

³⁴¹ R04 Page 9

³⁴² Ms Hart e-in-c

³⁴³ Mr Othen x-e

³⁴⁴ Mr Othen x-e

³⁴⁵ Mr Othen x-e

³⁴⁶ R06 Table 1 Page 13

³⁴⁷ R06 Table 1 Page 10

requires consistent supply which the ERF will not offer. The appellant accepts that were two large cruise ships to berth at the same time, no power would be supplied to the grid³⁴⁸ and of course, the more this happened, the more interruptions there would be³⁴⁹.

- 6.161 Such interruptions are likely to cause the export price of the energy to fall as the electricity market values certainty of supply and it is far from clear, in these circumstances, that the economic benefits of delivering shore power and/or district heating would outweigh the price impacts of delivering a non-baseload energy supply. Further of course, during the annual shut down there would be no energy supplied to the grid, further weakening the grid supply credentials of the proposal. All this uncertainty explains why the Council only affords this benefit limited, moderate weight³⁵⁰.

Disposal of IBA by Sea

- 6.162 Again, this purported benefit is in no way secured through the proposal. Of course, the Council accepts that there is the potential for IBA waste to be exported by sea, given the location of the port, but ultimately, the appellant offers no commitment to this³⁵¹. The obligation under s.106 requires only the use of 'reasonable endeavours'. Whilst there is the potential for IBA shipment by sea, it is equally possible that it will be transported by road. This is a far cry from co-location on site which is clearly encouraged by Policy 6 of the Waste Plan 2019. The long-distance transportation of this waste rather than its local treatment, is why the Council affords this purported benefit negative weight³⁵².

Climate Change and Air Quality Impacts

- 6.163 The appellant has referred to the potential for a Carbon Capture and Storage (CCS) plant near to the appeal site, but this is not part of the current application. If one was to be proposed, a variety of issues would fall to be considered not least the heritage and landscape and visual impacts of such a plant and its implications for the supply of grid electricity and shore power. There is not even any agreement with the port that the land the appellant suggests as being suitable for a CCS plant would be available³⁵³. There is no basis on which it could be concluded that this speculative possibility might obtain planning permission. There has not even been a high-level assessment of the impacts (noting that no CCS proposal has been considered in the ES as part of the project).
- 6.164 No weight can be given to the possibility of connecting a CCS unit to the proposed development some day in the future. Indeed, it might be thought surprising, in view of the appellant's confidence that CCS will in future become a policy requirement for ERFs³⁵⁴, that this proposal, with a lifespan of 25 years, does not include CCS.

³⁴⁸ Mr Othen x-e

³⁴⁹ Mr Othen x-e

³⁵⁰ Ms Hart e-in-c and R06 Table 1 Pages 10-11

³⁵¹ Ms Hart e-in-c

³⁵² R06 Table 1 Page 10

³⁵³ Mr Othen x-e

³⁵⁴ The view expressed by Mr Roberts

- 6.165 Turning to the appellant's carbon assessment, clearly this is highly sensitive to the assumptions it relies upon³⁵⁵, but it is also clearly dependent on the delivery of shore power and a DHN to show an overall net benefit for the development, compared to its key comparators³⁵⁶. In the appellant's words, shore power and DHN delivery is what gives this scheme advantages over other alternatives³⁵⁷. It is also dependent on assumptions that shore power and district heating provision will ramp up during the lifetime of the assessment³⁵⁸. Of course, the uncertainties relating to both have already been highlighted above, and this must reduce the weight (if any) that is given to the purported carbon savings.
- 6.166 It is worth re-emphasising that, contrary to some suggestions in the ES³⁵⁹, the appellant is not proposing that the development would be net zero³⁶⁰. So, no weight can be placed on there being an overall outweighing of emissions overall³⁶¹. In fact, we know that the ERF will produce greenhouse gas emissions (GHGs) from its stack that are in an order of magnitude 4.7 times greater than any emissions abated through the supply of shore power energy to berthed vessels, even if this was to occur³⁶². So, locally, there would be a net disbenefit in terms of GHGs produced.
- 6.167 Overall, there are no significant climate change benefits from the development; the appellant accepting that any such benefits would not be categorised as significant under the 2022 IEMA Guidance³⁶³. Hence, the Council has continued to afford such alleged improvements only neutral weight³⁶⁴.

Socio-Economic Factors

- 6.168 The socio-economic benefits put forward are in terms of construction and operational jobs. The development would provide 300 construction jobs and result in 35 full-time permanent jobs in operation. The Council agrees with the appellant that such socio-economic benefits should be given moderate positive weight³⁶⁵.

Use of Previously-Developed Land

³⁵⁵ Mr Othen x-e

³⁵⁶ See for example Table 19 on Page 27 to Appendix SO3 of PF11a which shows that without shore power and a DHN the development would be worse than either the Canford Magna or Parley sites

³⁵⁷ Mr Othen e-in-c

³⁵⁸ Mr Othen e-in-c and see the revised carbon assessment (Appendix SO3 to PPF11a Pages 32-34 and in particular points 2 and 3 in Section 5)

³⁵⁹ CD1.36(f) at Para 5.53

³⁶⁰ Mr Othen x-e

³⁶¹ Mr Othen x-e

³⁶² PPF31 Paras 3.22-3.24 – Mr Othen accepted in x-e that there was no dispute over the stack emission figures at PPF31 Para 3.23

³⁶³ PPF10 Para 5.3.5 and Mr Othen x-e

³⁶⁴ R06 Table 1 Page 11

³⁶⁵ R06 Table 1 Page 13

- 6.169 As explained in evidence³⁶⁶, the Council does not object in principle to the development of the appeal site, particularly as it is previously-developed land and an allocated employment site. What the Council objects to is the scale, height and massing of the proposed development and its associated harms. So, while some weight can be attached to the re-use of a previously-developed site, it is limited³⁶⁷.

Heritage Mitigation Strategy and the Permissive Path

- 6.170 These have been referred to already but in short, only slight positive weight can be given to the Heritage Mitigation Strategy in light of the fact that it does not address the substantive heritage impacts of the proposal. Only neutral weight can be given to the permissive path owing to its clear limitations, not least the fact that it will be tunnelled by a 2m high palisade fence and may lack permanence with the port retaining wide powers over closure³⁶⁸.

Permitted Development Rights

- 6.171 To the extent that the appellant relies on it, the fact that the port benefits from various permitted development rights and right under the Harbour Revision Orders, this is addressed in the Council's written evidence³⁶⁹. Put simply, the Council does not dispute that such rights exist, but they do not permit a development of the function and scale of the appeal proposal. It is agreed that EIA development, such as what is proposed, would fall outside the scope of the PD regime.

Conclusion

- 6.172 For the reasons set out above and as fully articulated in the Council's evidence, the appeal proposal would conflict with the development plan, and its benefits do not come close to outweighing the harms. Overall, the development would cause significant harm to the landscape of an iconic island, the heritage value of a remarkable group of assets, and risk seriously compromising Dorset's adopted waste management spatial strategy.
- 6.173 It is therefore requested that the appeal is dismissed.

7 The Case for TPS and SPWI

- 7.1 This is set out in full in opening and closing statements to the Inquiry and in evidence³⁷⁰. What follows is a summary of the case as presented in closing, but it is imperative that the evidence presented by TPS and SPWI is read and considered in full, in order to gain a proper appreciation of the case presented. There is also something of a crossover with representations from third parties that I summarise below.

Introduction

³⁶⁶ By Ms Hart

³⁶⁷ PPF22 Para 8.74

³⁶⁸ R06 Table 1 Pages 11-12 and AD11 Schedule 6

³⁶⁹ R06 Paras 2.6-2.10

³⁷⁰ AD02, AD18, PPF33 to PPF42 (inclusive), and R10

- 7.2 Driving away from Portland along the A354, one passes Chesil Beach on the left, and the foreground of the Jurassic Coast – Landscape Character Assessment 1 and the experiential setting of the WHS. On the right, is Portland Harbour – Man Made Harbour (Seascape Character Type 3A) and as one approaches Weymouth, there is the sight of windsurfers, sailors and fishermen who may now be properly described as users of the Active Coastal Waters (Seascape Character Type 3C).
- 7.3 The Rule 6 parties trust that an understanding of the importance of the area’s heritage and sense of place for the local community has been gained through the Inquiry process. Whilst this understanding can, at times, be lost in the midst of waste capacity data, character type assessments, and transport modelling, it is why so many members of the community care so strongly about the future of Portland and why so many have objected to, and spoken out against, the proposal.
- 7.4 A number of issues fall to be considered and there is a need to consider then, the planning balance.

Tranquillity

- 7.5 Tranquillity is an important feature of Dorset’s landscapes and seascapes. It is described as a key perceptual attribute of several landscape and seascape character types, and of the experiential setting of the WHS³⁷¹. As has been noted, tranquillity can currently be experienced in the vicinity of the site including (a) at the footpath which heads south from the Royal Navy Cemetery before stopping at a gate to port owned land (Footpath S3/72) which, has tranquillity scores of ‘fair’ to ‘excellent’ when the port is noisy, and ‘good’ to ‘excellent’ when the port is not noisy; and (b) at the path that connects this footpath with another (Footpath S3/81) which has a tranquillity score of ‘excellent’ when the port is noisy, and not noisy³⁷². This path is the permissive footpath that forms part of the appellant’s Heritage Mitigation Strategy³⁷³.
- 7.6 Both of these locations are important. They form part of the setting of the WHS and Footpath S3/72 is regularly used by residents and visitors who are able to enjoy the peacefulness of the location by day and night.
- 7.7 As has been demonstrated, the ERF would have a significant adverse effect on the tranquillity that can be experienced at both locations. There would be a significant loss of tranquillity along the southern parts of Footpath S3/72 as well as a smaller (though still important) loss of tranquillity at the northern end of Footpath S3/81. The tranquillity that would be experienced along the permissive path would be lost. The loss would be experienced more acutely when the port is not busy³⁷⁴ but even when the port is noisy, there would be a perceptible and material loss of tranquillity³⁷⁵.

³⁷¹ PPF35 Pages 32-33

³⁷² PPF42 Para 5.5 Page 15

³⁷³ PPF42 Figure A1 Page 14 shows the routes of the footpaths

³⁷⁴ PPF42 Figures A5 and A7 Pages 18 and 20

³⁷⁵ PPF42 Figures A4 and A6 Pages 17 and 19

- 7.8 The appellant contends that these locations are not tranquil by reference to (a) the CPRE Tranquillity Map; and (b) the appellant's noise contour map³⁷⁶. First, however, the CPRE map has significant shortcomings³⁷⁷. Most notably, the map uses low resolution 500m x 500m grid sizes and fails to consider properly the presence of natural sound. This is why the appellant accepts that the map is slightly difficult to interpret and therefore provides no definitive tranquillity score for Portland (let alone the specific locations the Rule 6 parties have assessed)³⁷⁸.
- 7.9 Second, the appellant's noise contour map is the very map that the R6 parties have used to inform their tranquillity assessment³⁷⁹. The appellant's noise contour map does not undermine the R6 parties' findings and conclusions, therefore. It simply presents a more optimistic picture of the noise impacts of the ERF by using different colours to the R6 parties Figure A3.
- 7.10 Various points were put to the Rule 6 parties' witness³⁸⁰ including suggestions that the findings were somehow rendered immaterial by the fact that receptors that were assessed were not located in the Dorset AONB (National Landscape) or on the Heritage Coast; that even more detail should have been included in terms of how the assessment was carried out; that weather conditions could have an effect on tranquillity; that there is a disconnect between the assessment and guidance in the PPG Guidance on Noise³⁸¹; and that the permissive footpath is currently inaccessible so that the 'excellent' tranquillity which it currently enjoys is irrelevant as a baseline.
- 7.11 But, none of these points are well founded since the conclusions support a finding of non-compliance with policy irrespective of whether the locations are within the Dorset National Landscape or on the Heritage Coast (see below); the methodology is plainly robust – it is supported by detailed evidence and stood up to questioning³⁸²; people are less likely to go to these locations in periods of bad weather so the possibility of poor weather conditions makes no difference to the tranquillity that people experience when they do go to these locations; the methodology accords with PPG Guidance – this notes that to justify being protected for its tranquillity an area is likely to be relatively undisturbed by noise from human sources that undermine the intrinsic character of the area³⁸³ - which is precisely why measurements were taken when the port was noisy, and not noisy; and whilst the permissive footpath would only be available through the Heritage Mitigation Strategy, it is still the case that its recreational benefits would be reduced if its tranquillity was reduced, and there would be a perceptible loss of tranquillity for its users if the footpath could at some point be opened without the Heritage Mitigation Strategy (see below).

³⁷⁶ PPF4 Paras 6.5.16-6.5.18 Page 25 (the maps are at PPF02 Appendix NR15 Pages 138-140)

³⁷⁷ Set out in full at PPF42 Pages 38-45

³⁷⁸ PPF4 Para 6.5.17 Page 28

³⁷⁹ PPF42 Figure A3 Page 21

³⁸⁰ Mr Bentley

³⁸¹ CD9.21b

³⁸² Mr Bentley x-e

³⁸³ CD 9.21b Para 08

- 7.12 Stepping back from this, the appellant has provided no acoustic evidence³⁸⁴ and cannot dispute the methodology and findings of the Rule 6 parties' evidence. In that context, the findings and conclusions of this evidence should plainly be accepted. Once these findings are applied to planning policy, it becomes clear that the ERF would result in policy non-compliance. Paragraph 185(b) of the Framework states that tranquil areas should be identified and protected³⁸⁵ while Policy ENV16 of the Local Plan states that development will only be permitted if it does not generate a level of activity or noise that will detract significantly from the character and amenity of the area or the quiet enjoyment of residential properties³⁸⁶. Both of these policies apply irrespective of whether the locations are in a National Landscape or on the Heritage Coast and both would be breached by the proposal.

Seascape, Landscape and Visual Impact

- 7.13 The Rule 6 parties support the Council's case on landscape and seascape in its entirety. In particular, the Rule 6 parties agree with the Council's evidence on a series of points.
- 7.14 First, the 'slight to moderate' threshold for determining the significance of the ERF's landscape and visual effects, which the appellant adopted in the original LVIA, was appropriate given the proximity of the site to the WHS and the Heritage Coast³⁸⁷. Without any adequate explanation, the appellant has adopted a threshold of 'above moderate' which is far less conservative, and which results in the significance of the adverse effect of the proposal being underestimated³⁸⁸. In the circumstances, the threshold of 'slight to moderate' that has been used by the Council, and by the appellant in the original LVIA, should be followed.
- 7.15 Secondly, on the application of a proper threshold for significance, the ERF would result in significant adverse landscape and visual impacts on a number of receptors, including the WHS³⁸⁹. Although the WHS is inscribed for geological and geomorphological reasons, and the ERF would not affect its OUV, the landscape impacts of the ERF on the WHS can and should be assessed for various reasons³⁹⁰. Third, as a result of the ERF's significant adverse landscape and visual impacts, the ERF fails to comply with Policy 14 of the Waste Plan 2019, Policy ENV1 of the Local Plan, and Policies Port/EN7 and Port/BE2 of the Portland Neighbourhood Plan³⁹¹.
- 7.16 However, the Rule 6 parties consider that additional harm arises from (i) the ERF's impacts on important seascapes; and (ii) the seascape setting of the WHS.

Seascape

³⁸⁴ Acknowledged by Mr Mason in x-e

³⁸⁵ CD9.01 Page 53

³⁸⁶ CD7.02 Page 57

³⁸⁷ R07 Para 4 Page 2

³⁸⁸ R07 Paras 6-8 Page 3

³⁸⁹ R07 Table 3 Page 8

³⁹⁰ PPF23 Paras 3.15-3.19 Page 10

³⁹¹ PPF23 Para 5.8 Page 35

- 7.17 The importance of the area's seascapes should be obvious. They are protected by Policy ENV1 of the Local Plan by reference to the area's exceptional landscape and seascapes and development that would have significant adverse effects on the character or visual amenity of the local landscape or seascape is prohibited³⁹². They have been considered in detail in the Dorset Coast Landscape and Seascape Character Assessment 2010 (LSCA 2010)³⁹³ which according to paragraph 2.2.6 of the supporting text to Policy ENV1 should be 'used as a basis to guide decisions about whether development is appropriate in the landscape and provide a framework for the provision of appropriate landscape mitigation'³⁹⁴.
- 7.18 The LSCA 2010 contains three seascape character types that fall within the ZTV of the proposal³⁹⁵ and which therefore have particular relevance in guiding a decision as to whether the ERF is appropriate in landscape terms. There are (a) Slumped Cliffs (SCT 2C); (b) Man-Made Harbour (SCT 3A0 and (c) Active Coastal Waters (SCT3C)³⁹⁶. Given the importance of these character types for guiding any decision on the compliance of the ERF with Local Plan Policy ENV1, there are some common themes that emerge.
- 7.19 The first relates to the activity that occurs in these seascape character types. We are told that a 'key characteristic' of the Man-Made Harbour is the 'high intensity of water-based recreational activities including water-sports, sailing, and diving' and that the harbour provides an 'important recreational resource' that hosted the 2012 Olympics, and is now home to the Portland National Sailing Academy in addition to being an important setting for Portland and Weymouth³⁹⁷. With respect to the Active Coastal Waters, we are told that 'key characteristics' of the character type include its 'high level of activity, often seasonal, from recreational sailing and other water-sports' and its 'valuable fishing activity...[involving] generally small boats, both recreational and commercial' and that the character type provides opportunities for bird watchers too³⁹⁸.
- 7.20 The second theme relates to the way in which these character types have and should be evaluated. In its methodology, the LSCA 2010 states that: In recognition that seascape character assessment is significantly influenced by visual characteristics, notably the views from land to sea, sea to land, and along the coastline, special consideration has been given to visual characteristics within the assessment process and to describe the character types³⁹⁹. In short, we are told that views from sea to land are visual characteristics that significantly influence these character types.
- 7.21 The importance of these seascape character types for assessing compliance with policy – and, in particular, their users and sea to land views, seems to be lost on the appellant. In the original LVIA and the supplemental evidence to

³⁹² CD7.02 Page 24

³⁹³ CD12.28

³⁹⁴ CD7.02 Para 2.2.6 Page 23

³⁹⁵ PP05b Figures JM1 and JM3 Pages 3 and 5

³⁹⁶ CD12.28 Pages 148, 166, and 180 respectively and Figure 20 on Page 294

³⁹⁷ CD12.28 Page 167

³⁹⁸ CD12.28 Page 180

³⁹⁹ CD12.28 Page 11

the Inquiry, the appellant fails to consider the significance of the Slumped Cliffs and Active Coastal Waters Character types entirely, and therefore fails to assess the impact of the ERF on these seascapes and their settings⁴⁰⁰.

- 7.22 Further, although the original LVIA considers the Man-Made Harbour and makes reference to the characteristics that are identified in the LSCA 2010, the LVIA's assessment of the landscape and visual effects of the ERF underestimates the sensitivity of the location, and the ERF's effects. We are provided with just one visualisation⁴⁰¹ to illustrate the susceptibility of the harbour to change; a photograph from the breakwater which is not accessible to the public⁴⁰². In contrast with the LSCA 2010's emphasis on the importance of 'sea to land' views, no visualisations are provided from within the areas of the harbour in which the recreational activity – which is considered to be a 'key characteristic' of the character type – takes place. And, despite supplementing the original LVIA's landscape evidence, the appellant has provided no further seascape evidence or visualisations to remedy these deficiencies.
- 7.23 The appellant suggested that the sensitivities of these character types, and the impact of the ERF upon them, could be 'inferred'. It was further contended⁴⁰³ that it required some 'imagination'. This was not suggested anywhere in the appellant's evidence. And if imagination could be substitute for evidence, then there would be no need to undertake an LVIA. Although the appellant does not need to assess the ERF proposed from every possible viewpoint, it does at the very least have to provide some assessment of these character types – accompanied by some relevant viewpoints – if it wants to satisfy the decision-maker that no significant impacts will arise in relation to these seascapes.
- 7.24 As such, irrespective of whether the appellant's LVIA is so inadequate as to render the entire ES defective – which as has been made clear is not a submission that the Rule 6 parties need to pursue – it is clear that the appellant's evidence (a) fails to consider the susceptibility and sensitivities of these seascape character types; and (b) as a consequence fails to consider the full extent of the ERF's impact on them too.
- 7.25 What level of harm to these seascapes should be found? Although this assessment will require some 'imagination' in the light of the appellant's lack of evidence in this respect, the Rule 6 parties contend that a 'worst-case scenario' should be used and that a high degree of harm can and should be found, for a number of reasons.
- 7.26 First, the appellant itself tacitly accepts that there would be harm to these seascapes and that this harm would flow from the impact of the ERF in views from the sea. In considering the 'primary mitigation' of the scheme, the appellant considers that the ERF has been designed in such a way that 'when viewed from the sea within the harbour and from much further away in the National Landscape it will be sympathetic to and will assimilate to a large

⁴⁰⁰ CD1.36j1

⁴⁰¹ CD1.36j1 Figure 9.20 Page 102

⁴⁰² A point confirmed by Mr Mason

⁴⁰³ Mr Mason x-e

degree with the landform backdrop⁴⁰⁴. Since something necessarily causes harm if it needs to be mitigated⁴⁰⁵ it is apparent that the appellant itself considers that the ERF will result in harm to the Man-Made Harbour when viewed from the sea. The same logic must apply to the Active Coastal Waters character type to which the appellant fails to make reference.

- 7.27 Indeed, there has been an assumption from the inception of the scheme that the ERF would result in such a degree of seascape harm that its design needed to provide mitigation. It is why the appellant's Design and Access Statement explains so fully how the ERF, and particularly its broadside elevation, would be viewed from the sea and how its design could mitigate its visual impact⁴⁰⁶.
- 7.28 Although the appellant's evidence fails to provide an assessment of the harm, the appellant's longstanding assumption that harm would be caused, is relevant, and it should be taken into account⁴⁰⁷.
- 7.29 Second, the Rule 6 parties have provided a range of viewpoints from the Man-Made Harbour and Active Coastal Waters in their evidence⁴⁰⁸ as have other interested parties⁴⁰⁹. Although these viewpoints are not LVIA compliant, and do not contain visualisations of the ERF, they can be relied upon as an aid to the 'imagination' required to determine the seascape impacts of the ERF. Indeed, the Rule 6 parties suggest that a high degree of harm should be found⁴¹⁰. Given the absence of any assessment of the impact of the ERF on the Active Coastal Waters and Slumped Cliffs seascapes in the appellant's evidence – and the failure to provide relevant visualisations to support an assessment of the impact on the Man-Made Harbour – the Rule 6 parties submit that this conclusion should be adopted.

Seascape Setting of the WHS

- 7.30 Seascapes are an important component of the setting of the WHS. Policy ENV1 of the Local Plan states that seascapes should be protected taking into account the objectives of the WHS Management Plan⁴¹¹. And the Jurassic Coast Partnership Plan, to which the Local Plan makes reference, states: (a) that the experiential setting of the WHS comprises its landscape and seascape and that in assessing the impact of any change to the WHS's setting, the starting point should be an assessment of landscape and seascape character⁴¹²; (b) that under Policy R4, those elements of landscape character, seascape.....that constitute the WHS's functional or experiential setting are protected from inappropriate development⁴¹³; and (c) that the evidence base which supports

⁴⁰⁴ PPF04 Para 5.2.4 Page 16

⁴⁰⁵ Accepted by Mr Mason x-e

⁴⁰⁶ See for example CD1.21 Part 1 (Pages 7-8), CD1.21 Part 2 (Page 7), CD1.21 Part 3 (Pages 5-6, 27-28 and 34), and CD1.21 Part 4 (Page 18)

⁴⁰⁷ Mr Roberts continues to make reference to CD1.21 Part 4 at PPF01 Para 5.3.12 Page 70

⁴⁰⁸ PPF35 Pages 22-31

⁴⁰⁹ See for example AD06

⁴¹⁰ As set out in PPF35

⁴¹¹ CD7.20 Page 24

⁴¹² CD12.09 Page 22

⁴¹³ CD12.09 Page 45

the Local Plan – including local landscape and seascape assessments – can support WHS plan policies⁴¹⁴.

- 7.31 Reference has already been made to the three seascape character types in the LSCA 2010 that, in the Rule 6 parties' submission, the appellant has failed to take into account and so there is no need to consider them in further detail here. But, for the reasons set out, it should be apparent that the Partnership Plan considers those seascapes to be relevant evidence in determining whether development complies with WHS plan policy, and that the setting of the WHS does not only comprise the Heritage Coast and National Landscape. Indeed, the relevance of these seascapes to the protection of the WHS is why the JCT raised concerns about the impact of the ERF on these character types as long ago as September 2021⁴¹⁵.
- 7.32 It can be recalled that the appellant made a point⁴¹⁶ that the JCT raised no concerns as to the impact of the ERF on the setting of the WHS as a result of its impact on the Slumped Cliffs. It was said that great weight should be given to the views of the JCT given that they are the designated body charged with protecting the WHS. However, the JCT did raise numerous concerns in relation to the impact of the ERF on the setting of the WHS as a result of its impact on: (a) the Limestone Peninsula (LCT 1F); (b) the Hard Rock Cliffs (SCT 2D); (c) the Active Coastal Waters (SCT 3C); and (d) the Man-Made Harbour (SCT 3A).
- 7.33 The JCT concluded that: (a) the scale of development may increase prominence of urban aspects and disrupt the perception of the connectivity of this part of the WHS to the wider, more natural coastline; (b) the scale of development may distract from the appreciation of the wider coastline and disrupt the perception of its natural qualities including the prominence and distinctiveness of exposed stratigraphy within the landscape; (c) the mass and height of the development causes some disruption to the distinctive profile of Portland and therefore may negatively affect the visible association between underlying geology and landscape character from certain viewpoints within the WHS and from certain viewpoints that present the WHS on Portland within the overall context of the island; and (d) the overall scale of this proposal, in a central and highly visible part of the WHS remains a concern.
- 7.34 The appellant was entitled to contend that the JCT's lack of concerns about the ERF's impact on the Slumped Cliffs character type should be afforded great weight notwithstanding the JCT's lack of landscape expertise and the fact that these were concerns rather than definitive conclusions. But this cuts both ways; it means that the JCT's concerns as well as its lack of concern must be afforded a similar level of deference, even if they too are not informed by landscape expertise and do not constitute definitive conclusions. As a consequence, and unless the appellant's evidence is to be set aside, it has to be common ground between the parties that great weight should be afforded to the numerous concerns that the JCT raise in relation to the impact of the proposed ERF on the setting of the WHS.

⁴¹⁴ CD12.09 Page 25

⁴¹⁵ CD4.51

⁴¹⁶ Mr Mason x-e

- 7.35 As has been explained, the JCT's concerns were well-founded⁴¹⁷. The ERF would result in harm to the seascapes which make up the setting of the WHS. As a result of its size and scale, the ERF would result in harm to the three seascapes in the LSCA 2010 which have been referred to. The plume, however infrequent, would exacerbate this adverse impact. And its presence would 'dramatically detract from the geological presentation and special landscape qualities that are perceived from the sea in the immediate setting of the WHS' and adversely affect the panoramic outlook that can be enjoyed over the WHS coastline. Moreover, there would be an adverse impact on tranquillity as experienced in the surrounding seascape and landscape within the WHS and its setting as a result of the ERF⁴¹⁸.
- 7.36 The appellant responds by asserting, rather ambitiously, that landscape and seascape harm to the WHS can only arise if the OUV of the WHS is affected; and given that the WHS was designated for geological and geomorphological reasons, and the WHS has no protective buffer zone, any landscape and seascape harm must necessarily be limited. But this suggestion flies in the face of the views of consultees (including the JCT and UNESCO), the policies of the Jurassic Coast Partnership Plan, the development plan, and the WHS nomination documents.
- 7.37 In summary, it would be wrong not to consider the full landscape and seascape impacts of the ERF on the setting of the WHS for a number of reasons. First, the character of the WHS is linked to its OUV⁴¹⁹. And as the Jurassic Coast Partnership Plan makes clear, the landscape value and setting of the WHS are integral to visitors' experience of the WHS, and therefore integral to the WHS's designation and management⁴²⁰.
- 7.38 Second, the Local Plan and the Neighbourhood Plan draw connections between protecting landscapes and seascapes on the one hand and securing the objectives of the Jurassic Coast Partnership Plan on the other⁴²¹. And conversely, the Jurassic Coast Partnership Plan makes clear that the WHS is protected through local planning policy⁴²².
- 7.39 Third, UNESCO has been clear that the landscape and visual impacts of the ERF on the setting of the WHS should be assessed, given that its setting is 'an important part of the visitor experience of [the WHS] and its World Heritage values' and that UNESCO has concerns as to 'the potential increase in industrialisation of the wider setting for the [WHS] and the effect this may have on the naturalness of the [WHS]'⁴²³.
- 7.40 Fourth, the relevant SoS concluded in the Navitus Bay decision that landscape impacts relevant to the setting of the WHS can be taken into account⁴²⁴.

Conclusions in relation to Landscape and Seascape

⁴¹⁷ PPF35 Paras 2.18-2.29 Pages 13-15

⁴¹⁸ PPF35 Para 2.27 Page 14

⁴¹⁹ CD12.09 Page 35

⁴²⁰ CD12.09

⁴²¹ CD7.04 Page 32, CD7.02 Page 24 and CD12.09 Page 25

⁴²² CD12.09 Page 25

⁴²³ CD4.97 Page 3

⁴²⁴ CD12.58 and CD12.08

- 7.41 Accordingly, the Council's second reason for refusal should be upheld, for the reasons given by the Council in its evidence, and as a result of the additional seascape harm (including the seascape harm to the setting of the WHS) which the Rule 6 parties have found. The ERF would therefore result in breaches of Policy 14 of the Waste Plan 2019, Policy ENV1 of the Local Plan, Policies Port/ENV7 and Port/BE2 of the Neighbourhood Plan, and paragraph 174 of the Framework. In addition, the ERF would fail to comply with Policies R4, IM3 and CSS5 of the Jurassic Coast Partnership Plan.

Heritage

- 7.42 The Rule 6 parties support the Council's case on heritage. In particular, the Rule 6 parties agree with the Council that there is a large number of designated and non-designated assets that would be impacted by the ERF. Many of these assets have a high degree of significance; and together they have a high degree of group significance in conveying the maritime, stone-working, and naval history of Portland. For many of these assets, their setting makes a significant contribution to their heritage value⁴²⁵.
- 7.43 Further, although the ERF would not result in physical harm to any heritage assets, it would result in harm to the significance of individual heritage assets, and their group value, by harming their settings, where those settings make a positive contribution to their significance. The Council and the Rule 6 parties both consider, with some differences as to precise degrees of harm to certain assets, that the ERF would result in less than substantial harm at the higher end of the scale to certain assets, and towards the middle of the scale for others.
- 7.44 However, the Rule 6 parties consider that additional heritage harm would arise from the appellant's Heritage Mitigation Strategy; the impacts of the ERF on certain non-designated heritage assets; and the impact of the proposal on the significance of the WHS.

Heritage Mitigation Strategy

- 7.45 With respect to the Heritage Mitigation Strategy, the Rule 6 parties support the Council's view that the measures would neither reduce the effect of the ERF on the intervisibility between the heritage assets in important respects, nor mitigate one of the primary causes of heritage harm – the scale and size of the ERF proposed⁴²⁶. In particular, the Heritage Mitigation Strategy would do nothing to mitigate the impact of the ERF on the intrinsically linked group of listed and scheduled structures that comprise the breakwaters and Dockyard Offices and the defences of the harbour provided by the Verne Citadel, and the East Weare batteries and associated structures. The measures in the Heritage Mitigation Strategy are therefore limited, whichever way one looks at them.
- 7.46 Indeed, as the Rule 6 parties have explained, most of the purported benefits of the Heritage Mitigation Strategy would either be deliverable without the ERF,

⁴²⁵ PPF26 Para 3.16 Page 16

⁴²⁶ PPF26 Para 5.2 Page 30

and the attendant harm it would bring, or would result in indirect heritage harm in itself⁴²⁷.

- 7.47 In summary, in terms of scrub clearance, it would be a benefit at E Battery because it would make the battery visible, the views towards Portland Harbour that would be opened up would include, and be adversely affected by, the ERF. Given that Historic England 'remain unconvinced' that alternative measures for removing E Battery from the 'at risk' register (to the appellant's proposal) could not be pursued – and these measures, if pursued, would result in the asset being removed from the 'at risk' register without the harm caused by the ERF – the Rule 6 parties contend that the benefits of the appellant's proposal should be afforded only very limited weight, particularly since the appellant has not presented a detailed conservation strategy to secure the long-term management and maintenance of the assets⁴²⁸.
- 7.48 As far as Information Boards are concerned, the benefits of their erection, in order to 'better reveal and help interpret', the structures of East Weare could be delivered without the ERF. Information Boards could easily be erected in the grounds of the Jail House Café whose location above the East Weare assets would enable visitors to appreciate the heritage context, and the relationship with the sea, better than the appellant's suggested location⁴²⁹. In the light of this more beneficial and deliverable alternative, the appellant's intention to erect Information Boards can hardly be classed as a 'major benefit'⁴³⁰.
- 7.49 The creation of the permissive path would result in some benefit. However, the benefits would be for recreational amenity rather than heritage and, furthermore, they would be limited in light of the (i) the fact that no PROW would be created; (ii) the path could be closed to the public with relative ease; (iii) the ERF would reduce the tranquillity that could otherwise be enjoyed on the path; and (iv) the 2m high fencing would inhibit visitors' perception and enjoyment of the heritage assets⁴³¹. In fact, in terms of its heritage impacts, the path could result in heritage harm. It would puncture the curtilage of East Weare Camp and harm the coherence of the asset by separating the Officers' building from the other buildings and intruding upon the setting of the important collection of East Weare defences⁴³².
- 7.50 Accordingly, contrary to the appellant's suggestion, the measures in the Heritage Mitigation Strategy would not outweigh the heritage harm that would be caused by the ERF, if an 'internal' balancing exercise is carried out under paragraph 202 of the Framework⁴³³.

Non-Designated Heritage Assets

- 7.51 The Rule 6 parties have identified certain non-designated heritage assets as being impacted upon by the ERF which the appellant fails to identify

⁴²⁷ PPF36 Para 7 Pages 51-61

⁴²⁸ CD12.79 Page 2

⁴²⁹ PPF36 Pages 53-54

⁴³⁰ PPF7 Para 7.32 Page 51

⁴³¹ PPF36 Para 7.4.4 Page 61

⁴³² PPF36 Pages 55 and 58 Figures 46 and 49

⁴³³ PPF7 Para 8.2 Page 54

altogether. These include the Isle of Portland itself and various historic features along its eastern coast, including King's Pier, Folly Pier, Durdle Pier and Rufus Castle. These assets all relate to the quarrying and stone-working history for which Portland is famous⁴³⁴. King's Pier and Folly Pier both fall within the ERF's ZTV⁴³⁵ and as has been explained, King's Pier 'could be impacted by the proposal as the bulk of the ERF building and its stack could be apparent from the pier'⁴³⁶.

- 7.52 Indeed, the evidence of the Rule 6 parties is that 'the presence of the ERF plant within the setting of the piers and historic stone workings will take away from their historic integrity reducing the ability to enjoy and fully engage with the history of the east coast of the isle' which is why the ERF should be considered to cause a 'moderate level of less than substantial harm' to the historic environment on Portland's east coast⁴³⁷. Given that the appellant accepts the importance of quarrying and stone-working for Portland's history⁴³⁸, it is regrettable that the impact of the ERF on these historical features, which played such an instrumental role in Portland's contribution to the construction of renowned buildings, like St Paul's Cathedral, has been overlooked. The harm to these non-designated heritage assets should be included in the overall heritage assessment.

The WHS

- 7.53 The appellant has stubbornly denied that the WHS could be affected by the ERF in cultural heritage terms. There are numerous reasons why development can affect the significance of the WHS as a heritage asset.
- 7.54 First, Policy R4 of the Jurassic Coast Partnership Plan states expressly that 'those elements of.....cultural heritage that constitute the WHS's functional or experiential setting are protected from inappropriate development' and 'experiential setting' concerns the 'quality of the cultural and sensory experience' surrounding the coasts⁴³⁹. Policy CSS5 states that 'the conservation and enhancement of.....the historic environment and landscape character in the WHS and setting will be supported in ways that are complementary with its OUV'⁴⁴⁰. And, under the heading 'Links between geology, culture and society', the Plan states that there are 'deep connections' between the 'geodiversity of the Jurassic Coast and the cultural stories of Dorset and East Devon' and that the WHS reflects an 'intimate relationship between people and geodiversity' since geology has influenced the 'origins, historic fabric, traditional industries and heritage collections' of local communities, such as quarrying⁴⁴¹.
- 7.55 Second, in its latest representation, Historic England has considered that the ERF has the potential to 'impact negatively on the setting of the globally

⁴³⁴ PPF36 Para 5.2.1 Page 14

⁴³⁵ PPF5b Page 3

⁴³⁶ PPF36 Para 5.2.2 Page 14

⁴³⁷ PPF36 Paras 6.9.1 and 6.9.2 Page 48

⁴³⁸ See for example PPF8 Pages 16, 93 or 96

⁴³⁹ CD12.09 Pages 22 and 45

⁴⁴⁰ CD12.09 Page 49

⁴⁴¹ CD12.09 Page 40

significant geological and geomorphological features⁴⁴². Historic England plainly consider that the significance of the WHS can be harmed in heritage terms otherwise it would not have commented; and given that it is the statutory consultee for heritage matters, its view should be afforded considerable weight.

- 7.56 Third is the appellant's own evidence. Although the appellant has been resolute at the Inquiry in contending that cultural heritage has no material relevance to the WHS, this stands in stark contrast to the previous position. In Chapter 13 of the ES, which examines the effect of the ERF on the WHS, reference is made to Policy R4 of the Jurassic Coast Partnership Plan before it is explained that its assessment will undertake a 'cultural heritage assessment and that professional judgment is important in determining the 'overall cultural heritage effects and landscape and visual effects' on the WHS. So, as well as acknowledging that the ERF's landscape and visual effects on the WHS⁴⁴³ should be considered, even though the WHS was inscribed for geological reasons, the appellant rightly acknowledged that 'cultural heritage effects' could also be relevant.
- 7.57 No explanation has been offered for the change of position between the ES and the appellant's evidence to the Inquiry. And in light of the clear wording of the Jurassic Coast Partnership Plan, and the respect that should be given to the opinions of Historic England, the Rule 6 parties submit that the decision-maker should adopt the approach in the ES and find that the heritage significance of the WHS could, in principle, be harmed by the ERF.
- 7.58 If this approach is taken, then the Rule 6 parties' evidence as to the effect of the proposal on the significance of the WHS must be accepted. The appellant cannot dispute the Rule 6 parties' findings given that the appellant has not carried out any counter assessment.
- 7.59 The Rule 6 parties' evidence is that the ERF would have an impact on the setting of the WHS and the 'current perception of the historic environment of the WHS in views towards Portland where the settlement pattern and stone-working history of the isle relates to geology and geomorphology....'⁴⁴⁴. Indeed, in harming the historic features on the east coast of the isle which relate to stone-working – including King's Pier and Folly Pier – the ERF would adversely affect cultural heritage features that comprise the experiential setting and 'historic environment' of the WHS in breach of Policies R4 and CCS5 of the Jurassic Coast Partnership Plan. By harming the piers, the ERF would harm the 'historic fabric' of local communities which, as the Partnership Plan recognises, has been influenced by the geology of the WHS.
- 7.60 This approach accords with the development plan and gives effect to its understanding of the connections between the Isle of Portland's heritage and the WHS. Policy Port/ENV5 of the Neighbourhood Plan expressly acknowledges (albeit in the context of pier-related development) that harm to the piers can result in harm to the WHS⁴⁴⁵. And although the ERF is not pier-related

⁴⁴² CD12.79 Page 2

⁴⁴³ CD1.36n Paras 13.24, 13.25 and 13.36 Pages 6-9

⁴⁴⁴ PPF36 Para 5.5 Page 36 and Para 6.8.1 Page 47

⁴⁴⁵ CD7.04 Page 31

development, the connection of the Neighbourhood Plan of harm to the piers and harm to the WHS must hold fast in other contexts. As such, the Neighbourhood Plan also supports a conclusion that harm to the significance of the WHS can flow from harm to King's and Folly Piers.

Conclusions in relation to Heritage

- 7.61 Accordingly, the Council's third reason for refusal should be upheld for the reasons given by the Council in its evidence and as a result of the additional heritage harm (including the harm to various non-designated assets and to the WHS) which the Rule 6 Parties have found. This proposal would therefore breach Policy 19 of the Waste Plan 2019, Policy ENV4 of the Local Plan, Policy Port/ENV4 of the Neighbourhood Plan, and paragraphs 197 and 202 of the Framework. In addition, the ERF would fail to comply with Policies R4 and CSS5 of the Jurassic Coast Partnership Plan, as a result of its effect on the WHS.

Waste and Climate

- 7.62 The Rule 6 Parties have concerns about the compliance of the ERF with the Waste Plan 2019 and support the Council's evidence as to why the ERF would not comply with Policies 1, 4 and 6 therein. There are also doubts about the deliverability of various non-waste related 'benefits' of the ERF, including its provision of onshore power and district heating and agree with the Council's evidence in this respect. On that basis, the Rule 6 parties will confine themselves to emphasising a few points in relation to waste and climate change that are of particular concern to the local community.
- 7.63 First, the ERF does not constitute 'renewable development'. As was acknowledged by the appellant, the ERF can at best be described as 'partially renewable development'. And as NPS EN-1 states⁴⁴⁶, energy from waste facilities can only be partially renewable 'due to the presence of fossil-based carbon in the waste'.
- 7.64 Second, while the appellant might question the characterisation of EfW in NPS EN-1 and EN-3, both policy statements are crystal clear that 'the primary function of EfW plants.....is to treat waste'⁴⁴⁷. The primary purpose of the ERF is not the delivery of onshore power. All EfW facilities produce energy so even if the proposal did produce shore power and this is taken up by ships (which is doubtful – see below), this should not change the characterisation of this ERF as a waste treatment facility.
- 7.65 Third, many of the proposal's 'benefits' are either too uncertain, or too unfeasible to be classed as genuine benefits. In particular, in terms of shore power, the provision is entirely dependent on commercial arrangements being agreed and its price cannot be guaranteed. For various reasons, cruise ships often do not take up onshore power even when it is provided⁴⁴⁸. Similarly, the appellant claims that the ERF would provide district heating to local receptors but this forms no part of the application – indeed it was originally considered

⁴⁴⁶ CD9.03 Para 3.3.42 Page 313

⁴⁴⁷ CD9.03 Para 3.3.39 Page 31 and CD9.04 Para 2.7.6 Page 17

⁴⁴⁸ PPF31 Para 3 Page 5

not to be viable⁴⁴⁹ - and the MoJ has not committed to the provision of district heating at HMP The Verne. Planning permission would be needed to deliver a district heating network and there has been no application. Further, if district heating was provided, and benefit would be lost during the ERF's four week annual shutdown. As the appellant correctly recognises, CCS is not currently commercially viable⁴⁵⁰. CCS is not a part of the application. Even if this process was used in the future, it would have a significant parasitic load.

- 7.66 The appellant contends that 'an opportunity exists for materials to be imported and exported, such as the import of RDF, and the export of IBA'⁴⁵¹. This opportunity relies upon consents being sought by the Port and granted by the EA through the permitting process. Furthermore, it is the subject of no more than a 'reasonable endeavours' clause in the draft Agreement under s.106⁴⁵².
- 7.67 Fourth, many of these purported 'benefits' would be undermined if there was any delay to the commencement of the ERF's operation or the ERF operated for longer than was anticipated. The appellant claims that shore power is needed as a matter of urgency because of existing grid constraints that will last until 2037. The appellant also acknowledges that the main carbon benefits of the ERF fall early in the 25-year lifespan of the ERF as a result of the anticipated decarbonisation of the National Grid in the coming years and that the ERF will start to have a negative carbon impact after 2044. This means that if there are delays to the ERF's start date, or the ERF operates for longer than 25 years, its carbon benefits would decrease and its negative impacts would increase.
- 7.68 As was explained, it is unrealistic to think that the ERF would become operational in 2027. The similar facility at Bridgwater is still in commissioning despite receiving consent in 2015 and there are many stages that need to be satisfied before this ERF could operate. As such, there is the possibility of slippage in relation to the start date⁴⁵³. Furthermore, there are good reasons to think that the ERF would operate for longer than 25 years. There are references to a 30-year lifespan in its Environmental Permit application and the ERF operator would have an economic incentive to operate for as long as possible. In that context, the benefits of the ERF have been overstated and the likelihood of carbon disbenefits occurring in future years, downplayed.
- 7.69 Fifth, the ERF would result in local overcapacity. Dorset has good rates of recycling and there is sufficient capacity available to meet its residual waste needs⁴⁵⁴. Indeed, as has been noted, 'capacity in 2022 has surpassed capacity needed to meet waste ambitions by 2035'⁴⁵⁵. As the Rule 6 party has noted, if it became economically attractive to send residual waste to the ERF, the construction of a new facility to treat residual waste could undermine the circular economy by reducing recycling rates in Dorset⁴⁵⁶.

⁴⁴⁹ CD12.68 Para 6.1 Page 28

⁴⁵⁰ CD2.3 Para 5.30 Page 79

⁴⁵¹ PPF01 Para 5.30 Page 79

⁴⁵² AD11

⁴⁵³ PPF38 Paras 7.2-7.6 Page 23

⁴⁵⁴ PPF33 Para 2.6 Page 5

⁴⁵⁵ CD9.23 Page 306

⁴⁵⁶ PPF38 Para 5 Page 12

- 7.70 Sixth, granting permission for this ERF would contravene the recommendations of the Committee on Climate Change whose 'key message' is that EfW emissions are controlled and reduced and that a moratorium on additional EfW capacity occurs until a review of capacity need is completed⁴⁵⁷.
- 7.71 This ERF would also undermine the objectives of the Clean Maritime Plan. This Plan is clear that it 'sees zero emission shipping as a future whereby no GHGs or air quality pollutants are emitted by vessels (of all types) operating in UK waters or in the ship to shore activities required to facilitate those operations⁴⁵⁸. Although the appellant contended that this objective applies only to vessels, it plainly also applies to 'ship to shore activities'. This ERF would not result in the 'zero emission' delivery of shore power and, as, such, this important objective would be undermined.
- 7.72 Accordingly, the Council's first reason for refusal should be upheld for the reasons given by the Council in its evidence and as a result of the additional concerns that the Rule 6 parties have in relation to waste and climate.

Transport, Amenity and Socio-Economics

- 7.73 The ERF would result in transport and amenity issues. It would also fail to deliver the level of economic benefit suggested by the appellant.

Transport and Amenity

- 7.74 In terms of transport and amenity, although the Rule 6 parties acknowledge that no objection to the ERF was submitted by the highways consultees, the consultees did not consider traffic-related amenity issues. As the Rule 6 parties, and many third parties, have explained there continues to be considerable concern within the local community in relation to the effects of HGVs on residential amenity, given the proposed route of the HGVs through the Underhill Conservation Area and in close proximity to residential properties⁴⁵⁹. There are also concerns about the effect on visual amenity of the plume and it's the aviation warning lights on the stack⁴⁶⁰.
- 7.75 In addition to these general concerns, the Rule 6 parties consider that the appellant's transport evidence underestimates the extent of the transport related issues that could occur, for a series of reasons.
- 7.76 First, it appears that the appellant's assessment has failed to incorporate traffic flows generated by cruise ship coaches into its baseline modelling. This deficiency appears to be recognised but it is contended that 'such visits are occasional and would be managed with their own travel planning including the use of occasional coach visits to the port to offload visitors to tour the wider Dorset area⁴⁶¹. However, it is unclear what is meant by 'travel planning' and since the appellant has not put a witness forward for questioning on this matter, this evidence has not been tested.

⁴⁵⁷ CD9.23 Page 299

⁴⁵⁸ CD9.20 Para 38 Page 15

⁴⁵⁹ PPF39 Pages 6-10

⁴⁶⁰ PPF39 Paras 2.17-2.19 Page 10

⁴⁶¹ PPF16 Para 6.18 Page 18

- 7.77 Second, it appears that the appellant has failed to assess how the ERF's traffic movements would interact with the traffic movements of a key development proposal that is coming forward on Portland – the Eden Project. Although the appellant suggests that this scheme may have been assessed as a 'committed project', the Rule 6 parties have found no evidence of this and again, the Rule 6 parties have not been able to test this evidence.
- 7.78 Third, the appellant has failed to appreciate the extent to which traffic movements could result in heritage harm, in particular to the Underhill Conservation Area. Although the appellant has responded to UNESCO's concerns about the effects of HGV movements on the WHS, there has been no acknowledgement of Historic England Advice Note 15 – Commercial Renewable Energy Development and the Historic Environment⁴⁶² which states that 'for a biomass or EfW facility, transport impacts also arise throughout the operational life of the development and from a heritage perspective, this has the potential to have a significant impact on local amenity and the appreciation of heritage assets. The impact of frequent HGVs carrying biomass or waste materials may be especially noticeable in areas known for their historic character such as conservation areas'⁴⁶³.
- 7.79 No reference is made to this Advice Note, or HGVs, in the appellant's heritage evidence. Indeed, in direct opposition to the Advice Note's concerns, it is suggested that the port and its 'traffic related movements are the raison d'être' for various heritage assets, including the conservation area⁴⁶⁴. By failing to take account of the Advice Note, the appellant has failed to consider the adverse impacts of the traffic movements related to the ERF in full.
- 7.80 As such, whilst the Rule 6 parties do not submit that the ERF would have a 'severe' impact on the traffic network, it is submitted that the ERF would result in traffic-related and visual amenity issues – as well as heritage impacts – that would breach Policy ENV16 of the Local Plan, and the heritage policies referred to above.

Socio-Economics

- 7.81 The Rule 6 parties have serious concerns about the effects of the ERF on the local economy and, in particular, its tourism and leisure industries. The development plan recognises the value of tourism and recreational activities to Portland's economy as well as the importance of the natural environment and the WHS in sustaining this activity.
- 7.82 As the Neighbourhood Plan states 'one of Dorset's economic strengths and drivers is its tourist industry. Many tourist visits are heavily dependent on the appeal of the natural environment'⁴⁶⁵. And as the Local Plan notes, the 'Vision for Portland' is for Portland to 'have abroad tourist offer including activity based sustainable tourism such as water sports, climbing, walking and bird watching, that capitalises on its unique location' by 2031⁴⁶⁶. Indeed, the

⁴⁶² PPF16 Para 6.20 Page 19

⁴⁶³ CD12.75 Para 62 Page 18

⁴⁶⁴ PPF7 Para 7.25 Page 49

⁴⁶⁵ CD7.04 Para 13.10 Page 68

⁴⁶⁶ CD7.02 Para 8.2.1 Page 161

importance of Portland's landscapes, seascapes and natural environment for its local economy is emphasised repeatedly in the Local and Neighbourhood Plans. It is for this reason that the Neighbourhood Plan notes that 'Portland's natural focus should be on activity-holidays and adventure-seekers'. It supports an approach to tourism that makes Portland an activity hub with reference to diving, mountain-biking and climbing responding to the distinctive offer and making the Island a destination⁴⁶⁷.

- 7.83 In terms of the importance of recreational activity, the Neighbourhood Plan notes that Portland 'offers significant activity and adventure opportunities' including the Weymouth and Portland National Sailing Academy which 'hosts world class facilities for sailors' and Portland Harbour which 'provides a safe venue with a full range of water sports including diving, paddle-boarding and kayaking'⁴⁶⁸. The Neighbourhood Plan notes that Portland's 'adventure tourism sector continues to grow, and the Island's topography, quarries, and wildness are there to be taken advantage of, responsibly'.
- 7.84 The Local Plan makes clear that 'Portland is an important visitor destination as part of the Jurassic Coast' and that its 'tourist offer' for WHS visitors includes its 'stunning natural environment' and its 'considerable opportunities for outdoor activities such as water sports, rock climbing, walking, and birdwatching'⁴⁶⁹.
- 7.85 The tourism and leisure industry is therefore vital for Portland's local economy, and for alleviating the deprivation of the isle. This is reflected in the LSCA 2010 which states, in relation to the Man-Made Harbour character type, that 'the growth of commercial activities could detract or displace the important sailing and water sports activities that occur within the Harbour and Weymouth Bay' and in relation to the Active Coastal Waters character type. That the 'expansion of Portland Harbour facilities must be planned to ensure that this does not displace other recreational activities and should take account of visibility from adjacent land and marine areas'⁴⁷⁰.
- 7.86 The proposed ERF would risk undermining Portland's burgeoning tourist and leisure industries. Its adverse landscape and seascape impacts would result in a reduction in the numbers of people visiting the isle to engage in the leisure pursuits and recreational activities that depend on Portland's valued landscapes and seascapes. Irrespective of whether such a concern is well-founded, there would at the very least be a perception that the ERF is environmentally harmful; this too would plainly result in a decrease in the number of people who would choose to visit the isle and take part in its recreational activities.
- 7.87 These concerns are shared by local businesses⁴⁷¹. As many third party contributors made clear, the feeling is that the ERF would damage the local economy. For example, the operators of Weyfish suggested that Portland's reputation as an attractive place to live and visit would be affected by the ERF

⁴⁶⁷ CD7.04 Para 13.12 Page 69

⁴⁶⁸ CD7.04 Para 13.4 Page 67

⁴⁶⁹ CD7.02 Para 8.2.7 Page 162

⁴⁷⁰ CD12.28 Pages 170 and 184

⁴⁷¹ PPF39 Pages 14-17

to the extent that tourists would be deterred which would affect the viability of businesses. It was felt that granting permission for the ERF would prioritise the interests of one business over those of the wider economy. The operators of B-Side stated that the ERF would undermine tourism, as did the owner of the Eastney Hotel. Those behind the Eden Project, Portland said that there were excellent prospects of the project being delivered but that it would be jeopardised if the ERF went ahead.

- 7.88 None of this is addressed in the appellant's evidence; the importance of the tourism and leisure industry, as opposed to the cruise ship industry – is ignored. The importance of Portland's natural environment, and in particular its valued landscapes and seascapes, for Portland's economy and WHS-related tourism is not acknowledged. The impact of the proposed ERF on the viability and success of important projects, such as the new Sailing Academy, or the Eden Project Portland is not addressed. By focusing solely on what is considered to be the benefit of cruise ship visitors to selected study areas, the appellant fails to provide an assessment of Portland's economy as a whole and how the ERF might affect it.
- 7.89 The appellant's failure to consider the full effects of the ERF on the local economy is reminiscent of the Navitus Bay decision where the Examining Authority and the SoS found that the applicant had understated the negative effects on tourism as a result of the development, in particular at a local level⁴⁷².
- 7.90 Furthermore, the evidence that the appellant provides in relation to the economic benefits of cruise ship visitors is based on assumptions that are entirely out of kilter with (a) the experiences of people living in and around Portland; and (b) the appellant's own evidence. For example, it is estimated that by 2025 there would be as many as 172,998 visitors to Portland⁴⁷³. Irrespective of whether every single one of the ship's passengers would leave the ship – which for obvious reasons is highly doubtful – it is simply not the case that these passengers would visit Portland. As the Rule 6 party and third parties explained, most cruise ship passengers do not visit Portland. They are taken on coaches to places much further afield. Further, it is entirely unclear how the appellant's estimate of the hundreds of thousands of visitors squares with the transport evidence that coach traffic from cruise ships would be 'occasional' and 'incidental'.
- 7.91 Since neither the appellant's transport nor socio-economic witnesses have given evidence at the Inquiry, a judgment will need to be arrived at, but less weight can be attached to this evidence as it was not tested. On this basis, the Rule 6 parties' evidence should be preferred.
- 7.92 Accordingly, the Rule 6 parties submit that not only have the economic benefits of the ERF been exaggerated, but it would in fact result in harm to the local economy. Accordingly, the proposal would breach Policy INT1 of the Local Plan and undermine the economic objective of sustainable development in the Framework⁴⁷⁴.

⁴⁷² CD12.58 Paras 36-39 Page 8

⁴⁷³ PPF13 Para 5.3.14 Page 37

⁴⁷⁴ CD11.07 page 2

Planning Balance

- 7.93 The planning balance as carried out by the Rule 6 Parties has been set out in evidence⁴⁷⁵. In summary, the proposal would give rise to a range of breaches of local and national policy. And it would provide only very limited benefits, many of which are so uncertain that they should only attract limited weight. The proposal does not comply with the development plan, read as a whole, and there are no material considerations to suggest that permission should be granted nevertheless. Accordingly, the Rule 6 parties consider that the appeal should be dismissed.

8 The Case for the Appellant

- 8.1 This is set out in full in opening and closing statements to the Inquiry and in evidence⁴⁷⁶. What follows is a summary of the case presented in closing, but it is imperative that the case presented by the appellant is read in full in order to gain a proper understanding of the case presented.

- 8.2 The case is put forward under a series of headings.

Is the Council's position on the treatment of its residual waste sustainable?

- 8.3 In short, the Council's position on the management of residual waste in the Waste Plan 2019 area is not sustainable and does not meet the Waste Plan 2019 objectives of managing waste at the highest feasible level (Objective 1) since significant quantities of waste are going to landfill and self-sufficiency is not optimised (Objective 2)⁴⁷⁷.
- 8.4 Indeed, given that in the Plan area there is only one residual waste management facility (the Canford MBT) and this is only for the intermediate treatment of LACW, the remainder of the Plan area's waste is exported, neither the objective of self-sufficiency, nor proximity are observed.
- 8.5 The Councils in the Plan area have long relied on distant ERF capacity, outside the south west region, including overseas, and distant landfill. Even with the Bridgewater ERF becoming available to take Canford MBT output (just one part of the residual waste stream), this is still located well outside the Plan area and requires transportation for about double the distance that would be required if it were sent to the site of the proposal. Further, such an arrangement is only subject to contracts expiring in 2027, and the current incumbent of those contracts has expressly stated their preference to take the MBT output to the Portland proposal, which it is at liberty so to do⁴⁷⁸.
- 8.6 The baseline data for 2022 shows that for the Waste Plan 2019 area, 85,611 tonnes of residual waste was sent to distant ERFs elsewhere in England⁴⁷⁹, over 70,000 tonnes consigned to 'out of county' landfill, and a further quantity over 70,000 tonnes was exported from the UK as RDF for treatment in

⁴⁷⁵ PPF33 Pages 18-26

⁴⁷⁶ AD01, AD16, PPF01 to PPF21, and R01 to R05

⁴⁷⁷ CD7.01 Pages 23 and 24

⁴⁷⁸ See the Beauparc letter in CD2.9

⁴⁷⁹ PPF01 Table 3.2

overseas ERFs. This is unsustainable and a result, in part, of allocations in the Waste Plan 2019 that are ill-suited to deliver the required residual waste treatment capacity.

- 8.7 The allocated sites in the Waste Plan 2019 are largely carried over from the earlier Waste Plan for Bournemouth, Dorset and Poole of June 2006⁴⁸⁰ and the current situation shows, not an encouraging response to the allocations as the Council suggest, but instead serious question must be raised as to why there has been such little progress with establishing facilities since 2006. It is notable that Canford, which has had some facilities for over 17 years, only submitted a planning application for an ERF to BCP Council after a planning application for the proposal at issue was made to Dorset Council.
- 8.8 Moreover, while there has been a grant of planning permission for a (small) scheme at Parley, this has not been implemented, and the Council has objected to the recent proposal for an ERF at Canford⁴⁸¹. This strongly suggests that the spatial strategy in the Waste Plan 2019⁴⁸² is ineffective.

To what extent is a capacity gap/need required to be demonstrated?

- 8.9 The requirement to demonstrate need is circumscribed by policy. Importantly, England does not impose either a moratorium or a capacity limit on the provision of ERFs or EfW. This can be seen in EN-1 and EN-3⁴⁸³ and the Defra Ministerial Statement of 1 December 2022⁴⁸⁴.
- 8.10 The latter states that *'Defra has no plans to introduce a moratorium on new energy-from-waste capacity in England, because we expect the market itself to assess the risks and determine the economic viability and deliverability of developing the new infrastructure. There is no financial advantage for the public sector or the market in delivering overcapacity in the energy-from waste provision in England'*. The appellant confirmed⁴⁸⁵ that there are no signs of any change in Defra's approach since the statement was made over a year ago and notwithstanding the Climate Change Committee's recommendation in July 2023⁴⁸⁶. Indeed, the Defra approach in December 2022 continues to be reflected in EN-1 and EN-3 and the continued endorsement of the NPPW (2014) in paragraph 4 of the Framework⁴⁸⁷.
- 8.11 The NPPW recognises at paragraph 3 *'the need for a mix and scale of facilities, and that adequate provision must be made for waste disposal'*. The references by the Council⁴⁸⁸ to moratoria in Wales and Scotland were shown to be incorrect⁴⁸⁹. In Wales there is a moratorium in place only for sites that would

⁴⁸⁰ Accepted by Ms Hart in x-e

⁴⁸¹ AD22

⁴⁸² CD7.01 Page 26

⁴⁸³ CD9.03 Paras 3.3.37 to 3.3.42 and CD9.04 Paras 2.7 and 2.7.27-2.7.29 in particular

⁴⁸⁴ PFF01 Para 3.1.6 Page 17

⁴⁸⁵ Mr Roberts e-in-c

⁴⁸⁶ CD9.23 – as Mr Roberts pointed out in x-e, while the ERF capacity was derived from Tolvik, the emissions consequences in the CCC Report were not so derived and were not ones that could be supported (or ones that the Government accepted)

⁴⁸⁷ CD9.02 and CD9.01

⁴⁸⁸ Through Mr Potter

⁴⁸⁹ By Mr Roberts

generate more than 10MW and the latest Scottish position is in National Planning Framework 4 (NPF4), which supersedes the Church report from which the Council cites. NPF4 contains no moratorium on EfW. Indeed, it contains specific policy tests for them (Policy 12g).

- 8.12 Further, NPPW states that need is not required to be demonstrated if there is an up-to-date Local Plan. Paragraph 7 says that *'when determining waste planning applications, waste planning authorities should: only expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date Local Plan. In such cases, waste planning authorities should consider the extent to which the capacity of existing operational facilities would satisfy and identified need...'*.
- 8.13 Where need is considered, account is to be taken of *'existing operational facilities'* not of proposals, or unimplemented permissions. Regardless of the contrary views of the Council⁴⁹⁰, NPPW is clear, and its relevance is underpinned by the Framework.
- 8.14 Since there are many examples of unimplemented EfW/ERF permissions⁴⁹¹, it makes no sense to count facilities when they are not in existence. That must include the Parley permission, and Canford proposal. Taking them into account would undermine the objectives of the Waste Plan 2019.
- 8.15 The appellant has explained⁴⁹² why the permission for Parley, which is only a 50,000 tpa recovery facility, notably much less than the 160,000 tpa allocated, has not even sought an Environmental Permit, or advanced its development. It is not an endorsement of the apparent enthusiasm of the Council for the fact that a permission has been granted for an allocated site following the adoption of the Waste Plan 2019, ignoring the longstanding waste facilities at Parley, or the non-construction of the permitted anaerobic digester plant.
- 8.16 Policy 4 of the Waste Plan 2019 does not require need to be demonstrated. The Council⁴⁹³ relied on paragraph 6.14 of the supporting text⁴⁹⁴ but: that paragraph is limited to the provision of information on potential shortfall capacities, rather than purporting to establish a need requirement; and even if it did purport to establish a need requirement, it would not do so as Policy 4 itself contains no such requirement. The supporting text cannot add one⁴⁹⁵.
- 8.17 The text at paragraph 6.14 of the Waste Plan 2019 cannot make it policy to require a demonstration of need where it does not appear in the policy and is no more than information expected on submission of an application pursuant to Policy 4. Nor does Policy 6 impose a requirement to demonstrate need.
- 8.18 The main instance where the Plan explicitly requires need to be considered is in the limited context of Policy 7 and paragraph 7.6⁴⁹⁶ where waste is proposed

⁴⁹⁰ Expressed by Mr Potter

⁴⁹¹ Mr Roberts identified 20 of which he is aware

⁴⁹² Through Mr Roberts

⁴⁹³ Mr Potter and in the x-e of Mr Roberts

⁴⁹⁴ CD7.02 Page 33

⁴⁹⁵ *R (Checkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567 – AD20 Para 21

⁴⁹⁶ CD7.02 Page 37

only to be disposed of, not recovered or dealt with higher up the hierarchy (such as by landfill). This does not apply to the proposal. Specific inclusion in Policy 7 demonstrates that the Waste Plan 2019 stipulates it in policy where it is a requirement, in contrast to the approach in Policies 4 and 6.

- 8.19 Need cannot logically turn on the bizarre approach of the Council⁴⁹⁷ to so-called 'net self-sufficiency' which appeared to attempt a sleight of hand that if the waste exported matched the waste imported into the Plan area, even if inert or otherwise different from that arising in the Plan area, that was sufficient. This approach fails because it cannot rationally be seen as achieving net self-sufficiency as required by Policy 1; it is not what is intended in Policy 1 or Objective 2 of the Plan, or paragraph 3.15⁴⁹⁸ which refers to 'sufficient capacity within the Plan area to deal with its waste arisings'; and it runs contrary to the proximity principle⁴⁹⁹. The Council's 'net' approach was rejected by the Inspector who dealt with the Northacre EfW appeal⁵⁰⁰.
- 8.20 The approach of the Waste Plan 2019 can be seen in Section 7 which runs through the various aspects of different types of waste management required in the plan area. Table 7⁵⁰¹ sets out the residual waste requirement for the plan period which needs to be adjusted due to the error of assuming Canford MBT is a waste recovery facility. For 2023, once the Canford MBT output of 95,000 tpa is added back in (rather than 125,000 tpa being deducted), then instead of a capacity gap of 214,000 tpa for 2028, as set out in the Waste Plan 2019, the figure should be 309,000 tpa⁵⁰².
- 8.21 Unlike Canford, where any scheme would have to demonstrate not only that there are no non-Green Belt alternatives (which the proposal clearly is) to comply with Waste Plan 2019 Policies 3 and 21, and that 'very special circumstances' exist to justify what is would plainly be inappropriate development in the Green Belt, with further Green Belt harm on account of the reduction in openness⁵⁰³, and other potential harm, the proposal does not have to overcome these very high hurdles or provide evidence that the circumstances sufficient to justify overriding such strong national policy protections exist.
- 8.22 The Council sought to suggest⁵⁰⁴ that the question of an impact on the setting of a WHS was more significant than the Green Belt issue at Canford, but this is not a good point. First of all, Green Belt policy presumes against inappropriate development at the outset. Second, issues around the impact on the setting of a WHS fall to be considered in relation to the OUV of the WHS. While a WHS may be of the highest significance, there is no starting presumption against. Moreover, in this case, the proposal is a good distance away from the WHS, and the OUV of the WHS is related to its geology and geomorphology. By contrast, the Canford site stands squarely in the Green Belt, with a 'red line'

⁴⁹⁷ Mr Potter endorsed by Ms Hart

⁴⁹⁸ CD7.02 Page 19

⁴⁹⁹ A point accepted by Mr Potter in x-e

⁵⁰⁰ CD10.1 Para 70 and R01 Paras 2.2.12 to 2.2.13

⁵⁰¹ CD7.01 Page 55

⁵⁰² Mr Roberts e-in-c and PPF01 Para 3.3.4

⁵⁰³ PPF01 Para 4.2.21 and PPF02 Appendix NR13 and Section 8.5

⁵⁰⁴ Mr Roberts x-e

extending well beyond the extent of the allocation⁵⁰⁵. It would clearly constitute inappropriate development with a far greater impact on openness than the facilities the proposal would replace. The Canford proposal would have far higher hurdles to clear than the proposal at issue.

Policies Regarding Residual Waste

- 8.23 In this context, the relative frailties of the allocations in Waste Plan 2019 Policy 3 are clear given that it is not disputed that there were few sites coming forward during the plan process⁵⁰⁶. Neither can it be disputed that any proposals on the allocated sites are still required to comply with the other policies in the Waste Plan 2019, even if the scale of the facility proposed accords with the expectation of the allocation. The two Green Belt sites (Canford and Parley) would need to comply with Policy 21. The existence of a specific policy for non-allocated sites (Policy 4) underlines that analysis. The Canford proposal, as submitted, would be of a scale ten times that of the 25,000 tpa allocation, as well as being located adjacent to a SPA, SSSI, and SNCI, and extending beyond the allocation into the Green Belt.
- 8.24 The appellant's proposal plainly meets the requirements of Waste Plan 2019 Policy 4. It would provide important advantages over the allocated sites, notably shore power, its location on a brownfield site allocated elsewhere for employment use, it is adjacent to port facilities, and IBA can be removed by ship⁵⁰⁷. Moreover, the appeal site can accommodate an ERF in a less harmful way than a facility on the Canford or Parley allocations.
- 8.25 On top of that, there would be no prejudice to the allocated sites by reason of cumulative or other adverse impacts. The proposal supports the delivery of the Waste Plan 2019 Spatial Strategy which does not restrict waste facilities to South East Dorset. All other policies of the Waste Plan 2019 would be complied with, as would criteria (e) to (g) of Policy 4.
- 8.26 The issue of prioritising the allocated sites in Policy 3⁵⁰⁸ needs to be considered carefully since in fact, the allocations have inherent difficulties, while the application of Policy 4(a) of the Waste Plan 2019 significantly weakens any priority which might be thought to attach to the allocations. It would not be correct to compare 'sites' since it is 'proposals' that must be assessed under Waste Plan 2019 Policies 3 and 4. In any event, if you do compare 'sites' the Canford proposal extends well beyond the allocation and is over ten times the scale of the allocation. The ability to promote non-allocated sites under Policy 4 of the Waste Plan 2019 where they have advantages over the allocations, demonstrates the limited nature of any prioritising of the allocations that can take place.
- 8.27 The Waste Plan 2019 itself, considered as a whole, dictates this approach and that may well result from a lack of confidence that the limited number of allocated sites will come forward. It also provides a context for the Waste Plan 2019 Spatial Strategy.

⁵⁰⁵ AD07

⁵⁰⁶ Ms Hart x-e

⁵⁰⁷ PPF01 Section 3.5 PPF02 NR4

⁵⁰⁸ Mr Roberts x-e

- 8.28 The requirements of Waste Plan Policy 6, that deal with recovery facilities, would be met⁵⁰⁹ and the benefits of the proposal would clearly outweigh any displacement. In fact, the proposal will manage waste higher up the hierarchy with important elements not available at any allocated site – notably shore power and the potential to remove IBA by sea. None of the allocated sites can offer these benefits.
- 8.29 Although the Waste Plan 2019 Spatial Strategy⁵¹⁰ may have a focus on South East Dorset, it is not exclusive and the proposal would lead to a reduction in 'waste miles' for example by comparison with sending residual LACW from the MBT to Bridgwater and sending C&I waste out of the County and Country. On top of that, Policy 4 of the Waste Plan 2019 clearly allows for sites to come forward that are not in South East Dorset. The Council's approach⁵¹¹ seems to ignore key objectives of in the vision of the Waste Plan 2019 and Objectives 1 and 2⁵¹² because the proposal is not in South East Dorset. The Council has taken a blinkered approach to the Waste Plan 2019, read as a whole.
- 8.30 The appellant is of the view that the proposal promotes the objectives and the Spatial Strategy of the Waste Plan 2019 and accords with Policies 4 and 6 therein. On that basis, there is no requirement to show need.

General Reliability of the Council's Stance on Need

- 8.31 Assuming that it is necessary to demonstrate the need for the proposal, though Policy 4 of the Waste Plan 2019 does not require it, it is submitted that the Council's evidence, whether it relies on the OSN⁵¹³ or their evidence⁵¹⁴, fails to demonstrate the absence of a capacity gap.
- 8.32 In this context, it should be noted that the area covered by Dorset and BCP Councils have no current ERF facility and export or landfill all of their residual waste – currently, in part, to the ERF at Bridgwater in Somerset. This is not a sustainable position in general terms and neither does it comply with the sustainability objectives of the Waste Plan 2019. Moreover, despite the unimplemented permission at Parley, and the current application at Canford Magna, both these sites have been allocated waste sites for at least 17 years⁵¹⁵ and in all that time, no viable proposals for residual waste treatment have come forward, despite the obvious capacity gap in the plan area.
- 8.33 In the Officers' Report⁵¹⁶, under the Key Planning Issue of 'Waste', the capacity gap is accepted, and the ability of the proposal to meet the need is acknowledged. The same is true of the Update Sheet⁵¹⁷. However, the need

⁵⁰⁹ PPF01 Paras 9.2.4 to 9.2.16

⁵¹⁰ CD7.01 Pages 26-29

⁵¹¹ Ms Hart criticised by Mr Roberts e-in-c

⁵¹² CD7.01 Pages 23 and 24

⁵¹³ CD11.09 - Dorset Council's Outline Statement on Waste Need

⁵¹⁴ There are several assessments in the evidence of Mr Potter – PPF28, PPF29, and R08

⁵¹⁵ Agreed by Ms Hart in x-e

⁵¹⁶ CD5.01

⁵¹⁷ CD5.02

assessment in the OSN, produced after the CMC⁵¹⁸ and foreshadowed in the Council's Statement of Case⁵¹⁹ was the work of the Council's witness alone⁵²⁰.

- 8.34 It has also become clear that this was an exercise constructed for the purposes of opposing the appeal, and not a genuine waste planning exercise. First of all, it has not been produced in consultation with BCP Council – the other waste planning authority involved, and nor has their agreement to it been sought or obtained⁵²¹. Secondly, it was not produced by the Council's Waste Team, and neither is it based on annual monitoring. It was not produced as a Waste Plan 2019 update exercise but as an ad hoc response to the appeal.
- 8.35 Moreover, the OSN has effectively been abandoned by the Council⁵²² due to an obvious error in the assumption that Canford MBT was a final, rather than intermediate, treatment facility when self-evidently it was not. The Council claims to rely on Table 7 of the Waste Plan 2019 but seems to have ignored the preceding pages that explain the position⁵²³.
- 8.36 It is clear from the Waste Plan 2019 that the only facility in the Waste Plan 2019 area is the Canford MBT and that it is not a recovery facility or one where final treatment of waste takes place. It should never have been assumed to be one and the lack of due diligence is surprising. The credibility of this evidence must be seriously doubted and the OSN is therefore a dead letter⁵²⁴.
- 8.37 Against this background, the Council declined to reveal how it would respond in relation to the Canford Magna ERF proposal⁵²⁵. This was surprising given that the size of the proposed ERF is over ten times the size referred to in the allocation, extending beyond the allocation boundary further into the Green Belt. This proposal would be in clear conflict with Policy 3 of the Waste Plan 2019, and Policy 21 which does not permit facilities in the Green Belt, where alternatives outside the Green Belt exist. The belated submission of the formal response⁵²⁶ does not support the proposal and fails to grapple with the implications of the Council's revised need assessment on the Waste Plan 2019.
- 8.38 Unlike the Officers' Report on the proposal at issue, and the Council's evidence for the appeal⁵²⁷, the submission does seek to address Policy 21 of the Waste Plan 2019, and alternatives. However, it does not address Green Belt impacts or the implications of extending beyond the allocation boundary.
- 8.39 Overall, there are several respects in which the OSN, and the Council's subsequent evidence, demonstrate a lack of reliability. The exercise failed to understand the effect of waste treatment at the Canford MBT and relied upon the use of WDI rather than the widely accepted Tolvik approach which uses

⁵¹⁸ CD11.07

⁵¹⁹ CD11.03

⁵²⁰ Mr Potter – this was confirmed by Mr Potter and Ms Hart in x-e

⁵²¹ Accepted by Ms Hart in x-e

⁵²² Ms Hart and Mr Potter

⁵²³ CD7.01 Page 55 but also Page 53 under the heading 'Recovery'

⁵²⁴ Mr Potter accepts the error in R08

⁵²⁵ Ms Hart x-e – the formal response was submitted to the Inquiry as AD22

⁵²⁶ AD22

⁵²⁷ CD5.01 and 5.02 and the evidence of Ms Hart

multiple sources⁵²⁸. Tolvik data has not only been endorsed by the Competition and Markets Authority but is relied upon by the Committee on Climate Change⁵²⁹ and even UKWIN⁵³⁰.

*Residual Waste Capacity/Need*⁵³¹

- 8.40 The residual waste baseline on which the appellant relies⁵³² is based on Tolvik data for the most recent complete year – 2022. The data comes from more than one source and is not simply WDI. The result is an identification of around 261,055 tpa of residual waste being generated in the area covered by the Waste Plan 2019 in 2022. As was made clear⁵³³, that figure may in fact be an underestimate. The key difference between the appellant and the Council on the residual waste baseline amounts to some 77,000 tpa of residual waste⁵³⁴. The discrepancy arises from a number of sources. First, the Council assumes that 50% of waste coded 19-12-12⁵³⁵ which currently goes to landfill is suitable for incineration⁵³⁶. Tolvik's equivalent figure is 70% based on its published data⁵³⁷ and this results in a difference of 7,735 tpa.
- 8.41 For bulky waste, while accepting⁵³⁸ that it substantially includes POPs which have been banned from landfill since 2023, and therefore combustion represents the only treatment solution, the Council assigns none of it to incineration on the basis that it requires pre-treatment through shredding. This is not justified given that the bulky waste can be shredded before incineration at an ERF. This accounts for a difference of 18,200 tpa.
- 8.42 Moreover, the appellant's figures⁵³⁹ include uncoded waste to the tune of 6,222 tpa and adds in mass loss which accounts for 34,444 tpa. On top of that, the Council⁵⁴⁰ considers only three waste codes in the WDI. Tolvik, in contrast, account for all 17 of the combustible codes in the WDI data that are applicable in the Waste Plan 2019 area. That accounts for an additional 4,669 tpa. The Council's identification of the quantity of waste under code 20-03-01 (mixed municipal waste) is wrong⁵⁴¹. When corrected, there is an additional 11,832 tpa.
- 8.43 The sum of all these differences is 83,102 tpa of waste. When that is added to the Council's 184,100 tpa⁵⁴², the result is 267,202 tpa of waste arisings as the baseline; a figure close to the appellant's assessment based on Tolvik data.

⁵²⁸ PPF01 Paras 3.4.23 and 4.3.24

⁵²⁹ CD9.23

⁵³⁰ AD75 and AD76

⁵³¹ PPF01 Sections 3.2 to 3.4 and R01 Section 2

⁵³² PPF01 Table 3.2 Page 32

⁵³³ By Mr Roberts

⁵³⁴ Comparing Mr Roberts' Table 3.2 (PPF01) and Mr Potter's Table 3 (PPF28 Page 22)

⁵³⁵ Mechanically Treated Waste

⁵³⁶ R08 Table 1

⁵³⁷ PPF02 Para 6d Page 49

⁵³⁸ Through Mr Potter

⁵³⁹ PPF01 Table 3.2 Page 32

⁵⁴⁰ R08 Table 1

⁵⁴¹ The correct figures should be 36,507 tpa in R08 Table 1 first column for the code, and 21,715 tpa in the second column

⁵⁴² PPF28 Page 22

Waste Management Analysis

- 8.44 It was noted⁵⁴³ that the LACW component of the BCP Council's waste goes to Canford for treatment at the MBT plant. That waste arrives at Canford under three discrete contracts, from the three component authorities in BCP Council. All expire in 2027. As of late, significant amounts of the output from the MBT are sent to Bridgewater. The operator of the MBT has made clear that it would prefer to send its arisings to an ERF at Portland rather than the facility at Bridgewater.
- 8.45 At the sub-regional level, the role of the proposal in the future market has been explained in evidence⁵⁴⁴. That analysis has been carried out on a very conservative basis – it proceeds on the basis of the Government's 'stretching' targets for the halving of residual waste from 2019 levels by 2042, and it adopts a 75% recycling rate. This can be contrasted with Defra's latest modelling of the effects of its known future recycling initiatives which are forecast to deliver recycling rates of 52% for household waste and 59% for C&I⁵⁴⁵. Even on that conservative basis, the 'Scenario A' sub-regional analysis shows that the sub-regional capacity gap never falls below 263,000 tpa.
- 8.46 This result is tested in 'Scenario B' which alters 'Scenario A' by assuming the opening of the Northacre facility, and the closure of the Marchwood ERF. These make virtually no difference to the capacity gap⁵⁴⁶.
- 8.47 The conservative approach to recycling rates is shown by the Defra modelling which reveals that recycling rates for household waste have flat-lined over the last 11 years⁵⁴⁷. That reveals the difficulty of attaining the 75% rate that the appellant has assumed.
- 8.48 Of course, all parties should strive to meet the Government target, but it would be naïve to plan on the basis that stretching targets will be met. If we did so, and if the targets were missed, the result would be even more waste being channelled into landfill, and down the waste hierarchy rather than up it. The recent Public Accounts Committee Fifth Report: Government's Programme of Waste Reforms (November 2023)⁵⁴⁸ made clear that the effect of Government policies was not proceeding as intended and there was significant uncertainty about objectives being achieved.
- 8.49 Another of the ambitious aspects of the Government's approach which has a bearing here, is the Government's stated objective of the near elimination of biodegradable waste from landfill by 2028. The achievement of that objective will significantly increase ERF demand on a national level – in 2021 around 10 million tpa of residual waste was sent to landfill⁵⁴⁹, and if that is to be avoided in the next 5 years, then further ERF capacity in the UK is needed.

⁵⁴³ By Mr Roberts

⁵⁴⁴ PPF01 Paras 3.4.37 to 3.4.38 and PPF02 Appendix NR9

⁵⁴⁵ PPF01 Para 3.4.18

⁵⁴⁶ PPF02 Appendix NR9

⁵⁴⁷ CD12.80

⁵⁴⁸ CD12.80

⁵⁴⁹ PPF01 Para 3.4.17 (v)

- 8.50 On that overall basis, the evidence shows that there is a clear need, and role, for the proposal for meeting waste needs in the Waste Plan 2019 area.
- 8.51 The suggestion by UKWIN that Marchwood is the only ERF likely to close in the near future is not correct because they have used age as the only consideration. It was explained⁵⁵⁰ that the main driver for future ERF closures will be the need for lower emissions, and CCS. The significant outlays required to bring older facilities into line with these emerging requirements will impact on viability will lead to more closures.
- 8.52 UKWIN also contended that the appellant has missed out a significant amount of ERF capacity by adopting a 3 hour drive time as a sensitivity⁵⁵¹. However, the 3 hour drive time is used as a broad means of describing the Waste Plan 2019 area. Further, if you add in that extra capacity on the basis that UKWIN suggests, then you must also add in the waste arisings from the wider area. The approach is misconceived.

The Effects of ERFs on Recycling

- 8.53 The Council suggested⁵⁵² that the development of new ERFs prejudices recycling rates by creating a market incentive to dispose of recyclable waste into the residual waste stream rather than through recycling. The Council pointed to the provisions in EN-1 and EN-3 that reflect this concern⁵⁵³. However, EN-1 and EN-3 are aimed at much larger plants which generate at least 50MW of power from a capacity of above 500,000 tpa.
- 8.54 However, in 2021, some 11.65 million tonnes of residual waste went either to landfill or overseas recovery facilities. That is the true waste stream that will be in competition with ERFs and the effect of ERFs on that waste stream is to drive treatment up the waste hierarchy.
- 8.55 In addition, as was observed⁵⁵⁴, the place where recyclables are separated from the residual waste stream is, in practice, at the front end of the process; that is through people and businesses putting recyclables into recycling bins rather than into the general refuse. That is significant because it shows the practical and commercial absurdity of the Council's point; no householder, with a plastic bottle to dispose of will decide not to recycle it because they wish to ensure that their local ERF has sufficient feedstock. The ERF operator has no input into this process. The Inspector in the recent Northacre appeal⁵⁵⁵ agreed with this approach.
- 8.56 The Rule 6 parties suggested that the shift in the permitted waste codes for the ERF's permit, to allow residual waste codes other than RDFs, would also prejudice recycling on the basis that the process of producing RDF secures a higher rate of removal of recyclables from the RDF waste stream than is the case for non-RDF residual waste. This is not the case, and the point can be

⁵⁵⁰ By Mr Roberts

⁵⁵¹ In PPF02 Appendix NR9

⁵⁵² Through Mr Potter

⁵⁵³ CD9.03 and CD9.04

⁵⁵⁴ By Mr Roberts

⁵⁵⁵ CD10.01 Para 59

shown by reference to the latest Canford permit⁵⁵⁶. This confirms that the only recyclable removed at that location in the production of its RDF is ferrous metals and compounds. The WDI data sheet for Canford⁵⁵⁷ enables the amount of metals recycled to be determined – 367 tpa which is only 0.29% of the total MBT output. Conversely, the ERF will recover 1-2% of its input stream, in the form of metals, through the processing of IBA. Further, the recovered metal is in a better condition for recycling since the incineration process burns away materials that would otherwise contaminate the metals. In other words, the ERF is preferable to the MBT in recycling terms, whether the waste that enters it is RDF, or non-RDF residual waste. Finally, it is not correct to say that ERF gate fees are cheaper than those of recycling facilities (MRFs)⁵⁵⁸.

ERFs and MBTs

- 8.57 The Council suggested⁵⁵⁹ that intermediate waste treatment in a MBT resulted in fewer waste miles than sending waste directly to an ERF. Once again, however, this analysis is flawed. It is true that a MBT reduces the volume of waste, but what the Council does not account for is that the MBT output then has to be transported from the MBT to the final treatment facility, resulting in the need to transport that portion of the waste twice – from the point of arising to the MBT, and then from the MBT to the final treatment venue. Across the lifetime of the waste, therefore, the insertion of a MBT stage significantly increases waste miles.
- 8.58 Further, the vast majority of the volumetric reduction which occurs in a MBT is the result of the loss of water, not carbon⁵⁶⁰. Since ERFs are sized on thermal capacity, the result is that an ERF can take a lower tonnage of high calorific value waste than it can of lower calorific value waste. The worse the quality of the fuel, the more than can be put in before the thermal capacity is reached. On a commercial level, ERFs outcompete MBTs in the marketplace⁵⁶¹.
- 8.59 The MBT market is supported by local authority contracts for LACW entered into originally in the erroneous belief that the output of the MBT could be spread on land thereby avoiding the need for ERFs. The EA never permitted that practice and now that authorities are aware that MBTs are no substitute for ERFs, the incentives that underpin those contracts are reduced. The result is that as more ERFs come online, and as MBT LACW contracts expire and are not renewed, ERFs will become the dominant treatment method in the market. For this reason, many MBTs have closed and there are very few left in operation. Even if MBTs are still used, the output still requires final treatment, and for local authorities, ERFs are plainly preferable to landfill or export for final treatment. Sending residual waste direct to ERF will avoid double handling and transportation.

Canford and Parley

⁵⁵⁶ AD08

⁵⁵⁷ AD09

⁵⁵⁸ The WRAP Report (CD12.82) confirms

⁵⁵⁹ Through Mr Potter

⁵⁶⁰ PPF01 Para 3.3.3

⁵⁶¹ PPF02 Appendix NR8 Para 6g

- 8.60 Of the allocated sites in the Waste Plan 2019, the focus has been on the sites at Canford and Parley; both longstanding waste sites that lie within the Green Belt. The allocated Canford site amounts to a small-scale intensification of the existing waste use at the site and is for 25,000 tpa. The red line of the allocation boundary is tightly drawn, and the entirety of the site is within the Green Belt⁵⁶².
- 8.61 The current application at Canford significantly exceeds the allocation both in terms of quantity, and the site boundary, proposing 260,000 tpa throughput and a site extent that extends far beyond the allocation boundary⁵⁶³ and includes some development elements of significant scale. The DNC compound for example includes built form that is around 20m high and the grid connection compound includes significant infrastructure elements too.
- 8.62 There is therefore no meaningful sense in which the Canford proposal delivers the allocation in accordance with the Waste Plan 2019. If that is the scale required to deliver ERF at Canford, it strongly suggests that the allocation is wholly inappropriate, and inadequate for that purpose.
- 8.63 There are other serious concerns with the Canford scheme, aside from the obvious challenges of it being inappropriate development in the Green Belt, that would reduce openness, and lie in close proximity to a SSSI, SNCI and a SPA/SAC. The layout of the proposal includes an area⁵⁶⁴ which appears to have been earmarked both for laydown and maintenance use, and as the location for a future CCS facility.
- 8.64 The land in question appears to be around 900 square metres in area which is a fraction of what would be required for a CCS facility serving an ERF of the scale proposed⁵⁶⁵. Even if it were technically feasible to locate a CCS facility on the land, and the appellant has made clear⁵⁶⁶ that it is not, that would still leave the problem of the absence of any land for servicing laydowns (which occur once a year for a period of 4 weeks). The same plot cannot fulfil both functions. It is submitted that the Canford scheme cannot, therefore, deliver a deployable CCS plant in the only location identified for it.
- 8.65 Indeed it would appear difficult for the Canford proposal to meet the policy tests of the Waste Plan 2019 at all, especially in terms of Policies 3 and 21. The site is in the Green Belt and the scheme would involve a large built form that would have a very substantial impact on the openness of the Green Belt, including a stack 110 metres high in one of the most sensitive parts of the Green Belt in the County. The proposal would involve increasing the built form on the site by a factor of 42⁵⁶⁷. This would be inappropriate development in the Green Belt, unquestionably, and given the scale of the harm that would be caused to the Green Belt, the very special circumstances that would be necessary to justify it would have to be very special indeed. Indeed, the level

⁵⁶² CD7.01 Pages 175-177

⁵⁶³ AD07

⁵⁶⁴ ID23 on AD07

⁵⁶⁵ Mr Othen estimates that a CCS plant for an ERF of this size would need 3,000 - 4,000 sqm

⁵⁶⁶ Through Mr Roberts

⁵⁶⁷ PPF01 Paras 4.2.19 to 4.2.22

of Green Belt harm that would be caused would be unprecedented for a proposal of this type⁵⁶⁸.

- 8.66 Policy 21 of the Waste Plan 2019 requires the Canford scheme to demonstrate that there are no sites outside the Green Belt that can meet the same need. Portland is of course, not in the Green Belt and would be a facility of a similar size that did not have the feasibility challenges for delivering CCS⁵⁶⁹, with other associated benefits including the provision of shore power.
- 8.67 The Council's case⁵⁷⁰ has been that there is insufficient waste need for the proposal at issue. If that is correct, then there is no need for the Canford proposal, which is even larger than the proposal at issue. On the other hand, if the Council is wrong on the 'need' issue, which the appellant contends it is, then there is enough 'need' to justify the Canford proposal, but also sufficient 'need' for the Portland proposal, which is not in the Green Belt, involves nothing like the level of environmental harm that the Canford proposal would, and provide other benefits. The scheme at issue in this Inquiry has distinct advantages over the Canford proposal within the requirements of Waste Plan 2019 Policy 4(a).
- 8.68 The position in relation to the site at Parley is just as stark, but for different reasons. The difficulties at Parley are technological.
- 8.69 The proposal there is for an ERF with a building that is up to 16 metres in height. By way of comparison, the Portland scheme is 47 metres high, and the Canford proposal 50 metres high. As was explained⁵⁷¹, it is not possible to run an effective ERF in a building that low; the building height is necessary to enable waste to be dropped on to the moving grate, and the residency time of flue gases which is required to render them permit-compatible for dispersal in the plume cannot be achieved in the height proposed.
- 8.70 The position is even worse though, because the Parley proposal includes selective catalytic reduction technology, which increases the capital cost of delivery while reducing the efficiency of the plant overall. Achieving R1 status for a 50,000 tonne ERF is very challenging even without the added difficulty that catalytic reduction presents⁵⁷².
- 8.71 In short, the scheme at Parley is not feasible and it will not be delivered. It has not sought an Environmental Permit. This is not an unusual situation – there are several examples of ERF permissions remaining unimplemented.

Conclusion on Reason for Refusal 1 (the waste issue)

- 8.72 It is submitted that the Council's first reason for refusal is unsustainable. The proposal complies with Policies 4 and 6 of the Waste Plan 2019, and the appellant's evidence shows that even if there was a requirement to demonstrate need (which there is not), that requirement is amply met in this

⁵⁶⁸ PPF02 Appendix NR13

⁵⁶⁹ R04 refers

⁵⁷⁰ The part of it delivered by Mr Potter

⁵⁷¹ By Mr Roberts

⁵⁷² As confirmed by Mr Roberts

case given the capacity figures presented on behalf of the appellant and supported by Tolvik.

Heritage Issues

- 8.73 All the evidence presented at the Inquiry⁵⁷³ concluded that any heritage harm arising from the proposal would be at a level of less than substantial harm, so that the test in paragraph 202 of the Framework is engaged. There is no need to cover the substantial historic and cultural value of the various heritage assets here – this is undisputed and thoroughly explained in the evidence⁵⁷⁴.
- 8.74 It was explained⁵⁷⁵ that a precautionary approach had been taken in relation to assessing the potential impact of the proposal on heritage assets, with harm being assigned to assets which were either intervisible with the proposal on the ZTV, where the ERF would be part of an asset's wider context, or which would in any way be affected by ERF-related traffic, as a starting point⁵⁷⁶. Arid submissions on methodology overlook the very obvious fact that what is important is the application and articulation of judgment⁵⁷⁷.
- 8.75 A very important insight⁵⁷⁸ concerns the context and nature of the port itself. The port forms a setting for the proposal that is characterised by constant, and often very significant, change over time, from the establishment by Henry VIII of defences for the Portland Roads, through the extensive naval history of the port, through to its current, primarily commercial use, alongside naval facilities⁵⁷⁹. That evolving nature is a key part of any busy, working port, and Portland Port is no exception. It is a central, and critical, part of the setting of the heritage assets in question; they were not designed to be and have never been appreciated or viewed in a context which was other than a constantly evolving port⁵⁸⁰. The appeal site has been developed has been previously developed and has included facilities such as a Creosote Pressure Chamber, a Hospital for Infectious Diseases and Mortuary, and a torpedo store.
- 8.76 Indeed, any assessment of the settings of all the heritage assets at issue should take account of the fact that the purpose of the assets was to ensure a safe and prosperous port. The facilitation of the continued success of the port is not at odds with those settings, but part of a process of continuation. That approach is consistent with the way in which Historic England suggests we deal with changes over time⁵⁸¹. This advice supports and indeed underpins the appellant's analysis⁵⁸².
- 8.77 In this regard, the proposal is a form of port-related activity, and stands in the long tradition of providing contemporaneous forms of shore power at the port for ships using the harbour. When ships needed coal, the port contained coal

⁵⁷³ By Dr Filmer-Sankey, Ms Kelly and Ms Burley

⁵⁷⁴ PPF08 Appendix WFS1 in particular

⁵⁷⁵ By Dr Filmer-Sankey

⁵⁷⁶ PPF07 Paras 3.1 and 7.12

⁵⁷⁷ In accordance with Para 14 of Historic England Advice Note 12 (CD9.31)

⁵⁷⁸ From Dr Filmer-Sankey

⁵⁷⁹ PPF07 Para 6.19

⁵⁸⁰ PPF08 Appendix 1 Section 2

⁵⁸¹ CD9.30 Page 4 under the heading 'Change over time'

⁵⁸² PPF07 Para 1.11

sheds; when ships needed oil, the port had oil tanks and bunkers. Now, ships need electricity, and the proposal will provide it to them. It must be remembered that the provision of shore power is a constituent part of the scheme itself⁵⁸³. It almost goes without saying that the only feasible place for an ERF to provide shore power is at a port.

- 8.78 The Rule 6 parties⁵⁸⁴ sought to argue that the ERF was not port related since it could be provided anywhere. Comments were also made about the lack of need for shore power for the port. This analysis demonstrated a lack of objectivity and impartiality based on a desire to resist the proposal.
- 8.79 The Council⁵⁸⁵ focused heavily on intervisibility, but this is not lost in any case, intervisibility is not something that exists in a contextual vacuum. Rather, the various assets are intervisible within a busy, working, and changing port.
- 8.80 Turning to the key asset groups, much of the evidence was understandably aimed at the East Weare group. In respect of that group, there is no meaningful harm that would arise to intervisibility as a result of the proposal. The view to and from the Verne from the various batteries would be unaffected as the proposal does not lie between those assets. The same is true of the view from the Verne to the Dockyard Offices and vice versa. At worst, the view from the Dockyard Offices to the breakwaters would be slightly truncated.
- 8.81 In relation to the view between the Dockyard Offices and the breakwaters, the presence of the switchgear serving the proposal may have some minor impact, but nothing close to the harm that already exists as a result of the unfortunate modern extension to the building⁵⁸⁶. Although the Council criticise the appellant for the relationship that would be formed between the building and the switchgear, their own evidence fails to appreciate the impact of the previous extensions to the building. The minor harm that would result is insufficient to amount to anything that warrants concern.
- 8.82 As to the individual assets within the group, it is fanciful to suggest that there would be competition between the proposal and the Verne⁵⁸⁷. The visual dominance of the Verne would not be harmed by the proposal, as is obvious from the visualisations and the experience of the approach to Portland. It is fair to say⁵⁸⁸ that the proposal would be larger than existing built forms at the port, but it would not be remotely of the scale as the Verne, which was built to dominate its surroundings.
- 8.83 In any case, the proposal stands in the long tradition of port-related development, with chimneys, in this area of the port, including the Dragon Portland Cement Silo proposed at the northern end of the port⁵⁸⁹.

⁵⁸³ CD1.20 Section 5 – the description of development

⁵⁸⁴ Through Ms Burley

⁵⁸⁵ Through Ms Kelly

⁵⁸⁶ That is specifically excluded from the List entry

⁵⁸⁷ As suggested by Ms Kelly

⁵⁸⁸ As accepted by Dr Filmer-Sankey

⁵⁸⁹ PPF5c Figure JM20

- 8.84 As for the various batteries, it must be recalled that they were designed not to be readily visible from the harbour; they would not have fulfilled their defensive function otherwise⁵⁹⁰.
- 8.85 The group value of the East Weare assets, and the value of the individual assets within the group, would not be impacted by the proposal other than in a very minor way.
- 8.86 As for the more remote assets, Sandsfoot Castle exists in a context that is already one of massive change. Even the shape of the island itself has altered since the castle was built. There are no intervisibility issues and no meaningful harm would be caused to its setting by the proposal. The ERF would simply be a new chapter in the long story of change that defines its setting⁵⁹¹. The same is true of Nothe Fort. It too exists in a context of the rather distant, changing port. The suggestion that the setting of Rufus Castle would be undermined⁵⁹² is nonsensical, given its location.
- 8.87 As for the Castletown Conservation Area and the assets within it, the key point is that the area, and the assets, and indeed Castletown as a whole, owe their existence to the presence of a working port. That working port is a fundamental part of the setting of these assets, and the ERF proposed would be an integral part of that working port. There would be limited intervisibility between Castletown and the proposal, and the impacts of vehicular movements associated with the proposal would be very limited indeed.
- 8.88 Finally, Portland Castle would be affected by no more than a minimal extent by the proposal. As was explained⁵⁹³, the current physical context, or setting, of the castle is entirely changed from when it was built. What has not changed is its relationship with a working and constantly changing port. The ERF proposed would form part of the context.
- 8.89 When all those points are taken together, even adopting a precautionary approach, the harm caused to the significance of these heritage assets would be at the very lowest end of the less than substantial spectrum.
- 8.90 It was suggested by the Council⁵⁹⁴ that the methodology in the ES was robust, with an implicit criticism of the appellant's evidence⁵⁹⁵ for following a different approach. It is true that the approach taken in the evidence presented is different to that in the ES but there is nothing unusual in such a difference. There is no one prescribed way to assessing heritage impacts and each expert will have their own approach. As was set out⁵⁹⁶, while a matrix-based approach is reasonable for an ES, a different approach, applying judgment to impacts on individual assets, is justified in the presentation of evidence.
- 8.91 Turning to the proposed mitigation scheme, this is an aspect of the proposal that will yield significant heritage benefits for Portland. E Battery is an

⁵⁹⁰ Agreed by Ms Kelly in x-e

⁵⁹¹ As Dr Filmer-Sankey put it

⁵⁹² As suggested by Ms Burley

⁵⁹³ By Dr Filmer-Sankey

⁵⁹⁴ Dr Filmer-Sankey x-e

⁵⁹⁵ Presented by Dr Filmer-Sankey

⁵⁹⁶ By Dr Filmer-Sankey

important asset and is currently in such an overgrown and deteriorated condition that it is on the 'at-risk' register kept by Historic England. The removal of an important asset from that register through works of mitigation would be an obvious and significant benefit. Further⁵⁹⁷, the clearance of E Battery will reveal it in the view from the Verne, which would vastly increase the understanding of the relationship between the assets, as well as better revealing the group value of the various East Weare assets.

- 8.92 There was some criticism of the lack of a Conservation Management Plan for the mitigation scheme⁵⁹⁸ and it was suggested that without such a plan, there could be little confidence in the ability of the scheme to deliver benefits. There is nothing in that criticism. It is right to note⁵⁹⁹ that of the assets in the vicinity of the proposal, E Battery is the obvious choice for the focus of mitigation efforts. Further, the appellant is the obvious, and indeed only realistic, candidate to undertake such works. The idea that voluntary groups could do the work⁶⁰⁰ is entirely nebulous – the groups are not even identified.
- 8.93 Various suggestions by the Rule 6 parties seeking to diminish the benefits of the heritage mitigation⁶⁰¹ should be rejected. The sweeping statement that measures could be undertaken in any event simply ignores the fact that they have not been done in the past, and there is no cogent proposal to do anything, other than what is proposed as part of the overall scheme.
- 8.94 Much of the evidence of the Rule 6 parties in this regard⁶⁰² was wanting but one aspect does need to be highlighted. It was suggested on behalf of the Rule 6 parties⁶⁰³ that there is a cultural heritage component to the setting of the WHS. This was not a point pursued by the Council and it is clear that it is formulated by taking individual sentences or phrases in the Jurassic Coast Partnership Plan⁶⁰⁴ out of context and reading them with no regard to the nature of the OUV of the WHS which is concerned only with geological and geomorphological matters.
- 8.95 Even if there was a built heritage component to the setting of the WHS, that would be an issue if, and only if, there was some way in which the proposal could cause cultural heritage harm to the OUV of the WHS. No such issue was identified. The limited references to cultural heritage in the Jurassic Coast Partnership Plan should be considered in their context and the lack of any linkage to the built form of the port noted⁶⁰⁵. These demonstrate that they are not concerned with development at the port – that is built heritage – but to cultural links in a more general sense.

⁵⁹⁷ As explained by Dr Filmer-Sankey

⁵⁹⁸ From Ms Burley

⁵⁹⁹ As Dr Filmer-Sankey did

⁶⁰⁰ A point made by Historic England (CD4.87)

⁶⁰¹ In closing (AD18)

⁶⁰² Presented by Ms Burley

⁶⁰³ Through Ms Burley

⁶⁰⁴ CD12.09

⁶⁰⁵ See for example the references on Pages 40 and 45

- 8.96 In terms of the Framework, the WHS is treated as a heritage asset⁶⁰⁶. However, it is noted that some WHSs are inscribed to be of natural significance rather than cultural significance, and sometimes both. Here, there is no such dual significance and the application of policy in the Framework must be approached in that light. The fact that the WHS is an asset of the 'highest significance' does not mean that significance is cultural, as opposed to natural.
- 8.97 Attempts by the Rule 6 parties to apply policies in the Neighbourhood Plan were misconceived as were the inflated contentions that harm would be caused to the non-designated piers. Neighbourhood Plan Policies Port/EN4 and Port/EN5⁶⁰⁷ are concerned with the piers themselves rather than their settings.

Conclusion on the Heritage Issue

- 8.98 There are two approaches to the heritage balance required. For those assets directly affected by the heritage mitigation scheme, an internal balance can be carried out. Given the very minor nature of the harms to those assets, and the very significant benefits brought forward by the mitigation scheme, the result is a net heritage benefit, so that no less than substantial harm would remain.
- 8.99 For those heritage assets not directly affected, it is necessary to carry out the balancing exercise in the Framework. The heritage benefit of the mitigation scheme is a 'public benefit' of the scheme that is alone capable of outweighing the heritage harm, even though that heritage harm must be given great weight. When the other, non-heritage, public benefits of the proposal are taken into consideration too, the balance is even further in favour.
- 8.100 For those reasons, the appellant considers that there is no heritage basis on which to resist the proposal and no breach of heritage policy whether in the Framework, or the development plan.

Visual and Landscape Issues (including the WHS)

- 8.101 The Council's second reason for refusal⁶⁰⁸ concerned the landscape and visual impacts of the proposal, and the alleged impact on the WHS which was the reason why the appeal was recovered.

The WHS

- 8.102 All agree that the OUV of the WHS is, in summary, its geological and geomorphological value⁶⁰⁹. This OUV is explicitly not concerned with the landscape or natural beauty of the area – the attempt to have the area inscribed for landscape reasons was rejected by the World Heritage Committee⁶¹⁰. The detailed description of OUV in the Jurassic Coast Partnership Plan makes no mention of the appearance of the WHS⁶¹¹. Nor does the statement of OUV make any reference at all to built heritage matters.

⁶⁰⁶ CD9.01 Paragraphs 194, 212 and 213 and Footnote 70

⁶⁰⁷ CD7.04

⁶⁰⁸ CD6.01

⁶⁰⁹ CD12.9 Page 16

⁶¹⁰ CD12.6 Page 50 – accepted by Mr Williamson in x-e

⁶¹¹ CD12.09

- 8.103 This is significant because as was emphasised⁶¹² 'all site protection and management efforts should be seen through the lens of [OUV]'⁶¹³. It is common ground that there would be no direct impact on OUV; the alleged impacts instead arise through an impact on the setting of the WHS. The setting of the WHS, and in particular the consideration of the possible impact of the proposal on that setting, must be considered through the lens of OUV.
- 8.104 Indeed, the PPG treats OUV as having a role like that of 'significance' in the context of built heritage assets⁶¹⁴. Just as heritage policy is aimed at protecting the significance of heritage assets, so WHS policy is aimed at protecting OUV. Put another way, the issue is whether the proposal would harm the OUV of the WHS through the impact it would have on the setting of the WHS. As to what that setting is, the general indication is that the landscape setting of the WHS is wholly, if not entirely, provided by the designated National Landscape and Heritage Coast.
- 8.105 The Jurassic Coast Partnership Plan is clear that there is no defined buffer zone for the WHS. The reason for the absence of a buffer zone is because the wider setting of the property is well protected through the existing designations and national and local planning policies⁶¹⁵. The relevant designations are set out⁶¹⁶ and the only ones relevant in landscape terms are the National Landscape and the Heritage Coast. No national or local policies relevant to the protection of setting are identified. Further, the Jurassic Coast Partnership Plan explicitly addresses the setting of the WHS. It identifies two elements of which the first – the experiential setting – is the relevant one here⁶¹⁷. The definition notes that the surrounding landscape and seascape should be regarded as the setting of the WHS and includes specific reference to the National Landscape, as important for helping to determine how the setting is enjoyed.
- 8.106 The Local Plan⁶¹⁸ notes that the WHS and its setting are protected through a wide range of international, national and local designations made either for geological, wildlife, or landscape value. The only relevant landscape designations are the National Landscape and the Heritage Coast⁶¹⁹. In that context it is highly significant that there was agreement between the Council and the appellant's witnesses that the proposal would give rise to no significant adverse effects on the National Landscape⁶²⁰. Thus, there is no relevant adverse impact on the primary mechanism by which the setting of the WHS is preserved.

The Landscape & Visual Assessments

⁶¹² By Mr Mason

⁶¹³ CD12.09 Para 2.2 Page 20

⁶¹⁴ CD9.21a

⁶¹⁵ CD12.09 Page 17

⁶¹⁶ CD12.09 Table 1 Page 29

⁶¹⁷ CD12.09 Page 22

⁶¹⁸ CD7.02 Para 2.2.9 Page 23

⁶¹⁹ Confirmed by Mr Mason in x-e

⁶²⁰ Mr Mason and Mr Williamson

- 8.107 It was explained⁶²¹ that as with the heritage issue, the port is the receiving context for the proposal. That receiving context is characterised by the thriving, dynamic, utilitarian working port with many existing large buildings, large ships, and industrial and marine artefacts⁶²². Furthermore, the site and its surroundings are unusual, indeed unique, in that the ERF proposed would not appear upon and within them as the most dominant landscape feature⁶²³.
- 8.108 In that context, the methodology that was adopted was outlined⁶²⁴. This methodology follows the GLVIA approach including, importantly, ensuring that the determination of the significance of impacts is assessed through professional judgment rather than simply relying on the mechanistic matrices. In this way, account can be taken of factors like the receiving context, in a more nuanced and site-specific way. This is the more suitable approach.

Landscape Character

- 8.109 Applying this approach, two new LCAs were assessed – Chesil Beach, the Fleet and the Causeway, and Portland Peninsula⁶²⁵.
- 8.110 The appellant’s analysis of these important character areas is detailed, systematic, and GLVIA3 compliant and includes in each case, detailed narrative explanations that support the judgments reached. It is concluded that there would be no significant adverse impacts on these character areas in that the presence of the ERF in views from these LCAs will simply represent another element of operational development in what are already views heavily influenced and informed by the existing operational development at the port, as well as other consented development like the Dragon Portland Cement Silo.
- 8.111 By contrast, the Council’s approach is limited to a single paragraph on each⁶²⁶. Those make no real attempt to link the assessments back to the baseline studies. That omission matters, because, for instance, the approach taken to the Portland Peninsula LCA deals with the magnitude of change on the basis of a breach of the skyline, without recognising or engaging with the baseline study’s observation that the skyline of that LCA is already dominated by man-made structures and features⁶²⁷. On that basis, the appellant’s evidence in relation to these LCAs should be preferred.

Seascape

- 8.112 The appellant and the Council are in agreement that the proposal raises no concerns in relation to seascape impacts. The LVIA concluded that no significant adverse seascape impacts would arise⁶²⁸. Notwithstanding that, the Rule 6 parties have advanced a case that there would be an unacceptable seascape impact as a result of the proposal⁶²⁹.

⁶²¹ By Mr Mason

⁶²² PPF04 Para 5.4

⁶²³ As explained by Mr Mason

⁶²⁴ PPF05a Appendix JM3

⁶²⁵ PPF05a Appendix JM1

⁶²⁶ PPF23 Paras 4.41 and 4.42

⁶²⁷ CD12.30 Para 7.5

⁶²⁸ CD1.36j1 Para 9.122 in respect of the Man-Made Harbour SCA

⁶²⁹ Based on the evidence of Mr de Bertrand (PPF35)

- 8.113 However, the approach adopted was not GLVIA3 compliant⁶³⁰. No attempt is made, for example, to assign magnitudes to sensitivities or impacts, and no attempt is made to identify which of the purported impacts might be significant. The value of the evidence is therefore very limited.
- 8.114 The case advanced by the Rule 6 parties on seascape impact turned, to a large degree, on allegations of a failure to assess those seascapes, which in turn were based on what was suggested to be an absence of seascape viewpoints. However, the absence of a viewpoint is not the same as an absence of assessment⁶³¹. No LVIA can ever include every possible viewpoint, and a degree of informed inference is always required of the decision-maker. There is plenty of evidence before the Inquiry to enable an informed view on seascape impacts to be taken, and the appellant's evidence is that there would be no significant adverse impact on any seascape character area⁶³².
- 8.115 It is important to note that the JCT itself, insofar as it provided clear opinions, as opposed to identifying concerns for later expert assessment⁶³³, considered the Slumped Cliffs SCA to be unaffected in any meaningful way by the proposal⁶³⁴. To the extent that the Rule 6 parties asserted otherwise, it is the only party to have made such a claim, and its claim is not based on objective expert evidence. The Rule 6 parties suggest that great weight should be attached to the concerns of the JCT⁶³⁵ but that submission ignores that the JCT explicitly acknowledged that its concerns would need to be investigated by a landscape expert. As was explained⁶³⁶, that assessment has been carried out by the appellant, without finding any cause for concern. The concerns of the JCT have been addressed and there is nothing to which great weight need be attached.
- 8.116 For those reasons, it can be concluded that the proposal will not affect any of the seascape character areas in any significant way.

Visual Impacts

- 8.117 As to the visual impact of the proposal, the appellants assessment⁶³⁷ has been based on the LVIA viewpoints, supplemented by further ones prepared for the Inquiry⁶³⁸. The summary findings on those viewpoints have been set out⁶³⁹ and confirmation that there would be a significant visual impact from but one receptor – the east end of the Royal Navy Cemetery.
- 8.118 Critically, the evidence shows that there would be no adverse effect on any view relevant to the Heritage Coast, or any other receptor that affects the WHS. The Heritage Coast is an important designation in this context; it is that

⁶³⁰ Accepted by Mr de Bertrand x-e

⁶³¹ As Mr Mason made clear

⁶³² Mr Mason re-e

⁶³³ Compare the language in CD4.51 Table 2 between the Slumped Cliffs and Active Coastal Waters for example

⁶³⁴ CD4.51 Page 5

⁶³⁵ AD18

⁶³⁶ By Mr Mason

⁶³⁷ By Mr Mason

⁶³⁸ PPF05b Appendix JM4

⁶³⁹ PPF04 Table 6.1

which (alongside the National Landscape) provides the landscape protection for the setting of the WHS.

- 8.119 The appellant's evidence shows that there would be no significant impact on the OUV of the WHS through a visual impact on the Heritage Coast. The relevant visualisations show that current views of the site from the various heritage coast receptors⁶⁴⁰ are characterised by the extensive amount of port-related development, some of it poor design quality; the regular breaking of the skyline by a range of marine paraphernalia like cranes, platforms, and ships; the consented Dragon Portland Cement Silo in views from a number of important angles; and the lack of any impact on the distinctive 'wedge' shaped landform of Portland itself.
- 8.120 Both the Council and the Rule 6 parties have relied on the Navitus Bay decision⁶⁴¹ but it is of limited assistance because it related to a completely different form of development – an offshore wind farm – which gave rise to adverse effects on the National Landscapes that provide the setting to the WHS. Here, it is common ground between the appellant and the Council that those National Landscapes would not be affected by the proposal.
- 8.121 The views of the ERF across the bay from the receptors adjacent to the WHS to the east of the site⁶⁴² would not suffer any significant impacts either. The views of the site from those locations would once again be characterised by the existing port so that the underlying nature and composition of the view would not be materially affected by the addition of the ERF.
- 8.122 As for the residential receptors, there is a considerable number of properties that would experience a change in the view as a result of the introduction of the ERF. The effects on them, however, would not be significant due to the fact that the fundamental nature of the views would not change. There are currently clear, long-distance views across a harbour to a working port at the foot of Portland, and this would continue to be the case if the ERF was built.
- 8.123 There is only one view that will be significantly impacted – the view from the eastern end of the Royal Navy Cemetery⁶⁴³. That is because the top of the proposed stack would appear in the view, when at present nothing of the port can be seen. That is the extent of the adverse impact. For a scheme of this nature to be so limited in its significant impacts on visual receptors is a sign of design quality, and the suitability of the location.
- 8.124 Put simply, the ERF would appear as another part of the existing maritime and industrialised view which is already present. Many of the arguments to the contrary have been driven by emotional hostility to the proposal rather than an objective assessment. The reality is that, once constructed, the ERF would be no more visually distracting than any of the existing built development which is already in place, and its presence would be entirely subservient to the landmass of Portland, so that the experience of the approach to Portland would be broadly unchanged.

⁶⁴⁰ PPF5b Figures JM19-JM28

⁶⁴¹ CD12.08

⁶⁴² PPF05a Appendix JM2 reassesses Viewpoints 9 and 10

⁶⁴³ PPF05b Figure JM12

Aviation Lighting

- 8.125 A great deal of concern from local objectors centred on the lighting that would be installed at the top of the stack. Those concerns are misplaced. There are⁶⁴⁴ two options available for the provision of lighting: the first and preferred option is an infrared light which is not visible to the naked eye and would, therefore, have no visual impact⁶⁴⁵; the second is a red light but that would be no brighter than a single car brake light⁶⁴⁶ of negligible visual impact.

The Plume

- 8.126 The plume from the stack attracted much comment to but again, concerns were overstated. The evidence shows that given the prevailing meteorological and topographical conditions, the plume would be visible for about 22 hours a year, during the daytime⁶⁴⁷. At night, over the last 5 years, there have only been 29 hours in total during which the plume would have been visible and 26 of those hours fell during an abnormally cold spell in 2018⁶⁴⁸.
- 8.127 In other words, visibility of the plume would be so infrequent that it is negligible as a consideration.

Tranquillity

- 8.128 A large part of the case advanced by the Rule 6 parties was concerned with the impact of the proposal on tranquillity.
- 8.129 It is important to set it within a policy context. Local Plan Policy ENV1 and its first limb⁶⁴⁹ was relied on by the Rule 6 parties as the part of the development plan that makes this a relevant consideration. However, that policy is explicitly concerned with the National Landscape and the Heritage Coast, and not with tranquillity impacts in themselves⁶⁵⁰. The site is not within either of those designations, and nor, critically, were any of the receptor locations employed. The reference to the supporting text of the policy does not assist, since it is well established that the supporting text to a policy cannot add to it⁶⁵¹. Local Plan Policy ENV1 includes no tranquillity-based protection for any areas beyond those designated areas referred to.
- 8.130 The same is true of any reliance on the Waste Plan 2019. A passage of text supporting Policy 14 was referred to⁶⁵² but again this refers to the Heritage Coast and National Landscape alone.
- 8.131 As to the evidence presented, it was fairly accepted⁶⁵³ that of the receptors considered, the Royal Navy Cemetery would be affected to only a negligible degree by the proposal. That acceptance undermined other parts of the

⁶⁴⁴ As Mr Mason confirmed

⁶⁴⁵ The MoD is content with this approach (e-mail dated 19 September 2023)

⁶⁴⁶ As confirmed by Mr Mason

⁶⁴⁷ PPF04 Para 6.5.21

⁶⁴⁸ R04 Para 3.2.4

⁶⁴⁹ CD7.2 Page 24

⁶⁵⁰ A point accepted by Mr Bentley in x-e

⁶⁵¹ *R (Checkley Campaign) v Mole Valley* [2014] EWCA Civ 567 (AD20) refers

⁶⁵² CD7.01 Page 110

⁶⁵³ By Mr Bentley

evidence on tranquillity⁶⁵⁴, since it was that very receptor that, it was said, would be most significantly affected.

- 8.132 What the case of the Rule 6 parties on tranquillity amounts to, therefore, is the suggestion that there would be some reduction in the tranquillity of receptors on either side of the proposed permissive path. Those receptors are not protected by any policy designation at all. To the extent that the area in question is tranquil, the creation of the permissive path, and the introduction of a reasonably tranquil walking option, where at present there is no public access at all, hardly represents a loss.
- 8.133 Furthermore, the tranquillity of those receptors is not made out in any event. The assessment of the amount of time that the receptors were affected by port noise was about 50% and based on instructions⁶⁵⁵. The reliability of those instructions could not be tested, having been present at the receptors for less than 24 hours across a single weekend. Those instructions seem not to have extended to the impact on the area of the artillery range to the north, despite that being a source of considerable noise for a significant amount of time⁶⁵⁶.
- 8.134 The reference to Local Plan Policy ENV16 (amenity) was of no assistance either given that any impact of noise on amenity is engaged if it will detract significantly from the character or amenity of the area or the quiet enjoyment of residential properties⁶⁵⁷. That would not be the case here.
- 8.135 The Rule 6 parties suggested⁶⁵⁸ that the appellant had not presented any noise evidence to challenge their own evidence. That is incorrect. An assessment has been put forward that explains the analytic shortcomings of the Rule 6 parties' evidence⁶⁵⁹.
- 8.136 The Rule 6 parties also tried to draw a connection between the alleged loss of tranquillity at and around the proposed permissive footpath and the setting of the WHS⁶⁶⁰. That is a very tenuous argument indeed. The introduction of some additional noise on a path that is not even in the National Landscape or Heritage Coast, let alone the WHS itself, will clearly have no effect on the OUV of the WHS.
- 8.137 Overall, the Rule 6 parties have not made out their case on tranquillity, and even at its highest, it is a minor consideration of limited weight in any event.

Policy

- 8.138 The Council's second reason for refusal⁶⁶¹ identifies four policies that bear on landscape issues but none of them is contravened by the proposal. Waste Plan 2019 Policy 14⁶⁶² is complied with in landscape terms. The National Landscape

⁶⁵⁴ That of Mr de Bertrand

⁶⁵⁵ Mr Bentley x-e

⁶⁵⁶ R01 Appendix NR 18 Page 18

⁶⁵⁷ CD7.02

⁶⁵⁸ In closing AD18

⁶⁵⁹ R01 Appendix NR19

⁶⁶⁰ In closing AD18

⁶⁶¹ CD6.01

⁶⁶² CD7.01 Page 112

and the WHS would be conserved by the proposal and no unacceptable impacts would arise. Local Plan Policy ENV1⁶⁶³ would be complied with too. It requires the protection of the character, special qualities and natural beauty of the AONB (National Landscape) and Heritage Coast taking into account the WHS and AONB Management Plans. None of those designations would be significantly affected by the proposal so the policy is not breached.

- 8.139 Neighbourhood Plan Policy Port/EN7 relates to the need to reflect and reinforce the existing character of the locality and Neighbourhood Plan Policy BE2 requires the avoidance of significant impacts on the character of the area and a reflection of the maritime and industrial character of the area. Both are complied with⁶⁶⁴.
- 8.140 As for national policy, the Council's reason for refusal identifies paragraph 180 of the Framework⁶⁶⁵ as the appropriate test. It is unclear, however, how that policy, which is principally concerned with controlling the character of valued landscapes and the undeveloped coast, is said to be engaged. However, it is said to be engaged, given the very low and very localised impact of the proposed ERF, the policy would not be breached.
- 8.141 Finally, it is necessary to address the national policy approach to the WHS. The Rule 6 parties have suggested that, since the WHS is a designated heritage asset, it falls to be assessed against the cultural heritage policies of the Framework, in the same way as any other designated heritage asset would be. That is an arid debate. What is clear is that it is the OUV of the WHS that is protected and there would be no harm to that OUV as a result of the proposal. In the language of the Framework, there would be no harm caused to the significance of the asset. And even if some harm were to be found, that harm would be less than substantial at the lowest end of the scale, and as such clearly capable of being outweighed by the substantial public benefits of the proposal.
- 8.142 Overall, the Council's second reason for refusal does not stand scrutiny.

Design and Delivery Considerations

- 8.143 The appellant has set out the technical case for the proposal⁶⁶⁶ but there are aspects that need to be addressed.

Shore Power

- 8.144 All of the RFA ships that berth in Portland Harbour are already equipped to receive shore power. Additionally, about 60% of the cruise ships that come to the harbour are so equipped and that number is expected to rise in future⁶⁶⁷.
- 8.145 The representations from the Port of Portland⁶⁶⁸ explains in more detail why shore power is important to the commercial interests of the port to attract

⁶⁶³ CD7.02 Page 24

⁶⁶⁴ CD7.04 Pages 35 and 42

⁶⁶⁵ CD9.01

⁶⁶⁶ Through Mr Othen

⁶⁶⁷ As explained by Mr Othen

⁶⁶⁸ PPF02 Appendix NR2 and also CD11.1 Appendix E

cruise custom, given that cruise operators are taking account of the availability of shore power when planning itineraries, and that the marine sector is also under pressure to decarbonise. The same is true of the RFA fleet.

- 8.146 As a private line provided by a commercial operator, the ERF would be well placed to provide commercially attractive power to visiting ships. Since the ERF generates its own power, the price of the provision would not be linked to the grid and the commodity price of gas. The same cannot be said for Southampton, for example⁶⁶⁹. That level of commercial certainty, and consistency would be highly attractive in the power market. Shore power is also a key means by which cruise liners can meet their commitments to carbon reductions in future – an important part of the corporate strategies of most companies in the current climate.
- 8.147 The Council⁶⁷⁰ raised several alternatives means by which shore power could be viably provided at the port. These include an enhanced connection to the grid, and the use of batteries. A number of third parties raised further alternatives such as solar, or wind, power. These are all hypothetical, however. No-one is considering the provision of shore power by any of those means and there are no developed plans to do so. By contrast, the ERF is a real option.
- 8.148 In any event, the alternatives are either not technically feasible, or not commercially viable. In relation to the upgraded grid connection, nothing is possible until 2037, a full decade after the ERF would become operational⁶⁷¹. Further, it is clear that there is no spare capacity at the port at present; if there were, then the Bibby Stockholm would not require the diesel generators that it uses for its own power needs⁶⁷². The ERF is obviously preferable in air quality and climate terms to diesel generators. Indeed, the use of shore power would improve air quality at the port and in the surrounding areas because cruise ships and the like would not need to run their engines in port⁶⁷³.
- 8.149 As for batteries, the electricity to charge them needs to be supplied and there is no realistic proposal to do so. Even if there were a ready source of electricity from the grid, the number of batteries required would cost tens of millions of pounds⁶⁷⁴ which is not a commercially viable proposition. The Council offers no evidence to the contrary.
- 8.150 The provision of wind and/or solar power is not workable in this location both because of their intermittent nature, and in the case of solar, the lack of suitable space for the size of array that would be needed⁶⁷⁵. Other means raised by third parties have also been considered and ruled out⁶⁷⁶.
- 8.151 It was suggested by the Council that the port is not in a position to require visiting ships to take shore power⁶⁷⁷. That point goes nowhere because the

⁶⁶⁹ Mr Othen in-c

⁶⁷⁰ Through Mr Norton

⁶⁷¹ PPF01 Para 8.2.2

⁶⁷² AD13

⁶⁷³ The evidence of Mr Othen

⁶⁷⁴ As explained by Mr Othen

⁶⁷⁵ PPF01 Para 8.2.3

⁶⁷⁶ PPF01 Section 8.2

⁶⁷⁷ Mr Othen x-e

commercial reality is that both the port and cruise companies need to decarbonise and shore power is a key means by which that can be achieved. It is highly unlikely that a suitable commercial deal for the provision of shore power would not be reached. Similar misgivings about shore power raised by the Rule 6 parties should be rejected in the light of the appellant's evidence. The proposal is the only viable, feasible, and available means of delivering the many air quality and climate benefits of shore power.

District Heating

- 8.152 The proposal does not include a district heating system. It is, however, designed to be 'district heating ready' in future. That is entirely standard practice for an ERF proposal and indeed, the district heating plans for this ERF are more developed than the market norm⁶⁷⁸. Moreover, a memorandum of understanding has been reached with the MoJ⁶⁷⁹. It was explained⁶⁸⁰ that given the nature of the anticipated district heating network, which would primarily, but not exclusively, heat HMP The Verne and the YOI, no additional pump house plant is required. Further, while a backup boiler has been included in the costings, such a backup is unnecessary as the prisons already have their own⁶⁸¹.
- 8.153 Three potential routes through which a district heating network could be established have been identified. All three are viable. The first two routes have been set out in some detail⁶⁸² and a new, third route was presented in evidence⁶⁸³. This involves passing from the port along public roads, and into the Verne by an existing bridge at its southern end. While details of the various routes would be considered at the planning stage for the district heating proposal, what is presented is sufficient at this stage to demonstrate that all the routes are technically feasible. Indeed, the District Heating Paper is based on the specific heat load identified by the MoJ as being required by the prison estates on the top of Portland, and the proposals have been developed in consultation with the MOJ's retained engineers⁶⁸⁴.
- 8.154 The Council questioned the viability of the district heating system proposed by seeking to derive its capital cost with reference to the South West Exeter District Heating scheme⁶⁸⁵. As was explained⁶⁸⁶, that is a flawed exercise since the district heating network proposed here is not comparable. In particular, the Exeter scheme serves 4,000 dwellings rather than two large prisons, and as such has a far higher requirement for pipelines (and as a result a far higher capital cost). The result is that the Council considerably over-estimates the appellant's costings. The submissions on this matter from the Rule 6 parties ignore the appellant's evidence and rely on no expert evidence of their own.

⁶⁷⁸ As outlined by Mr Othen – compare the situation at Northacre (CD10.1)

⁶⁷⁹ PPF11a Appendix SO2

⁶⁸⁰ By Mr Othen

⁶⁸¹ Mr Othen e-in-c

⁶⁸² CD2.07

⁶⁸³ By Mr Othen

⁶⁸⁴ CD2.07 – confirmed by Mr Othen

⁶⁸⁵ R04 Para 2.1.24

⁶⁸⁶ By Mr Othen

- 8.155 For all those reasons, the district heating network proposed is feasible, viable, and desired by its anticipated user. It carries at least some positive weight as a future benefit that the ERF would facilitate.

Carbon Capture and Storage

- 8.156 Between the submission of the planning application in 2020 and the present day, the regulatory regime around carbon emissions has changed⁶⁸⁷. There is now a significant economic incentive for the provision of carbon capture as part of the ERF proposal, alongside the environmental benefits it would bring.
- 8.157 As with district heating, the proposal does not include provision for CCS, but it is capable of accommodating such provision in future⁶⁸⁸. It was demonstrated that there is an area within the port, which is available for, and could accommodate, a CCS, in future⁶⁸⁹.
- 8.158 The Rule 6 parties ignored much of this evidence, that CCS is now viable, and also appeared to ignore the appellant's evidence on the matter. It was confirmed⁶⁹⁰ that the carbon capture and storage facility would take up about half the area identified.
- 8.159 As to the fate of the captured carbon, it was explained⁶⁹¹ that the port location of the ERF would enable removal to an appropriate storage facility, after it is liquified, by ship. Such a mode of transport is far more practical than transportation by road – the only option that would be available at Canford.
- 8.160 On that basis, the proposal meets the relevant tests for carbon capture readiness that the Government has set out⁶⁹². It is therefore entitled to the positive weight that status brings in the planning balance.

Climate Change

- 8.161 A series of carbon reports have been prepared for the proposal⁶⁹³. The most up to date assessment⁶⁹⁴ reflects the improved efficiency of the ERF, the fullness of the shore power potential of the port location, and the Government's most recent statistical updates.
- 8.162 The appellant⁶⁹⁵ has analysed the carbon implications of treating waste at the ERF, including the carbon emissions generated by the HGVs bringing waste to the site, the emissions of the ERF itself, and the emissions from the transport off-site of the residue of the ERF process (IBA in the main), set against the displacement of emissions which would be generated by ships taking advantage of shore power, and power stations where the ERF's energy is instead exported back to the grid. The carbon implications of the proposal

⁶⁸⁷ PPF10 Section 2.5

⁶⁸⁸ The Canford scheme does not include provision for carbon capture and storage either and the area identified to accommodate it is inadequate

⁶⁸⁹ R04 Page 20 – the area within the red line

⁶⁹⁰ By Mr Othen

⁶⁹¹ By Mr Othen

⁶⁹² PPF10 Para 2.5.7

⁶⁹³ PPF10 Section 3.1 provides a summary

⁶⁹⁴ PPF11a Appendix SO3 – updated by Mr Othen e-in-c

⁶⁹⁵ Through the evidence of Mr Othen

were compared⁶⁹⁶ with a series of counterfactuals, principally what happens to Dorset's waste at present⁶⁹⁷.

- 8.163 The results of that assessment are striking. Even without the carbon benefits of shore power delivery, the ERF will produce around 30,000 tpa of carbon dioxide less than the current landfill approach used by the Council⁶⁹⁸. In a maximum capacity case, that benefit increases to 40,000 tpa. Those benefits increase further once shore power is factored in, and even further if the potential for district heating is allowed for.
- 8.164 When the provision of shore power is factored in, the ERF is preferable to landfill even if improvements in landfill gas capture are taken into account and even if grid decarbonisation measures are assumed to take place as planned⁶⁹⁹.
- 8.165 Other waste disposal options for the Council's waste were examined, including a range of UK options as well as European ones at Rotterdam and Gothenburg⁷⁰⁰. The conclusion is that when shore power and district heating benefits are factored in, as they should be, then the proposal has the lowest emissions of any available disposal option.
- 8.166 The final counterfactual scenario examined is to compare the Council's current residual waste management strategies with the ERF⁷⁰¹. The results show that even without shore power or district heating, the ERF would generate 10,000 tpa less carbon dioxide than those existing approaches. That benefit increases further when shore power and district heating are factored in.
- 8.167 It follows that the proposal is far better, in climate change terms, than what is happening at present. It is far better than any of the proposed alternative fates for the management of the Council's waste. It should be welcomed by those who wish to see the climate emergency addressed.

Air Quality

- 8.168 The appellant's evidence⁷⁰² confirms that the ERF will be beneficial, particularly in terms of nitrogen oxides and particulates, and will not have a significant negative impact in terms of other pollutants.
- 8.169 This conclusion follows from the assessment that the emissions from the ERF are less than ship emissions (both cruise ships and the RFAs) which currently occur, and which will cease once the ERF provides shore power⁷⁰³. That is true even on a worst-case analysis that assumes the ERF is operating at its maximum permitted emissions all year round⁷⁰⁴.

⁶⁹⁶ By Mr Othen

⁶⁹⁷ PPF10 Para 3.2.3

⁶⁹⁸ PPF11a Appendix SO3 Para 3.4.1

⁶⁹⁹ Mr Othen e-in-c

⁷⁰⁰ PPF11a Appendix SO3 Table 19

⁷⁰¹ PPF11a Appendix SO3 Table 20

⁷⁰² That of Mr Othen

⁷⁰³ PPF11a Appendix SO5

⁷⁰⁴ PPF11a Appendix SO5 Para 4.2.10

- 8.170 The Council suggested that the ERF proposed would create more emissions than it would offset⁷⁰⁵. However, as was explained⁷⁰⁶, the analysis was flawed having used GHG emissions from the ERF and compared them to a far more limited range of emissions (NOX and particulates) from the berthed ships. Like was not being compared with like. When a proper comparison is made, the ERF can be seen to be the environmentally preferable option.
- 8.171 It was also explained⁷⁰⁷ that the backup diesel generator proposed at the ERF is of no material concern; it would produce 500 times lower emissions than the ERF itself⁷⁰⁸. The only possible concern arising from it is in respect of the ecological site adjacent to the ERF, and both the EA and NE are content that the site will suffer no adverse impacts.
- 8.172 The same is true of HGV emissions. Even when the Boot Hill area is assessed as though it were an AQMA (which it is not), the results of the assessment still demonstrate a negligible effect on air quality in that location⁷⁰⁹.
- 8.173 The Rule 6 parties suggested⁷¹⁰ that the way in which the benefits of the ERF had been modelled across the lifetime of the proposal was inappropriate, because the benefits declined with time, and the ERF may operate beyond its 25-year design life. The approach of the Rule 6 parties in this respect is flawed. It is not appropriate to assume that the modelling assumptions for the ERF will remain applicable beyond the design life, and the uncertainties of impact at such a remote distance are simply too uncertain to model with any accuracy⁷¹¹.
- 8.174 The shore power potential of the ERF presents a unique opportunity to secure a net improvement in air quality for the residents of Portland and Weymouth, as well as for the occupiers of the Bibby Stockholm. It will benefit the sailors and other recreational users of the harbour and surrounding waters, for the same reason.

Human Health and Process Emissions

- 8.175 A number of allegations as to the human health implications of the proposal were made. There is nothing in these concerns, which are frequently raised at ERF Inquiries, and are based on misconceptions and assumptions rather than scientific analysis. They are primarily a matter for the EA and the permitting process.
- 8.176 The appellant has carried out a detailed study of the most up-to-date scientific literature on the possible health implications of persistent pollutant emissions from ERFs. The results of those studies are consistent; there is no evidence of any association between ERF operations and any of the identified potential human health outcomes⁷¹².

⁷⁰⁵ PPF31 Para 3.24

⁷⁰⁶ By Mr Othen

⁷⁰⁷ By Mr Othen

⁷⁰⁸ PPF10 Para 4.2.19

⁷⁰⁹ PPF10 Para 4.3.1 et seq

⁷¹⁰ Mr Othen x-e

⁷¹¹ Mr Othen re-e

⁷¹² PPF10 Para 4.5.18

- 8.177 Third parties referred to papers suggesting that ERF may have health impacts. These have been considered and it has been explained⁷¹³ that these papers are dated, and not specific to the UK regulatory context. By contrast, the appellant's work draws on recent UK focused analysis. This is to be preferred, especially when it is borne in mind that neither the Council, nor any statutory consultee, has raised human health concerns.
- 8.178 The appellant's supplementary paper⁷¹⁴ also addresses a number of other miscellaneous concerns raised by third parties. The upshot is that none of the concerns raised are well-founded⁷¹⁵.
- 8.179 Upon receipt of the appellant's supplementary paper, UKWIN submitted further evidence in response⁷¹⁶. This is stretching the limits of acceptability – if UKWIN wished to take a full part in proceedings, they should have sought Rule 6 status. Nevertheless, the later submission does not take things much further. It maintains the suggestion that the biocarbon content in the ERF feedstock could be reduced further but provides no evidence at all in support of the allegation. The appellant's evidence on the matter is fully evidenced and based on published sources. On sequestration, UKWIN's latest correspondence simply repeats points already addressed in evidence.

Other Matters

- 8.180 There are other matters raised specifically by the Rule 6 and third parties. As a preliminary point, it is clear that a number of local objectors' concerns are less to do with the evidence of impact on matters like air quality and transport, than they are to do with the perception of adverse matters. The weight that can be attached to such perceptions, however, is severely curtailed if the perceptions are not grounded in objective evidence⁷¹⁷. The approach therein covers most if not all the points addressed below.

Socio-Economics

- 8.181 The concerns in the Rule 6 evidence under this heading⁷¹⁸ seem to be based on assumption that damage would accrue and ignores the existing presence of a busy, commercial port. Nevertheless, the appellant has produced a detailed analysis of the position⁷¹⁹. This shows that the proposal will give rise to no meaningful socio-economic harms; rather it will generate a range of benefits⁷²⁰. These include that having regard to shore power, a forecast that by 2034, the combined cruise ship visitor and crew expenditure will have increased to £10.07 million, which would be sufficient to support 119 net direct and indirect jobs, an increase of 9 jobs from 2025. By 2050, the combined visitor and crew expenditure will have increased to £10.79 million, which would be sufficient to support 127 net direct and indirect jobs, an increase of 17 jobs from 2025.

⁷¹³ AD13

⁷¹⁴ AD13

⁷¹⁵ Including those concerns raised by Dr Webb and UKWIN

⁷¹⁶ AD14

⁷¹⁷ *Gateshead MBC v SSE* [1994] 1 PLR 85 Page 95

⁷¹⁸ PPF39, PPF40 and PPF41

⁷¹⁹ PPF13, PPF14, and PPF15

⁷²⁰ PPF01 Para 7.2.16 summarises

- 8.182 The scheme would create permanent operational employment with a net additional effect for the local study area of 36 employees, equating to £1.4 million in gross annual earnings and £7.6 million in annual output (GVA). In the construction phase, employment would be created with a net additional effect for the local study area of 84.9 FTEs.
- 8.183 It was also suggested by the Rule 6 parties that no evidence has been provided by the appellant to deal with the impact of the proposal on the tourist industry. That is not the case. Alongside the evidence for the Inquiry⁷²¹, the ES includes analysis and consideration in this regard⁷²². Underpinning the suggestions from the Rule 6 parties, are allegations around heritage, landscape and visual, air, and/or water quality impacts, or the perceptions of such impacts. Substantively, these concerns are not established for the reasons already set out. As for perception, the weight that can be attached to it is closely linked to how well-founded the perception is. In this case, the perceptions are in all cases, manifestly ill-founded.
- 8.184 There is also reliance on adverse impacts alleged for the construction process. It must be recalled however, that the site is allocated for employment uses; some construction impact is thus inherent in the Local Plan status of the site. The construction impact is overstated in the Rule 6 parties' evidence. The appellant's evidence sets out the correct situation⁷²³.
- 8.185 The Rule 6 parties also suggested⁷²⁴ that no cruise liner would alter its itinerary in circumstances where only 3% of ports will provide shore power by 2025. In response, the appellant would draw attention to the correspondence of the port itself, which makes clear that both cruise liners and the port itself want shore power to be made available. Indeed, it may be positively advantageous for Portland to be in the vanguard of cruise liner destinations which makes this important service available.

Transport and Highway Impacts

- 8.186 The Rule 6 parties raise concerns too about adverse impacts on both highway capacity and highway safety. It is critical to note that neither National Highways, nor the Council as highway authority, has raised any concern about the proposal in this regard. Further, there is only a single highways expert who has presented evidence to the Inquiry⁷²⁵.
- 8.187 This evidence explains the background to the comprehensive traffic impact assessment work which took place through the various iterations of the ES. The evidence established that all links in the wider Traffic Assessment study area would experience negligible change in traffic flows with this lower level of committed development with a maximum 4.7% increase in HGV flow and maximum 1% increase in total traffic flow in the AM/PM peak hours⁷²⁶. This

⁷²¹ Provided by Mr Elliot

⁷²² CD1.36g, CD1.37h, and CD1.37i

⁷²³ PPF13 Section 7

⁷²⁴ Mr Roberts x-e

⁷²⁵ PPF16, PPF17, and PPF18

⁷²⁶ CD2.29I Para 7.26

change would be well within the natural day-to-day variation in traffic flow experienced on the local road network.

- 8.188 The volumes of traffic generated by the development (even under a worst-case assessment) thus remain insignificant and will not lead to any significant effects on severance, driver and pedestrian delay, pedestrian amenity, or accidents or safety, on Castletown. Furthermore, the peak hour traffic flows generated by the development are insignificant and within the normal daily variation of traffic flows experienced on any highway network⁷²⁷.
- 8.189 The Rule 6 parties repeatedly emphasised that the proposal would result in an extra HGV movement every 9 minutes, as though this was a significant adverse impact. It is nothing of the sort; one additional movement every nine minutes is aptly described as negligible.
- 8.190 The Rule 6 party also suggested that the proposal gives rise to risks to emergency service provision, by reference to the position of the Council's Emergency Management and Resilience Committee's response⁷²⁸. The Rule 6 party has quoted selectively from the response. When the response is read in its entirety, it is clear that the proposal could be integrated. There was no objection.

Amenity

- 8.191 The Rule 6 party and others also raised issues around noise, visual impact, and odour control. Visual impact has been dealt with above. Save for a single receptor (the cemetery) which is not a residential receptor, the ERF will have no significant adverse impact on any dwelling. The proposal would be visible from a number of properties, but it will simply appear as another part of the port that is already busy, heavily developed, and ever-changing.
- 8.192 As for noise impacts, the ES includes detailed work on the noise impacts of the proposal⁷²⁹ and has concluded that there is no cause for concern. The same is true in relation to odour⁷³⁰. As was explained, the ERF itself would be maintained at a negative pressure, and the HGVs carrying fuel stock for the ERF will be covered or sealed. No statutory consultee has raised amenity issues in this regard.

Water Quality

- 8.193 Concerns have been raised about alleged impacts of the proposal on water quality and marine life. This is dealt with in the ES⁷³¹ where it is concluded that there would be no significant residual effects on either groundwater or on water quality in the harbour and surrounding areas⁷³².

⁷²⁷ CD2.29I Para 7.27

⁷²⁸ PPF39 Para 2.15

⁷²⁹ CD1.28 and CD2.14

⁷³⁰ CD1.36g from Para 6.74

⁷³¹ CD1.36i

⁷³² CD1.36i Para 8.78

- 8.194 The work in the ES is supported by the appellant's evidence⁷³³ which noted that the Council's appropriate assessment considered impacts on the Studland marine SAC and the EA appropriate assessment screened out any likely significant effects. The conclusion of the appellant's work, taken with the assessments by the Council and the EA, which have not been challenged at the Inquiry, is that there will be no impact on the integrity of the SAC.
- 8.195 The only attempt at making a detailed case on water quality came from a third party⁷³⁴. This attempt was made on fundamental misunderstandings of the data as the appellant has shown⁷³⁵.
- 8.196 There was also a suggestion that water quality could be impacted by stack emissions, and that the dispersal of the plume had not been assessed by reference to the topography around the site. That is not the case; the ES contains detailed consideration of topography to ensure that the dispersal of the plume was properly modelled⁷³⁶. It is also highly relevant that none of the Council, the EA, Natural England, or the Marine Management Organisation, have raised any concerns about the marine or water impact of the proposal.

Water Supply

- 8.197 Another third party raised another fresh point about the adequacy of the water supply available to the ERF. The appellant has prepared a note⁷³⁷ which confirms that there will be no significant pressure on the water network as a result of the ERF. In summary, while the water demand of the ERF (56 million litres per year) may sound large, it needs to be viewed in context. Wessex Water currently supplies 282 million litres of water per day to households in the catchment. The ERF's daily water demand is therefore equivalent to 1,158 households and there are 1.4 million households in the catchment, as well as multiple business users. In that context, the water needs of the ERF are not significant.

Development Plan Compliance and the Planning Balance

- 8.198 The appellant has assessed the proposal against the development plan considered as a whole⁷³⁸. It is common ground that the Waste Plan 2019 is up-to-date though the Council's need assessment departs further from Table 7 within the Waste Plan 2019 than the appellant's assessment.
- 8.199 The evidence of the appellant establishes that the proposal is fully compliant with the relevant policies of the Waste Plan 2019⁷³⁹ and will generate no impacts that are unduly harmful, or which are not outweighed by the benefits of the proposal. The proposal has also been assessed against other parts of the development plan and found to comply with the Local Plan⁷⁴⁰, the 2014

⁷³³ PPF19, PPF20, and PPF21

⁷³⁴ Dr Webb (who is a Director of UKWIN)

⁷³⁵ AD19

⁷³⁶ CD2.29d

⁷³⁷ AD19 in response to Mr Gwillim

⁷³⁸ PPF01 Section 9

⁷³⁹ PPF01 Table 9.1

⁷⁴⁰ PPF01 Table 9.2

minerals strategy⁷⁴¹, and the neighbourhood plan⁷⁴². On that overall basis, planning permission should be granted for the proposal, unless material considerations indicate otherwise.

- 8.200 There are no material considerations which indicate that the proposal should be refused, in particular the Framework, and other guidance relating to the WHS. On the contrary, important material considerations such as national waste and sustainable energy policy, the future of the port, the reality of the need for waste recovery, and the range of planning benefits from the proposal, all powerfully support it.
- 8.201 The Council's view⁷⁴³ that even if the impacts of the proposal were found to be acceptable, it should be refused permission shows a lack of balance or understanding of the need case and a failure to grapple with Waste Plan 2019 Policies 4, 6 and 21, as well as the implications for the Canford and Parley allocations. Addressing Policy 21 to some extent in the consultation response on Canford⁷⁴⁴ is no substitute for the failure to engage with it in this case.
- 8.202 It is worth setting out here the significant suite of benefits that the proposal would deliver which must be factored into the planning balance: (a) meeting an identified need for waste management in the Waste Plan 2019 area; (b) delivering low-carbon, renewable energy infrastructure which in turn contributes towards the net zero commitments of both the Council and the UK as a whole; (c) contributing towards national energy security by providing a source of baseline, dispatchable power; (d) providing shore power which supports both the air quality and the long-term economic health of the port; (e) mitigating and resolving grid issues for the delivery of electricity to the island; (f) the potential for a district heating network serving amongst others HMP The Verne; (g) the delivery of a wide range of socio-economic benefits in one of the most economically and socially deprived areas of the country with the creation of 295 FTE jobs in the construction phase and 36 FTE jobs in the operational phase; (h) the displacement of landfill with all the greenhouse gas emissions benefits that flow from the displacement; and (i) the provision of a Heritage Mitigation Strategy that will remove a Scheduled Monument from the at-risk register.
- 8.203 The combination of these benefits and compliance with the development plan provide a compelling case, the appellant says, in favour of the proposal.

Conclusion

- 8.204 With all that in mind, the appeal should be allowed, and planning permission granted for the proposal.

9 Third Party Representations

- 9.1 A distinct session of the Inquiry was set aside for third party representations - the afternoon and evening of 14 December 2023. Lots of people were able to speak though some had to leave before they could do so. Most people who

⁷⁴¹ PPF01 Table 9.3

⁷⁴² PPF01 Table 9.4

⁷⁴³ Expressed by Ms Hart

⁷⁴⁴ AD22

addressed the Inquiry helpfully brought along speaking notes that I have attached as Inquiry documents. Given that full transcripts of what was said are available for full consideration, I need only briefly summarise the various submissions here.

- 9.2 **Brian Heatley** a local (Dorset) Councillor for Rodwell and Wyke Ward pointed to a series of issues around waste policy, heritage impacts and uncertainties, particularly in relation to the plume, and traffic which were said to put the proposal at odds with the development plan⁷⁴⁵.
- 9.3 **Clare Sutton** a local (Dorset) Councillor for Rodwell and Wyke Ward highlighted the impact on the WHS, the number of traffic movements through Wyke that the proposal would produce, and the extent to which the benefits of the proposal have been inflated⁷⁴⁶.
- 9.4 **Barry Walsh** a Fellow of the Royal Meteorological Society and local resident raised concerns about pollution and air quality based on his real-life experience of the area and its climate⁷⁴⁷.
- 9.5 **Jan Edward Bergman** a Weymouth Town Councillor directed the Inquiry to a series of points about health concerns and referred to a wealth of research material that refers to the impacts that incinerators can have, particularly on children. It was noted that Weymouth lies to the north-east of the proposal, in the direction of the prevailing wind⁷⁴⁸.
- 9.6 **Guy Dickinson** that Chair of the **Dorset CPRE** made plain opposition to the proposal for a series of reasons including its impact on the WHS, SSSIs and SACs, and the National Landscape, the attractiveness of the harbour for sailing and other watersports, traffic generation and the position of Weymouth and its beaches in relation to the scheme bearing in mind the prevailing wind direction. There is likely, it is said, to be a detrimental impact on the tourist industry⁷⁴⁹.
- 9.7 **Kate Wheller** a local Councillor and Mayor of Weymouth set out her resistance to the proposal in the light of likely harmful impacts in relation to nature conservation, the landscape, tourist facilities, and heritage assets⁷⁵⁰.
- 9.8 **David Harris**, a local Councillor and Leader of Weymouth Town Council brought objections in relation to the impact on the WHS and its OUV, traffic generation, and a lack of compliance with the development plan, and the Waste Plan 2019 in particular⁷⁵¹.
- 9.9 **Lucy Hamilton**, a Weymouth Town Councillor, raised objections that focussed on land use, traffic generation, and waste management⁷⁵².

⁷⁴⁵ AD32

⁷⁴⁶ AD33

⁷⁴⁷ AD28

⁷⁴⁸ AD80 contains a list of the references

⁷⁴⁹ AD43

⁷⁵⁰ AD80

⁷⁵¹ AD80

⁷⁵² AD80

- 9.10 **Giovanna Lewis**, a local (Dorset) Councillor expressed concerns in terms of traffic generation and provided information relating to traffic counts⁷⁵³.
- 9.11 **Nigel Stevens**, a resident of Wyke Regis put forward drawbacks of the proposal in terms of traffic and air quality in particular noting that the only road on to Portland runs through Wyke Regis.
- 9.12 **Paul Kimber**, a local (Dorset and Portland Town) Councillor talked about the limitations of shore power, and the size of the building proposed and its landscape impact⁷⁵⁴.
- 9.13 **John Orrell**, a local (Dorset and Weymouth Town) Councillor and former GP expressed concerns about the potential health impact of the proposal on residents of Portland, and their mental health in particular, in the context of the levels of deprivation and life expectancies experienced locally.
- 9.14 **Shlomo Downen and Josh Downen** of **UKWIN** (the United Kingdom Without Incineration Network) gave a presentation that covered a lot of ground headed under the Climate Case, and the Need Case, in relation to the proposal⁷⁵⁵.
- 9.15 **Amanda Newby de Saulles**, a local resident, spoke about her concerns in relation to fire risk⁷⁵⁶.
- 9.16 **Janet Davis** spoke on behalf of the **Dorset Ramblers** raising issues about the landscape impact of the scheme and making critical observations about the proposed permissive footpath⁷⁵⁷.
- 9.17 **Catherine Bennett** of the **Portland Biodiversity Group** highlighted the proximity of the proposal to important habitats and the likely impacts on the unique biodiversity of Portland.
- 9.18 **Chris Moyle**, Chair of the **Weymouth and Portland Civic Society** expressed concern about the WHS and the potential for this status to be lost as a result of the proposed ERF, as well as traffic, flood risk, and biodiversity⁷⁵⁸.
- 9.19 **Ian Barrett** of **Weyfish** spoke about the importance of local maritime traditions, and fishing, opposing the proposal on the basis of sustainability, the environmental and climate impact, and the financial case, urging consideration for the broader impacts of the proposal on the local community⁷⁵⁹.
- 9.20 **Douglas Pigg** of **Portland Youth Council** objected to the proposal for a variety of reasons but concluded by noting that living on Portland as a young person is difficult enough; the situation should not be made worse⁷⁶⁰.
- 9.21 **Rebecca Kemp** spoke on behalf of plot-holders at the Incline Gardens and Community Orchard and outlined a series of concerns but in particular, the

⁷⁵³ AD34

⁷⁵⁴ AD35

⁷⁵⁵ AD75 and AD76

⁷⁵⁶ AD23

⁷⁵⁷ AD48

⁷⁵⁸ AD30

⁷⁵⁹ AD79

⁷⁶⁰ AD64

effect the ERF would have on the ability of plot-holders to grow food, and consume it⁷⁶¹.

- 9.22 **Amanda Wallwork**, a local resident and artist highlighted the beauty of Portland and set out that for a number of reasons, the proposal represents the wrong thing, in the wrong place⁷⁶².
- 9.23 **Gerry Hinde**, a local resident, asked a series of rhetorical questions and gave examples relating to various proposals and used the device to show that, in his words, the proposal would be a catastrophe for Portland and its heritage⁷⁶³.
- 9.24 **Andrea Frankham-Hughes**, a local resident and archaeologist, spoke of the historical and cultural value of Portland and suggested that this is the wrong development in the wrong place at the wrong time⁷⁶⁴.
- 9.25 **Dr John Webb**, gave a presentation to the Inquiry that covered a series of aspects of the proposal, and related matters, largely connected to potential impacts on marine and coastal habitats, and supplemented it with a series of further comments⁷⁶⁵.
- 9.26 **Etienne Stott MBE**, Olympic Gold medallist (canoe slalom) and local resident made a series of points in objection to the proposal covering the impact on sporting activities in the harbour, and the impacts of pollution upon those activities, the climate emergency, health concerns for those living on Portland, and the nature of the process by which a decision will be reached. In brief, the proposal should be rejected out of respect for the community⁷⁶⁶.
- 9.27 **Carralyn Parkes**, the **Mayor of Portland** and a Portland Town Councillor, made a series of points, highlighting the scale of local objections, and health, traffic and heritage impacts⁷⁶⁷.
- 9.28 **Rocca Holly-Nambi**, Director of **Beeside**, a local arts organisation expressed concern about the impact of the scheme on burgeoning local cultural interests and made plain that there is a stronger way forward for Portland's future.
- 9.29 **Kathryn Pearce**, a resident of Portland made a series of points about the likely impact of the ERF on residents' health, as a result of its emissions, traffic, and need⁷⁶⁸.
- 9.30 **Hilary Breakwell** a resident of Portland voiced concerns about light, odour, and noise pollution⁷⁶⁹.
- 9.31 **Dr Tony Dobbs**, a retired Environmental Chemist, and local resident, took issue with the assessment of dispersion, and transport modelling⁷⁷⁰.

⁷⁶¹ AD65

⁷⁶² AD24

⁷⁶³ AD41

⁷⁶⁴ AD25

⁷⁶⁵ AD50, AD51, AD52, AD53, and AD54

⁷⁶⁶ AD38

⁷⁶⁷ AD29

⁷⁶⁸ AD56

⁷⁶⁹ AD46

⁷⁷⁰ AD71, AD72, and AD73

- 9.32 **Avril Harris**, a Swanage Town Councillor made a series of points about various aspects of the proposal including, its visibility, the impact on the WHS, and facilities on Portland like the Jailhouse Café, and traffic⁷⁷¹.
- 9.33 **Laura Baldwin**, a local resident and Olympic Sailing Coach highlighted the plans for a flagship training centre in the grounds of the Weymouth and Portland National Sailing Academy and the potential impact of the proposal on those plans. Points were made about the effect of likely emissions from the ERF, and non-threshold pollutants in particular, and likely effects on athletes for whom cardio-vascular fitness is so important; the aim should be to improve air quality rather than reduce it⁷⁷². Ms Baldwin also read out a submission from **Fynn Sterritt** who made similar points about air quality, and the potential impact of the proposal on local residents on Portland⁷⁷³.
- 9.34 **Esmari Steenkamp**, a resident of Portland expressed concerns about the effect on local businesses that are based on the attractiveness of Portland; a quality that would be lost if the proposal went ahead.
- 9.35 **Finn Caldecoat**, a young resident of Portland raised issues about long-term impact of the proposal on residents, some of whom live relatively close to the site, and Portland itself, a special place⁷⁷⁴.
- 9.36 **Professor Tony Walter**, a Portland resident, made a series of points about the actions of absentee interests and the effect on Portland and its people⁷⁷⁵.
- 9.37 **Penny Quilter**, a former public health nurse, and local resident expressed concern about the likely effect of the facility at issue on tourism⁷⁷⁶.
- 9.38 **Gillian Pearson**, a local resident, wondered about whether there was any need for the ERF and expressed concern about health impacts from emissions from the plant itself, and from the HGVs that would feed it⁷⁷⁷.
- 9.39 **Kim Wilcocks**, a local resident, objected to the proposal on the basis of its likely health impacts in an area where lots of existing residents have chronic health conditions, and whether, in the light of the climate emergency, carbon emitting plants, like that proposed, should go ahead⁷⁷⁸.
- 9.40 **Jonathan Tweddle**, a local resident raised issues around traffic and pointed to apparent paradoxes in terms of waste and the location, cruise ships and shore power, and the stack and its relationship to nearby homes⁷⁷⁹.
- 9.41 **Rob Hughes**, a local (Portland and Dorset) Councillor talked about potential health effects on people and wildlife as a result of the proposal's emissions⁷⁸⁰.

⁷⁷¹ AD31

⁷⁷² AD58

⁷⁷³ AD40

⁷⁷⁴ AD39

⁷⁷⁵ AD74

⁷⁷⁶ AD62

⁷⁷⁷ AD42

⁷⁷⁸ AD57

⁷⁷⁹ AD55

⁷⁸⁰ AD36

- 9.42 **Lesley Saunders**, a local resident, highlighted a number of issues and asked how the waste incinerator would improve lives on the Island of Portland?⁷⁸¹
- 9.43 **Andrew Matthews**, Chair of the **Portland Community Partnership** pointed to the carbon emissions that the scheme would result in, in the context of ongoing climate change⁷⁸².
- 9.44 **Steve Coggins**, a local resident expressed concerns about potential contamination of the sea from the various processes involved in the scheme, and the incongruity involved in placing an ERF plant next to where cruise ships would berth⁷⁸³.
- 9.45 **Andrew McQueen** put forward a range of issues around cruise ships, other ways in which renewables could be used to generate power, and the potential for marine pollution⁷⁸⁴.
- 9.46 **Pauline Scott**, a local resident, referred to the visual and environmental damage and the problems that would be caused by increased traffic.
- 9.47 **Seb Brooke** talked about the Eden Portland project, its economic potential particularly in terms of job creation (100+ direct jobs and 500 indirect), and the support it has from Portland residents. It was said that the proposal would put the scheme at risk because of the additional traffic it would generate.
- 9.48 Several residents who were not able to speak before the session ended put in written submissions. These can be found amongst the Inquiry documents⁷⁸⁵.

10 Conditions

- 10.1 Helpful discussions between the Council and the appellant resulted in a comprehensive list of conditions that was presented to the Inquiry⁷⁸⁶. This was discussed in a round table session that also involved the Rule 6 parties, and members of the public. Work continued on the conditions and a final list, agreed (with some exceptions) between the appellant and the Council was submitted before the Inquiry closed⁷⁸⁷. The condition numbers referred to below are from the final list.
- 10.2 I have considered these suggested conditions in the light of advice in paragraph 56 of the Framework. This suggests that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. Conditions that are required to be discharged before development commences should be avoided unless there is clear justification. In this latter respect, I have taken the involvement of the appellant in preparing and acceding to the various conditions as confirmation of their agreement to all the pre-commencement conditions on the agreed list.

⁷⁸¹ AD59

⁷⁸² AD26

⁷⁸³ AD67

⁷⁸⁴ AD27

⁷⁸⁵ AD37, AD44, AD45, AD47, AD49, AD60, AD61, AD63, AD66, AD68, AD69, AD77 and AD78

⁷⁸⁶ AD12

⁷⁸⁷ AD82

- 10.3 As is usually the case, a condition is necessary to deal with commencement within three years of the date of permission (condition 1) and to set out the approved plans (condition 2). It is reasonable for the developer to notify the Council when various phases (A: commencement; B: commissioning trials; and C: operation) of the development start (condition 3). These phases can then be used to inform the timing of other conditions.
- 10.4 Given the location of the building and the importance of its composition, it is imperative that the Council has control over the proposed use of materials and the nature of various aspects of the design (condition 4). Similarly, given its location near a listed building, the design of the switch-gear relating to the provision of shore power is something over which the Council needs to have control (condition 5). There is no need to include any timetable in this condition as a programme for shore power is included in another condition (condition 44). A condition is required to deal with the proposed landscaping scheme (condition 6).
- 10.5 Construction of the proposal would obviously be a significant enterprise that has the potential to cause issues for those living and working nearby. In order that some control can be exerted over that enterprise, conditions requiring the submission for approval of a Construction and Environmental Management Plan (CEMP) (condition 7) and a Construction Traffic Management Plan (CTMP) (condition 8) are obviously necessary.
- 10.6 Linked to those, and bearing in mind the nature of the construction process that would take place, it would also be reasonable to apply conditions requiring temporary protection works for the Inner Breakwater and Dockyard Offices (condition 9), details of any piling (condition 10), control over noise at various locations (conditions 11) and limitations on the times of day when noisy activities can take place (condition 12). In relation to the abnormal construction activities in the latter, and those processes that cannot be reasonably halted once begun, I am content that bunker construction and turbine installation should be referred to specifically. I also note that this condition will apply to the facility in operation too. It would also be necessary to make provision for a Community Liaison Committee (condition 13).
- 10.7 Given the basis on which the ERF is put forward, it is reasonable to apply a limit of 202,000 tonnes to the total amount of waste that can be received at the facility in a calendar year (condition 14). A related condition is necessary to deal with record-keeping and retention (condition 15).
- 10.8 In terms of HGV movements, a condition is needed to ensure loads are covered or enclosed (condition 16), and that movements are restricted to 80 (40 in and 40 out) per day (condition 17).
- 10.9 In terms of the hours of operation, the facility has to be allowed to work continuously, save for the shut-down period. Given that the facility would be located in a working port where, to my knowledge, there are no restrictions on traffic movements, it is reasonable to allow HGVs to service the plant between 0700 and 1900 hours daily, save for Christmas Day and Boxing Day. I see no purpose in applying a prohibition on Sundays given that other port traffic is not so restricted (condition 18).

- 10.10 The route by which HGVs arrive at the plant, and leave, is obviously an important consideration. To that end, a condition is necessary to allow a Transport Plan to be submitted to and approved by the Council, a plan that needs to include a complaints procedure (condition 21).
- 10.11 It seems to me necessary to apply a condition requiring the vehicle and cycle parking facilities to be made available prior to Phase C (condition 19) and, in order to ensure sustainable modes of transport are used as far as possible, an Employee Travel Plan (ETP) to be submitted for approval (condition 20).
- 10.12 While there is some crossover with the relevant obligation, a management scheme for odour, dust, and IBA needs to be agreed with the Council and implemented (condition 22).
- 10.13 Notwithstanding the noise conditions referred to above, further conditions are needed to allow monitoring of noise from the plant in operation (condition 23) to set noise limits, accepting that there may be emergency situations where they are exceeded (condition 24) and to carry out noise surveys and produce a noise compliance monitoring scheme (condition 25). A condition is required to deal with the loading doors to the tipping hall and/or fuel store, and their closing system (condition 26).
- 10.14 It is also necessary to apply a condition to ensure that all vehicles, plant and machinery are maintained in accordance with manufacturer's specifications and effectively silenced where appropriate (condition 27). All vehicles need to have broadband type reversing alarms (condition 28). In the context of all these noise controls, a condition is required to set out what happens in the event the Council receives a justified noise complaint (condition 29).
- 10.15 Conditions are necessary to address the existing surface water outfall (condition 31) and a surface water drainage scheme (condition 32). Linked to that, it is reasonable to apply a condition to deal with the storage of oils, fuels, or chemicals (condition 30). Given the nature of previous uses of the site, it is imperative that the potential for contamination is dealt with (conditions 33 and 34). Similarly, any potential difficulties in relation to land stability must be addressed through a condition (condition 35).
- 10.16 The appellant has put forward the Framework Heritage Mitigation Strategy as a benefit of the proposal designed to offset heritage impacts. A condition is needed to secure a scheme and a programme for implementation (condition 36). The permissive footpath element of the strategy is to be dealt with through a planning obligation. For the sake of clarity, a condition is also needed to protect the remaining tracks of the Breakwater Branch Railway (condition 37).
- 10.17 Again, where there are elements dealt with through a planning obligation, a condition is necessary to secure a Biodiversity Plan given that the scheme will have some impacts in that respect that need to be mitigated (condition 38). In terms of flooding, and other potential issues, it is reasonable to apply a condition that secures an Emergency Plan and a Flood Warning and Evacuation Plan for the approval of the Council (condition 39).

- 10.18 External lighting at the plant needs to be covered through the submission of an external lighting scheme (condition 40) and details of any stack lighting required needs to be subject to the approval of the council (condition 41).
- 10.19 A series of conditions are put forward that deal with R1 status, various verifications from the EA, and decommissioning and/or restoration. While I acknowledge some crossover with the environmental permitting regime, I am content that these conditions are reasonable to ensure that the Council has some input (condition 42, condition 47, and condition 48). A condition is also needed to set out what should happen in the event the plant fails to export electricity (condition 43).
- 10.20 Given the manner in which these aspects of the proposal have been put forward, a condition is needed to address the provision of Shore Power (condition 44), and to ensure that the plant is capable of supplying heat to a district heating network (condition 45), and to ensure a route for pipework to the site boundary is safeguarded (condition 46). There is some crossover with the planning obligations but no duplication.

11 The Obligation

- 11.1 A draft version of an Agreement under s.106 was available for discussion at the Inquiry⁷⁸⁸ alongside a CIL Compliance Statement⁷⁸⁹.
- 11.2 Like the discussion around conditions, this took place on a 'round table' basis and the Rule 6 Parties and members of the public were able to take part, as well as the appellant and the Council. I gave the appellant and the Council time after the Inquiry closed to complete and sign the documents and a final version of the Agreement under s.106, dated 9 February 2024⁷⁹⁰, and completed (signed) by all the parties, was duly received along with a final, signed version of the CIL Compliance Statement⁷⁹¹.
- 11.3 Planning obligations are addressed in paragraph 57 of the Framework. In accordance with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, these must only be sought where they meet all the following tests: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. I have considered the various obligations in the Agreement under s.106 in that context.
- 11.4 The Agreement under s.106 contains a series of obligations but before dealing with them, it is necessary to highlight paragraph 19 of the Agreement which deals with compliance with Regulation 122. This sets out that if the SoS concludes in their decision that any of the obligations in the Agreement fail to satisfy any one of the tests for planning obligations referred to above, and accordingly attaches no weight to that obligation in determining the appeal, then the relevant obligation(s) shall, from the date of the decision letter,

⁷⁸⁸ AD11

⁷⁸⁹ AD10

⁷⁹⁰ AD83

⁷⁹¹ AD84

- immediately cease to have effect and the developer and owner shall be under no obligation to comply with it.
- 11.5 The first of the obligations relates to connecting the plant to a district heating system. This would use steam or hot water produced by the development to transfer heat to buildings on Portland, for example HMP The Verne, and/or HMP/YOI Portland. Policy 6(d) of the Waste Plan 2019 states that recovery facilities must provide combined heat and power or if that is impracticable, have the capacity to deliver heat in the future.
- 11.6 In simple terms, the obligation requires the operator to first use 'reasonable endeavours' to make progress relating to a connection with large heat off-takers in the vicinity of the proposal. If agreement can be reached, then a scheme for the approval of the Council which would then be implemented in accordance with that approval.
- 11.7 Connecting the development to any district heating system that comes forward must take place within ten years of practical completion. That requirement to connect is subject to obtaining the necessary consents, technical feasibility, financial viability, and operational matters.
- 11.8 The second obligation relates to the biodiversity contribution of £82,231.28 (plus indexation). It is accepted that the proposal would have an adverse effect on biodiversity at the site, so mitigation is necessary in accordance with Policy 18 of the Waste Plan 2019. A biodiversity plan designed to provide that mitigation has been submitted to and agreed by the Council. Part of that involves a financial contribution to be paid to the Council for the provision of off-site habitats. The amount of that contribution has been arrived at using the Dorset Biodiversity Appraisal Protocol.
- 11.9 The third obligation relates to the Employment and Skills Plan. Policy ECON2 of the Local Plan requires proposals like that at issue to demonstrate economic enhancement over and above B1/B2/B8 uses. The proposal would create 35 permanent jobs and there is an opportunity to maximise employment opportunities for local residents. The obligations require the developer to submit and comply with a written strategy that sets out how these employment opportunities will be delivered.
- 11.10 Obligation four deals with IBA. Policy 6 of the Waste Plan 2019 requires processing of IBA to take place as close as possible to the source. Of course, the proposal would, in operation, produce IBA. The obligation requires the developer to use reasonable endeavours to remove IBA by sea instead of by road; and to procure that the IBA is then used in aggregates or other building industry uses.
- 11.11 The final and fifth obligation relates to the off-site footpath. On the basis of an acceptance that the development will have adverse impacts on the setting and thereby the significance of designated heritage assets, the appellant has put forward a heritage mitigation strategy (to be dealt with through a condition) that includes a permissive footpath enabling better access to designated heritage assets and connecting two existing public rights of way. The obligation secures a permissive footpath use along an existing private use within the Port though measures are included to allow its closure in limited circumstances.

11.12 I deal with the compliance of these various obligations with Regulation 122, and advice in the Framework, in my conclusions below.

12 Inspector's Conclusions

- 12.1 In this part of the report, I have used references thus [---] to cross-refer to previous, important paragraphs in the report, and in particular, the relevant part of the main parties' cases.

Introduction

- 12.2 In the light of the Council's reasons for refusal⁷⁹², and the reason given for call-in, the main considerations for the determination of the appeal are: (a) whether the proposal would comply with the relevant policies of the Waste Plan 2019 and represent a sustainable form of waste management in relation to 'need', amongst other things (the waste issue); (b) the effect of the proposal on the setting and thereby the significance of a range of designated and non-designated heritage assets (the heritage issue); (c) the effect of the proposal on the character and appearance of the area including any impact on the setting of the WHS and designated landscapes (the landscape issue); (d) the effect of the proposal on a range of 'other matters' notably living conditions, socio-economic issues, traffic, biodiversity and anything else (recognising the separation between planning matters and matters properly in the ambit of the environmental permitting regime) (other matters); and (e) the balance between any adverse impacts against any benefits in the light of the development plan and other material considerations (the planning balance).

The Waste Issue

- 12.3 The starting point for 'the waste issue' must be the Waste Plan 2019. All parties at the Inquiry accept that the Waste Plan 2019 should not be treated as being 'out-of-date'. The NPPW says in paragraph 7 that waste planning authorities, or in a case such as this, the SoS, should only expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date Local Plan. While the NPPW dates from as far back as 2014, it is specifically endorsed in paragraph 4 of the latest version of the Framework and can be taken to represent the view of the Government on the matter.
- 12.4 Against that background, while, as the Council sets out, the data underpinning it might be of some vintage, dealt with in very simple terms, the Waste Plan 2019 can be taken to deal with the issue of 'need' and as such, there ought to be no requirement on the decision-maker to examine the matter further.
- 12.5 The Council advances an argument that the Waste Plan 2019 can be treated as being up-to-date⁷⁹³ while at the same time, the need for residual waste management capacity set out therein can be treated as having been overtaken by events. To a large extent, the Council's case on 'the waste issue' rests on this point and the suggestion that the need for residual waste management capacity is now significantly lower than the need the Waste Plan 2019 was predicated upon, and that this need will continue to fall. In that way, it is said,

⁷⁹² CD6.01

⁷⁹³ I take the phrase 'not being out-of-date' as synonymous with 'being up-to-date'

that at an early point during its operating lifetime, the capacity of the appeal proposal will significantly outstrip the predicted needs of the Plan area.

- 12.6 I have significant doubts about whether that position is defensible. The 'Vision and Objectives', the 'Spatial Strategy' and the approach to allocated sites in the Waste Plan 2019 are all born of that identified need. If that identified need is much lower than what the Waste Plan 2019 proceeded upon, and likely to fall further, year on year, then it seems to me plain that the whole approach must be questioned. In particular, if the forecasts in Chapter 7, and Table 7 in particular, are not to be relied upon, then how can the approach to allocated sites (Policy 3), and facilities on non-allocated sites (Policy 4) remain tenable? If the Waste Plan 2019 is to be taken as being up-to-date, then one has to treat the assessment of need therein as reliable.
- 12.7 Notwithstanding that, a good deal of time was spent at the Inquiry dealing with the competing forecasts of need for residual waste management capacity. Having heard evidence from the Council and the appellant⁷⁹⁴, it is clear to me that predictive assessments of need of this type are more of an art than a science, and the main parties' respective assessments, and the many different sources and assumptions that underpin them, ably demonstrate that.
- 12.8 Unsurprisingly perhaps, the Council suggests that the actual 'need' is much lower than that set out in the Waste Plan 2019, decreasing over time, while the appellant produces figures that are higher. Testing sources, and each and every assumption, and ending up with a figure of my own, seems to me to be an arid exercise. It would not result in figures necessarily more reliable than those put forward by the main parties. Having analysed the various assessments and their sources, and heard the evidence relating to them, it seems to me that subject to the agreed adjustment to Table 7 [**6.106 – 6.107, 6.117 and 8.20 and 8.35**] which pushes the identified shortfall upwards, there is no convincing justification for setting aside the figures in Table 7 of the Waste Plan 2019.
- 12.9 I intend to proceed on the basis that the Waste Plan 2019, and the figures on 'need' therein, are 'up-to-date', subject to the agreed adjustment, and this has formed the basis of my approach.
- 12.10 This is a point fundamental to the determination of the appeal. Should the SoS disagree on that point and prefer the Council's evidence on 'need', then a different approach to the Waste Plan 2019 would have to be taken. My view is that the Waste Plan 2019, and the policies therein that are most important for determining the application, would have to be treated as being 'out-of-date' with the consequence that the tilted balance in paragraph 11d) of the Framework, subject to points i and ii, would be engaged. Into that tilted balance, amongst other things, would be fed the question of whether the proposal is necessary, in the light of the Council's figures on 'need'.
- 12.11 Returning to my analysis, the approach of the Waste Plan 2019 to dealing with the need it identifies is to allocate sites in Policy 3. However, and perhaps reflective of the fact that these allocations have not been taken up despite having been around for some time, the Waste Plan 2019 also includes

⁷⁹⁴ Through Mr Potter (PPF28-PPF30 and R08) and Mr Roberts (PPF01-PPF03, R01 and AD05)

provision for waste management facilities to come forward on sites that are not allocated. This is an unusual approach; Policy 4 is permissive of proposals for waste management facilities on unallocated sites where, amongst other things, the non-allocated site provides advantages over the allocated site.

- 12.12 In relation to the allocated sites, I heard that there is an unimplemented permission for a relatively small-scale ERF (60,000 tpa of residual waste) in the Green Belt at Parley (Inset 7) that is very unlikely to come forward. At Canford Magna (Inset 8), also in the Green Belt, there is an application before BCP Council for a facility designed to process 260,000 tpa of residual waste. Clearly, MVV, the operator behind that application, is of a similar mind to the appellant in terms of the continuing need for residual waste management.
- 12.13 The workings of Policy 4 require the decision-maker to make a qualitative comparison between the proposal at issue here, and the allocated sites. If it can be concluded that the proposal provides advantages over the allocated site, then, subject to other relevant policies, it could be found to comply with the Waste Plan 2019.
- 12.14 I return to this matter below, but first I intend to deal with those policies that are most relevant namely Policy 19 (historic environment) and Policy 14 (landscape and design quality). Obviously, if there is a failure to accord with either, then bearing in mind how Policy 4 works, the comparison with the allocated site becomes academic, in terms of the Waste Plan 2019 at least. **[6.101-6.136, 7.62-7.72, and 8.3-8.72]**

The Heritage Issue

- 12.15 Having considered the evidence on this matter, and carried out extensive site visits that took in the various heritage assets referred to, it seems to me imperative that the starting point for any analysis of the impact of the proposal on the setting and thereby the significance of all the heritage assets that are said to be affected, is clearly set out.
- 12.16 The appeal site is within a working commercial port that used to be a significant naval base. The port, or former naval anchorage, is the reason why most, if not all, the assets cited, are where they are, and take the form that they take.
- 12.17 The question then arises as to whether the proposed ERF is a facility that would happily fit into the context of a busy commercial port, that was formerly a naval base, or whether for reasons of use, form or design, it would appear as an alien insertion.
- 12.18 There can be no doubt that the proposal would be an insertion of massive scale – the main building would have a significant bulk and be 47m high and the stack would be 80 metres tall and prominent. The buildings and the process facilitated would take up a large amount of space.
- 12.19 Firstly, I do not consider the process involved in the proposal to be an incongruous one in the context of a working port. As is documented in the evidence⁷⁹⁵, there have been buildings of significant scale, serving shipping,

⁷⁹⁵ PPF08 Appendix WFS1 but also the Council and the Rule 6 parties' evidence

within the port, since its inception. For example, the breakwaters were built to provide shelter for ships from wind and waves; there were coaling sheds⁷⁹⁶ to store fuel for steam ships; and oil storage facilities.

- 12.20 A very important part of the proposal at issue is the provision of shore power. Leaving aside for a moment the doubts expressed by the Council and the Rule 6 parties about whether it will come forward, that I deal with below, that provision ties the facility into the evolving nature of the port where different means of serving shipping have formed an important part of the function of the port. This has taken the port from coal through to oil and the provision of shore power proposed would bring the port into the modern age, where shipping relies on to shore power to reduce emissions when in port, and beyond that perhaps, to charge batteries that form their primary power source. In that way, the generation of electricity through the ERF is part of a progression, and not, therefore, something that can be said to be unusual.
- 12.21 In terms of the building itself, as I have set out it would be a large insertion into the port and its near and wider context. The form of the building would follow its function, and I do not find anything particularly jarring about its form or design, viewed in isolation. No party to the Inquiry raised any issue of that kind. The treatment of the cladding, if carefully designed, something that can be dealt with through a condition, could be used to break up the scale of the building in the way perhaps that 'dazzle' patterns have been used in the past to break up the apparent scale of ships.
- 12.22 The main concerns raised centre on the size and bulk of the main building, and the prominence of the stack. As I have set out above, the scheme would be an insertion of massive scale. However, one cannot form any value judgment about that in isolation. The port itself is a facility of great scale and it includes, and will include, other buildings and structures of great scale, for example the breakwaters, the various quays and their ancillary structures, the Mulberry Caissons, and the Glencore warehouses⁷⁹⁷, with the Dragon Portland Cement Silo⁷⁹⁸ to come. The port itself lies in the shadow of the Verne Citadel – a structure of quite enormous scale.
- 12.23 Moreover, in terms of the stack, there are precedents. The evidence shows that there has been, in the past, a creosote pressure chamber or factory with a tall stack in the port, and subsequently, an electricity sub-station with what appears to be a brick chimney⁷⁹⁹. It is difficult to say whether these chimneys were similar in height to what is proposed as part of the scheme (a stack 80 metres high) but the point is that there have been, at various times, relatively tall chimneys in the port, with plumes emanating from them.
- 12.24 One cannot disregard the influence of shipping either. Much was made of the fact that ships come and go, but that is the nature of a port. When ships are in port, and the evidence shows that they are in port regularly, they are a massive, inescapable presence⁸⁰⁰. That is especially the case in relation to the

⁷⁹⁶ Some of which remain, but not in their original use

⁷⁹⁷ PPF05a Appendix JM6 includes some photographs of the warehouses

⁷⁹⁸ PPF05b Figure JM20

⁷⁹⁹ PPF08 Appendix WFS1 Fig.13 Page 20 and Fig.14 Page 21

⁸⁰⁰ PPF05c Appendix JM6

visiting cruise ships, but the RFAs are very large vessels too, and so is the Bibby Stockholm.

- 12.25 Against that background, I do not consider that the proposal would appear out of scale, or out of place. Rather, it would take its place as another functional building or structure of significant scale, within the immediate and wider port context. That conclusion underpins my approach to the individual assets.
- 12.26 Before I turn to those individual assets, I would highlight that the Council, the Rule 6 and third parties take a very different view that informs their analysis of the impact the scheme would have on the setting and thereby the significance of the assets concerned. This is another fundamental matter that the SoS will need to consider. If the SoS disagrees with my analysis above and comes to a different conclusion about the relationship between the proposal and its context, then the point of departure for an analysis of the effect on the various heritage assets would be very different. I return to this below.
- 12.27 The significance of the various heritage assets, and their classifications, have been ably and fully set out in the evidence of the parties and I need not rehearse all that again here. The same is true of the statutory and policy background. Sufficient to say that the various assets referred to, individually, and as a group, are remarkable, and of the highest significance. What they share is a clear functional tie to the port, and its development over time. That is a fundamental element of their settings, and their significance. Any finding of harm to those settings and as a result, the significance of the various assets, would be a matter of considerable importance and weight.
- 12.28 While all the assets form a group, there are smaller groups of assets within that overall grouping, while some assets need to be dealt with individually. The path followed by the Council in this respect is most pertinent.
- 12.29 The first group referred to by the Council includes the Inner and Outer Breakwaters, and the Inner Breakwater Fort and the Outer Breakwater Fort, the Coaling Sheds, the Coaling Jetty and the Storehouse Jetty. These are all substantial structures/buildings whose function is port and/or harbour related. They draw a good deal of their significance from their placements within the port and/or harbour.
- 12.30 Based on my findings above, I take the view that the proposal would not compete with these structures/buildings in terms of its use, scale or design and it would in no way blur an understanding of their function or placement within the port. For those reasons, while the proposal would change the setting of these assets, it would cause no harm to that setting, or their significance, individually or as a group.
- 12.31 The Verne Citadel is a structure of gargantuan scale and the defensive function underlying its form, commanding and protecting the port and the anchorage, is readily apparent when looking at it, from close-up or far away, and out from it. While it would be visible in conjunction with the citadel, and from it, the proposal, being smaller in scale, and set at a lower level would not compete with the Verne Citadel visually, and neither would it take anything away from its dominant, intimidating presence.

- 12.32 The impact on views out from the Verne Citadel is at its highest from the terrace outside the Jailhouse Café, part of HMP The Verne, which commands a wonderful view across the harbour and the bay beyond⁸⁰¹. The visualisation does not give a full picture⁸⁰² but it seems to me that the proposal would feature very strongly in the foreground and draw the eye. That said, I do not consider that this effect would be harmful, given that the port is already in the foreground of this view, and the proposal, while considerable in scale, would not appear out of place in its context. Moreover, the appeal site is allocated for employment purposes and it is reasonable to conclude that absent the proposal, a different building, of significant scale, fulfilling another purpose, might well come forward upon the site.
- 12.33 For those reasons, I do not consider that the proposal would harm the setting of the Verne Citadel, or its significance.
- 12.34 The East Weare Camp and its attendant buildings and structures, along with the associated Batteries A-E sit below the citadel, between its massive form and the port and the anchorage and the approaches to it. The manner in which the various batteries, serviced by the camp, have fields of fire that command the approaches to the port and the harbour is a fundamental part of their significance, that is derived from their setting.
- 12.35 The proposal would not interfere with that at all. The purpose of the batteries and the attendant buildings would be readily apparent, when viewed from the batteries themselves, or from the Verne Citadel above, would be as easily apparent with the proposal in place, as it is today, without it. On that basis, I do not see that the proposal would harmfully affect the setting of these assets, or their significance, individually or as a group.
- 12.36 The proposal would be closest to Battery E – the subject (in part) of the appellant's Heritage Mitigation Strategy. If the battery was cleared of vegetation in the manner foreseen in the works of mitigation, then the proposal would be visible from it⁸⁰³. However, because of the changes in level, there would be no interference with what would have been the field of fire from the battery and as such, no harmful impact on the contribution the setting of the battery makes to its significance.
- 12.37 The Dockyard Offices were built to oversee the construction of the breakwaters. There is a bay window on the east face of the building⁸⁰⁴ that was clearly designed in a way that allowed views from it towards the inner breakwater. That relationship has been dimmed by a modern extension to the building, but it remains discernible, and the relationship with the inner breakwater so formed is an important element of the setting of the listed building and its significance.
- 12.38 The Dockyard Offices are an integral part of the port, which already contains some very large buildings and structures, so I have no issue about the relationship that would be formed between the main building of the proposal

⁸⁰¹ PPF05b Appendix JM4 Viewpoint 16

⁸⁰² PPF24 Appendix 5 Photograph C is angled downwards

⁸⁰³ PPF05b Appendix JM4 Viewpoint 15

⁸⁰⁴ Appendix 6 Page 26

and the listed building. However, the switchgear for the shore power element of the proposal⁸⁰⁵ would be placed directly to the east of the building. It would interrupt and interfere with what is left of the relationship between the Dockyard Offices and the inner breakwater. While careful design of the switchgear could alleviate this impact to some extent, something that could be controlled by condition, there would be a detrimental impact on the setting of the listed building and its significance as a result of the presence of such substantial structures between the bay window and the inner breakwater.

- 12.39 Bearing in mind that most of the significance of the listed building lies in its fabric, and the element affected is but one, albeit important, part of the contribution setting makes to significance, I consider that the degree of harm would be 'less than substantial' at the lower end of the scale. Nevertheless, it is a matter of considerable importance and weight to which I return below.
- 12.40 The Phoenix Caissons are part of the Mulberry Harbour that was integral to the success of the D-Day landings in 1944. They are structures of significant scale that sit within the harbour, to the west of Queen's Pier. They derive some significance from their setting within the harbour, and act as a reminder of the importance of Portland in WWII, and as a port of departure for the D-Day landings. The proposal would sit some way to the east and despite its scale, it would not change the relationship of the Caissons with the harbour or blur the reminder of the relationship with WWII and D-Day in particular. In my view, the proposal, as a piece of new port-related infrastructure, would have no harmful impact on the setting of the Phoenix Caissons, nor their significance.
- 12.41 The Underhill Conservation Area and No.1 Castletown that lies within it are on the approach to the port. The area, and the buildings within it have a distinct 'port' flavour to them which is an important part of their character and appearance, and in the case of buildings within the conservation area, like No.1 Castletown, or the Royal Breakwater Hotel, that aspect of their surroundings, and the proximity of the port, is an important part of the contribution setting makes to significance. As I have found, the scheme would not be out of place in the port and as such, the character of the port would not change as a result of its presence. In that way, the proposal would not harm the setting of the conservation area, or its significance, and neither would it have a detrimental impact on the setting or the significance of No.1 Castletown, or any other listed buildings within it.
- 12.42 Issues have been raised about the traffic the proposal would generate and in particular HGVs and the effect they would have on the conservation area. I deal with this in traffic and amenity terms below, but from what I saw, the comings and goings of vehicles serving the port are a constituent part of the business and bustle associated with it. I do not consider that the traffic generated by the proposal would be so great that it would detract from the character or appearance of the conservation area, or the setting of listed buildings within it.
- 12.43 Portland Castle and Sandsfoot Castle were designed and positioned to protect what were called the Portland Roads before the current port was in place. Their inter-relationship, and in particular an understanding that the distance

⁸⁰⁵ CD1.04, CD1.17 and CD1.18 give details

between them is a reflection of the range of the artillery available in the times of Henry VIII, is an important part of their setting and, as a result, their significance. Views from Sandsfoot Castle towards Portland Castle⁸⁰⁶ would include the proposal, but it would be set off to one side and would not interfere with the inter-relationship between the two artillery forts in any way. On that basis, the proposal would have no detrimental impact on the setting or the significance of Portland Castle or Sandsfoot Castle.

- 12.44 Reference has been made to Nothe Fort too. This was designed to protect the approaches to Weymouth rather than Portland. It may be that the proposal would be visible a good distance away, across the bay, in the context of the port⁸⁰⁷, but that visibility would not detract from the setting of the fort, or its significance.
- 12.45 The Rule 6 Parties brought to my attention a series of historic piers along the eastern coast of Portland to the attention of the Inquiry, including King's Pier, Folly Pier, Durdle Pier and Rufus Castle. These assets all relate to the quarrying and stone-working history for which Portland is I appreciate, famous. However, they are also part of the history of port-related activity since their purpose was to facilitate the export of stone to boats and/or ships.
- 12.46 In that context, given my findings above about the relationship of the ERF with its port context, even if the facility at issue is visible from them, it is not going to confuse any understanding of those origins. On that basis, it would not detract from the setting of these non-designated assets or their significance.
- 12.47 The Rule 6 parties also advanced an argument that the WHS should be treated as a designated heritage asset of the highest significance. That is a fair point but given the nature of its OUV, that is related to its geology and geomorphology, an analysis of any harm to its setting and its significance is locked into the landscape issue that I consider below.
- 12.48 The Heritage Mitigation Strategy⁸⁰⁸ came in for a good deal of criticism, largely related to the fencing that would bound the footpath. However, even in the absence of a Conservation Management Plan, it cannot be said that clearing 'E' Battery of vegetation, thereby better revealing its significance, would be anything other than a benefit. Providing a permissive footpath that linked two existing footpaths, allowing one to move along and through the line of batteries, and take in the associated structures, and their relationship with the port and the various assets in and around it, with interpretation boards to aid understanding, as well as make a circuit of Portland itself, would be an obvious benefit too. Of course, that benefit would be greater if the path was not bounded by a fence, but I can understand why the port needs to be properly conscious of its security. If the fence is designed in a way that balances that security against transparency, then the extent to which the benefit of the path is lessened can be controlled. Moreover, it need have no harmful impact on the assets its runs past and between. **[6.170, 7.45-7.50, and 8.91-8.93]**

⁸⁰⁶ Appendix JM4 Figures JM5 and JM6

⁸⁰⁷ CD1.36j2 Viewpoint 10

⁸⁰⁸ Secured through an obligation in the Agreement under s.106

- 12.49 The question then is whether this benefit meets the tests of the Framework, derived from Regulation 122(2). I have found no harm to the setting or the significance of Battery 'E' specifically, or the group it lies within, as a consequence of the proposal, so it could be argued that the Heritage Mitigation Strategy is not necessary to make the proposal acceptable in planning terms.
- 12.50 However, I consider that a wider view needs to be taken largely because, as I have set out above, all the assets affected are part of a larger, inter-related group. I have found some harm to the setting and thereby the significance of the Dockyard Offices in my analysis above. It is my view that on an internal balance that takes into account the larger group of assets as a whole, then the Heritage Mitigation Strategy would provide heritage benefits that would outweigh the less than substantial harm I have found, notwithstanding the considerable importance and weight that must be given to that harm, meaning that the proposal is acceptable in heritage terms overall.
- 12.51 Even if one finds that treatment of the overall group to be too wide for the purposes of an internal balance, it would be fair to conclude, applying paragraph 202 of the Framework, that the benefits of the Heritage Mitigation Strategy are public benefits that outweigh the less than substantial harm to significance that would be caused to the Dockyard Offices.
- 12.52 Either way, it is my conclusion that the Heritage Mitigation Strategy meets the tests of the Framework and Regulation 122(2).
- 12.53 On that overall basis, I conclude that the proposal would cause no harm to the setting or the significance of most of the heritage assets affected. The exception is the Dockyard Offices where, for the reasons set out above, I have found some less than substantial harm, at the lower end of the scale. I have attached considerable importance and weight to that finding. Careful design might limit that harmful impact even further but, in any event, the harmful impact would be outweighed by the provisions of the Heritage Mitigation Strategy, whether one treats those benefits as heritage benefits, for the purposes of an internal balance, or public benefits for the purpose of the balance required by paragraph 202 of the Framework.
- 12.54 On that overall basis, having regard to the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the Framework, the proposal would comply with Policy 19 of the Waste Plan 2019, Local Plan Policy EN4, and Neighbourhood Plan Policies Port/EN4, Port/EN5 and Port/EN7. **[6.3-6.59, 7.42-7.61, and 8.73-8.100]**
- 12.55 As set out above, these conclusions rely on my findings that the proposal would not appear out of scale, or out of place, in the context of the port. If the SoS takes a different view on that point, and agrees with the Council, the Rule 6 party, and third parties, then their findings on the heritage issue would need to be followed and as set out in paragraph 202 of the Framework, the less than substantial harm they find balanced against public benefits.

The Landscape Issue

- 12.56 As with the heritage issue, the approach to the landscape and visual effects depends on the starting point. As I have set out above, the proposal would not appear out of scale, or out of place. Rather, it would take its place as another

functional building or structure of significant scale, within the immediate and wider port context.

- 12.57 Once again, I would highlight that the Council, the Rule 6 and third parties take a very different view and that informs their analysis of the impact the scheme would have on the surrounding landscape and the various designations involved. This is another fundamental matter that the SoS will need to consider. If the SoS disagrees with my analysis above and comes to a different conclusion about the relationship between the proposal and its context, then the point of departure for an analysis of the effect on landscape and the various designations, would be very different. I return to this below.
- 12.58 From the more distant viewpoints⁸⁰⁹, the proposal would (often)⁸¹⁰ be visible, and at times, though not very often, there would be a plume from the stack. Controlled by condition, there need be no impact as a result of the aviation lighting. However, the installation would be visible in the context of the port, and the large structures it contains, and sometimes large ships, all set against the background of Portland itself. It must be borne in mind too that the profile of Portland, while very distinctive, indeed iconic, has been very much influenced by quarrying, and the Verne Citadel. It is not a natural landform.
- 12.59 From these more distant viewpoints, the presence of the proposal would not be a harmful one, in terms of landscape and visual effects. It would simply appear as another part of the port.
- 12.60 As one gets closer to the site, from Sandsfoot Castle and in particular on the approach to Portland along the causeway, the proposal would be seen in the context of the port and its buildings and structures and at times ships, but also the development along the lower slopes of the north face of the island that has stretched out along the causeway⁸¹¹. In my view, it would not look particularly prominent in these views; it would be seen as another part of the infrastructure of the port. That impression would become even more forceful once one gets even closer to the port⁸¹².
- 12.61 In most of these views, the proposal would break the skyline. However, in so doing it would not compete with Portland itself, or in any way detract from its distinctive and iconic form. The difference in scale between the proposal and Portland itself is too great for that. I agree with the appellant that a conclusion of this sort, in relation to an ERF proposal, is a rare one indeed and that speaks to the suitability of the site, in these terms.
- 12.62 Turning then to views from out at sea, I was able to take in some of these as part of my site visit. Whatever weight might be attached to these views, bearing in mind that they are views enjoyed by those on ships, boats and other craft, it was plain to me that once again, the proposal would be visible in them in concert with the rest of the port infrastructure, often set against the

⁸⁰⁹ CD1.36j2 Viewpoints 4, 5, 6, 7, 11, 12, 13, and 14 and other places along the coast between Weymouth and Lulworth Cove

⁸¹⁰ I saw during my site visits that at times, weather conditions can make Portland very difficult to make out

⁸¹¹ PPF05b Appendix JM4 Viewpoints 9 (Sandsfoot Castle), 21, 22, 23, 24, and 25 for example,

⁸¹² PPF05b Appendix JM4 Viewpoints 19 and 20

background of Portland itself, and the Verne Citadel above. While it would change views from out at sea, I do not consider that it would be harmful in terms of seascape, landscape or visual effects.

- 12.63 Having said all that, there is one place where the effect of the proposal, in visual terms, would be more significant. That is the Royal Navy Cemetery⁸¹³ where the stack would be most apparent. The cemetery is obviously a very sensitive place, and somewhere where one would seek out time and space for reflection. That must be especially so for those with ancestors, relatives, colleagues, and/or friends interred there.
- 12.64 The stack would be clearly visible in some views from the cemetery. However, while I accept the sensitivity of the place, I do not believe it would be an injurious presence. When one is in the cemetery, one is conscious of the port and the harbour, and that relationship is important bearing in mind the longstanding naval presence at the port. As I have found, the proposal would not appear incongruous in the modern port context, and objectively speaking, the stack, even if the plume from it was occasionally visible, would be seen in that light.
- 12.65 I am conscious that there would be residential receptors, on Portland itself, and on the mainland, where the proposal, or parts of it, would be visible. However, objectively, I do not equate the ability to see the proposal with a harmful visual effect. I reach the same conclusion in relation to users of the South West Coast Path. Given that the ERF would not appear as an alien insertion within the port, it would appear as an addition to an existing permanent feature, augmented at times, by large ships.
- 12.66 Given the nature of these findings, I do not see the need to assess the proposal against the various landscape classifications that have been brought to my attention. Put very simply, the installation would be seen as a part of the infrastructure of the port, albeit a significant part, and it would have no harmful landscape or visual effect.
- 12.67 I appreciate that there are designated landscapes in the vicinity of the site. As far as the National Landscape (formerly AONB) is concerned, the port and the harbour are already prominent in its setting. The change to that setting that the proposal would bring about would have no harmful impact on its landscape and scenic beauty, or its setting. I reach the same conclusion, for the same reasons, in relation to the Heritage Coast.
- 12.68 The WHS is a little more complex. These designated landscapes are said to form the buffer, protecting the setting of the WHS. I am conscious that the OUV of the WHS is geological and geomorphological so it is difficult to see quite how a development outside the WHS, but within its setting (whether you term that setting 'experiential' or not) could affect that OUV⁸¹⁴. The PPG tells us that we are meant to read OUV as representative of the significance of a WHS. However, even if it is accepted that it could, the port and the harbour are already prominent in views in and out of the WHS. If you find, as I have, that the proposal would sit comfortably in the context of the port, then it

⁸¹³ PPF05b Appendix JM4 Viewpoints 17 and 18

⁸¹⁴ And it is important to note that this suggested effect was the reason behind the 'call in'

would have no injurious effect on the WHS, its OUV, or the setting (experiential or otherwise) of the WHS.

- 12.69 The Rule 6 parties advanced a case in relation to tranquillity. Having walked the existing path that passes the Royal Navy Cemetery and the various batteries several times, moving on to the permissive path in the Heritage Mitigation Strategy, it seemed to me that it is not particularly tranquil; I was conscious throughout of intermittent and steady sounds or noise from the port below and that is part of the character of the route. Anyone walking this existing or extended path would be aware of the nearby presence of the port.
- 12.70 With the proposal in place, I do not doubt that there would be more sounds or noise but given the nature of the existing experience, I do not consider that would devalue the route to any harmful extent.
- 12.71 I would note too that Local Plan Policy ENV1, that the Rule 6 parties rely upon, only seeks to protect 'tranquillity' in the AONB and Heritage Coast. The path said to be affected is not within either. **[7.5-7.12, and 8.128-8.137]**
- 12.72 Bringing all those points together, it is my view that the proposal would have no harmful landscape or visual effects from receptors on land or at sea. Put very simply, that is because the proposal would sit comfortably in the context of the existing port. Consequently, I find that the proposal would accord with Policy 14 of the Waste Plan 2019 and Local Plan Policy ENV1. **[6.60-6.100, 7.5-7.41, and 8.101-8.142]**
- 12.73 Obviously, as with the 'heritage issue', I have reached that conclusion from the starting point that I have set out. If the SoS disagrees with that starting point, then the approach to landscape and visual effects taken by the Council and the Rule 6 parties is brought into play.

Other Matters

- 12.74 There are some general principles that I need to deal with before I deal with some of the specific points raised under this heading. First, the place of incineration as a means of disposing of residual waste has been questioned. I understand and appreciate that to many people it is not a process that should be supported, with reference to moratoria that have been introduced in Scotland and Wales.
- 12.75 However, notwithstanding recent issues around the permitting regime, Government planning policy in England is clearly supportive. There is no moratorium or capacity limit on the provision of ERFs or EfW in England, and this is borne out by EN-1 and EN-3, the Defra Ministerial Statement of 1 December 2022, and the NPPW. Consideration of an individual proposal like that at issue here is not the place for a review of that approach. I would note too that the Waste Plan 2019 is predicated on the provision of ERF capacity.
- 12.76 Linked to that in many ways, is the suggestion that incineration of waste drives down recycling rates. Of course. It is important for waste to be treated at the highest point of the waste hierarchy possible. However, I do not understand why the presence of an ERF in an area should depress or remove the incentive to recycle. Domestically, it is up to the householder to sort their waste and put it out at the correct time, and in the correct receptacle, for it to be collected for recycling. The same is largely true for those responsible for

C&I waste. It is then a matter of personal choice and the presence of an ERF locally is not going to have any meaningful impact on any right-thinking householder or operator. There is nothing in this, in my view and in any event, if the Government was concerned about this possibility, it would surely not support the provision of ERFs in the way that it does.

- 12.77 Secondly, a lot of people, understandably, have concerns about the impact of the proposal on human health, and the environment, as a result of the process involved, emissions from the stack, odour, the need to remove IBA, and so forth. However, as paragraph 7 of the NPPW makes clear, decision-makers dealing with ERF proposals should concern themselves with implementing the planning strategy in the Local Plan and not with the control of processes which are a matter for the pollution control authorities. Waste planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced. This is a matter then for the EA to address through the permitting process.
- 12.78 That said, I appreciate that there is a perception that the proposal would be harmful to the health of a population that, as I heard, already suffers disproportionately in these terms. This could have an impact on the quality of life, and mental and physical conditions, of residents. There is the perception that the proposal would cause environmental damage too. However, planning policy is very clear that for a perception of this kind to carry weight, it must be based on something tangible, rather than assumptions or speculation. There is no convincing evidence before me that the proposal would have detrimental health impacts and nether is there anything convincing to suggest that the proposal would have a detrimental impact on biodiversity on land or sea, or on water quality. Again, those are matters for the permitting regime. **[8.175-8.179]**
- 12.79 It is accepted that construction and operation of the proposal would have a harmful effect on the biodiversity value of the existing site. This is addressed through the planning obligation. The relevant obligation and financial contribution therein are necessary to make the proposal acceptable in planning terms and bring it into line with Policy 18 of the Waste Plan 2019.
- 12.80 That brings me on to socio-economic issues. It was put to me that the people of Portland think that they live in a place where they have things imposed upon them. The Bibby Stockholm was given as an example. I appreciate that and acknowledge that many on Portland suffer from a lack of opportunity and economically, the area suffers in a way that the rest of Dorset does not. To my mind, that is a wider argument about economics and Government, and it starts from a place where an ERF would be another unwelcome imposition. However, it is my view that the ERF would sit comfortably as part of an operating port; a port that must surely be central to the future economic prospects of Portland.
- 12.81 The facility would create jobs in the construction and operational phases (around 300 and 35 FTE) respectively and provide opportunities for local residents through the Employment and Skills Plan. This is one of the planning obligations referred to above and, in my view, it is necessary to make the proposal acceptable in planning terms, bearing in mind the terms of Local Plan Policy ECON2. **[6.168, 7.81-7.92, and 8.181-8.185]**

- 12.82 I heard too that the electricity supply to Portland is limited and that this has constrained the development of the port. The upgrade to the electricity supply is projected to take place in 2037, which in economic terms, is a very long time. The ERF would have the ability to improve the situation by producing electricity on Portland itself. I appreciate that this supply will need to be balanced against the provision of shore power to ships in port (see below) but again, this is another way that the proposal will assist the port, and thereby Portland, in an economic sense. **[6.160-6.161]**
- 12.83 That leads me on to tourism. It is very clear that Portland, and the area and the waters around it, is an attractive destination for all sorts of reasons. The suggestion of many third parties, and the Rule 6 parties, is that the proposal would devalue that attractiveness, depressing visitor numbers and putting tourist-related projects, existing and proposed, at risk.
- 12.84 I do not agree with that analysis. It rests on the assumption that the ERF would be an unwelcome intrusion but as I have found, it would not be; it would sit comfortably within the context of a busy, operational port, that is an important part of the character and history of Portland. Similarly, concerns that those interested in the area for water-based activities, would be 'put off' by the presence of an ERF are based on the perception that the ERF would pollute the waters, and make the harbour unattractive. However, for the (objective) reasons set out above, the facility would fit in with the current appearance of the port. The potential for pollution would be controlled by the permitting process.
- 12.85 Overall, I do not believe that the proposal would have a harmful impact on tourism. Indeed, there are aspects of the proposal that could well have a beneficial impact. The port is keen to attract more cruise liner traffic and additional visitors linked to them, while they might well travel on coaches further afield than Portland from their cruise liner base, would bolster the economic wellbeing of the area, and encourage tourist-related development on Portland itself. The proposal offers shore power, and this is bound to be attractive to cruise operators who, for economic, and I am sure other, reasons, are keen to promote their environmental credentials. On top of that, because the ERF could power those cruise liners directly, through the shore power element of the proposal, rather than relying on the grid, Portland would be at a competitive advantage over other potential ports of call. **[7.81-7.92]**
- 12.86 It was suggested that the 'shore power' aspect of the proposal might not be brought forward. Of course, there is always that doubt about parts of a scheme like this, but it is central to the proposal, and it seems to me that there is a clear commercial opportunity for the operator to bring it forward and the port itself is keen on it. That, and the condition designed to secure it (condition 44) give me confidence that the shore power aspect of the proposal will be delivered. After all, if the condition requires it to be provided, it would be in the operators' interests to use it.
- 12.87 The provision of shore power is important in another way too. Concerns were raised about air quality and the effect of the proposal upon it. Generally speaking, control of emissions from the stack would be a matter for the EA and the permitting regime. However, it seems to me that ships running their engines while in port, whether they are cruise ships, RFAs, or others, or the

Bibby Stockholm powered by diesel generators, must be having a detrimental impact on air quality locally already. If ships coming into port are able to connect to shore power, thereby allowing their engines to be switched off, then that would lead to an improvement in ambient air quality. **[6.142-6.151, 6.163-6.167, 7.65, 8.144-8.151, and 8.168-8.174]**

- 12.88 Linked to shore power in many ways, is the ability of the proposal to deliver a District Heating Network. I recognise that this would be quite a challenge to implement, but again, it seems to me that there is an obvious commercial incentive for the operator of the ERF and the MoJ to move ahead with a scheme that provides heat to HMP The Verne and/or the YOI. That is reflected in the Memorandum of Understanding. Taking heat from the plant up to the prisons would require careful design but from what I saw, it would not be so challenging that the parties need necessarily shrink from it. A District Heating Network of this type would have the potential to lower the carbon footprint of the prisons, emissions from the existing plant, and their running costs. Of course, the supply of heat might be interrupted when the ERF has its annual shut-down, but that is why the prisons would need to retain their existing systems as cover. **[6.152-6.159, 7.65, and 8.152-8.155]**
- 12.89 I am content that the approach of the Obligation under s.106 and the reference therein to 'reasonable endeavours' alongside the relevant condition is sufficient to secure the network, and its advantages. This obligation is necessary to make the proposal acceptable in planning terms and accords with advice in the Framework and the CIL Regulations.
- 12.90 Much concern as expressed too about traffic and specifically the HGVs that would travel to the plant through Wyke, along the Causeway, and through Castletown, and from it. This route already carries a significant amount of HGV traffic to the existing port and while I appreciate the concerns expressed, it seems to me that the concern is linked more to what the HGVs would be carrying rather than the additional traffic in itself.
- 12.91 The Council as highway authority raised no objection on highway grounds in terms of capacity or amenity issues and I agree; an increase of 1% in the peak times, or an extra HGV movement every 9 minutes or so, would not have any significant impact in highway terms, or in relation to living conditions, or on any other proposals on Portland. In any event, conditions can control the covering of loads, the number of movements per day, and the times in which those movements can take place, and the route to be taken. There is no departure from Policy 12 of the Waste Plan 2019 in this regard. **[7.73-7.80, and 8.186-8.192]**
- 12.92 There is IBA to consider too. The location of the facility in a port would allow IBA to be removed by sea which would mean that the proposal would generate less traffic overall than a similar facility, like that proposed at Canford Magna, that was not able to do that. This is an advantage of the proposal in that sense, but also environmentally in that were it not for the ability to remove IBA by sea, it would have to leave by road, resulting in additional traffic movements. **[6.162, and 7.66]**
- 12.93 The obligation in the Agreement under s.106 which refer to the use of 'reasonable endeavours' to remove IBA by sea and use it for other (construction related) purposes is necessary to make the proposal acceptable

in planning terms, with reference to Policy 6 of the Waste Plan 2019, as is the relevant condition (22).

- 12.94 The final matter I need to deal with under this heading relates to carbon emissions and the potential climate impacts of the proposal. Burning residual waste would of course result in carbon emissions but the approach to those emissions cannot consider them in isolation. Residual waste has to be disposed of somehow and, as a result, the analysis must be comparative.
- 12.95 The evidence is clear that burning residual waste in this location would result in lower carbon emissions than the present situation where the Waste Authority disposes of its residual waste partly through landfill, and partly through incineration outside the Waste Plan area, with the consequent waste miles. The proposal would represent a clear improvement on the existing situation, therefore. I would observe too that while the process is in its infancy, the proposal has the potential, and importantly the space, to provide for carbon capture and for its transport to storage facilities, by sea. **[6.163-6.167, and 8.156-8.167]**
- 12.96 As far as a comparison with the approach of the Waste Plan 2019 is concerned, the situation is more complex, and for reasons that will become clear, I deal with that below.
- 12.97 All things considered, I find nothing in these 'other matters' that weighs against the proposal and in some ways, the proposal would bring forward benefits. **[9.1-9.48]**

Overall Balance and Conclusions

- 12.98 I have concluded for the reasons set out that the proposal would have no harmful landscape or visual impacts, and that the heritage harm I have identified would be outweighed by the Heritage Mitigation Scheme considered as part of an 'internal balance' or as a public benefit. There is nothing in the 'other matters' in my view, that weighs against the scheme.
- 12.99 On that basis, I am content that the proposal complies with Policy 14 of the Waste Plan 2019 and Local Plan Policy ENV1, and Policy 19 of the Waste Plan 2019, Local Plan Policy EN4, and Neighbourhood Plan Policies Port/EN4, Port/EN5 and Port/EN7, as well as Waste Plan Policies 6, 12 and 18, and Local Plan Policy ECON2. I have found no variance from any other policy in the development plan.
- 12.100 That said, there is Policy 4 of the Waste Plan 2019 to consider. As I have set out above, this allows proposals for waste management facilities to come forward on non-allocated sites where the non-allocated site provides advantages over the allocated sites. Unusually, this means that the decision maker in this case must carry out a comparative exercise between the proposal at issue, and allocated sites in the Waste Plan 2019. That is not a straightforward exercise.
- 12.101 Having said that, the comparison with the site at Parley (Inset 7) is not too difficult for the simple reason that the site is relatively small, and the approved proposal for an ERF upon it is very unlikely to come forward. In any event, the site could not cope alone with the residual waste needs set out in the Waste Plan 2019, and it is in the Green Belt. The appeal site has obvious advantages

over that site in that it can cope with the residual waste needs, it is not in the Green Belt, and it can take place without landscape or heritage harm and bring forward other benefits like shore power and a district heating network.

- 12.102 Comparison with the site in Canford Magna (Inset 8) is more complicated. There is a scheme before BCP Council for a facility upon it that would be able to deal with the residual waste needs set out in the Waste Plan 2019. However, the site is in the Green Belt, in a very sensitive location environmentally.
- 12.103 In their consultation response⁸¹⁵, Dorset Council suggests that their evidence on 'need' presented at this Inquiry should be considered, in the context of the capacity of the facility proposed, but conclude that the benefits of the location (co-location with other waste management facilities and location in south-east Dorset/BCP Council, the consequent reduction in distance travelled by the waste, and the diversion from landfill) are all benefits which potentially support a case that very special circumstances exist.
- 12.104 As far as the allocated site is concerned, which is what Policy 4 actually refers to, I take the appellant's point that it is not big enough to accommodate the facility that has been proposed – the 'red line' of the application is well beyond the confines of the allocation which suggests that the allocated site is too small to cope with the residual waste needs in the Waste Plan 2019, that I have found to be reasonable.
- 12.105 Turning to the proposal itself, which I feel bound to do notwithstanding what Policy 4 says, it would obviously be inappropriate form of development in the Green Belt, and an enormous imposition that would massively reduce openness. The level of Green Belt harm would be very high indeed. As the Framework sets out, substantial weight would have to be attached to that harm. The Framework goes on to say that the very special circumstances that would be required to justify the proposal would not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. In relation to 'any other harm' I understand that there are aviation concerns about the proposed stack, amongst other things. The appellant has also pointed out that the scheme is tightly constrained and may not be able to deliver carbon capture facilities.
- 12.106 In my view, the 'other considerations' required to justify this level of harm to the Green Belt, and any other harm, would have to be very weighty indeed. The Council in their consultation response has suggested that the proposal is too big (based on their revised position on need) but because the proposal at Canford Magna is in accord with the spatial strategy of the Waste Plan 2019, it may be (in a smaller form I surmise) suitable.
- 12.107 I have my doubts about that approach. First, as I have set out above, I do not agree with the Council's latest stance on 'need' and rely instead on the Waste Plan 2019. Second, and more importantly, one of the first questions the decision-maker must ask about a proposal like that at Canford Magna in the Green Belt, is whether the provision could be made outside the Green Belt.

⁸¹⁵ AD22

The scheme at issue here shows that it can be, and, in that situation, it is difficult to see how the necessary very special circumstances could be shown.

- 12.108 I do not doubt that the proposal at Canford Magna might well perform better in terms of the spatial strategy in the Waste Plan 2019 but that would have to be balanced against the Green Belt harm to which substantial weight would have to be attached, and any other harm. To complicate matters further in terms of the spatial strategy, the locational benefits of the Canford Magna site might well be offset by its inability to accommodate carbon capture technology, and of course IBA would need to be removed by road.
- 12.109 I have to say that the approach the Waste Plan 2019 requires is an unusual one, but it has been found sound and adopted. For the reasons set out, I find that the proposal at issue here would have very clear advantages over the allocated sites (and the proposals for them) and as such, it complies with Policy 4. On the basis that it complies with Policy 4, I also find that it accords with Policy 1. **[8.60-8.71]**
- 12.110 As a result, I am satisfied that the proposal complies with the development plan taken as a whole and in my view, there are no material considerations that would justify a decision contrary to the provisions of the development plan. **[6.137-6.140, 6.172-6.177, 7.93, and 8.198-8.204]**

13 Recommendation

- 13.1 I recommend that the appeal is allowed, and planning permission is granted for the proposal subject to the conditions set out in Annex C below, and the obligations in the Agreement under s.106 that I have referred to above.
- 13.2 Should the SoS disagree with that recommendation, I have attempted to highlight the response that would be necessary to the (main) potential points of departure in my reasoning above.

Paul Griffiths

INSPECTOR

Annex A: APPEARANCES

FOR THE WASTE PLANNING AUTHORITY:

Simon Bird KC and
Morrow Golden, Counsel

Instructed by Philip Crowther of Dorset Council
Legal Services

They called⁸¹⁶

Helena Kelly BSc MCIFA
Director, Heritage Archaeology

Neil Williamson BA(Hons) MA FLI PPLI FCMI
Director, Neil Williamson Associates Ltd

Alan Potter BSc(Hons) FCIWM CEnv UKELA
Founding Partner, BPP Consulting LLP

Felicity Hart BSc(Hons) DipTP FRTPI
Minerals and Waste Planning Manager, Dorset
Council

FOR THE APPELLANT:

David Elvin KC and
Luke Wilcox, Counsel

Instructed by Tor & Co.

They called⁸¹⁷

Nick Roberts BA(Hons) Landscape Architecture
Dip LA CMLI
Director, AXIS

Jon Mason BSc(Hons) Dip LA, CMLI
Technical Director, AXIS

Stephen Othen MA Meng CEng MChemE
Technical Director, Fichtner Consulting Engineers
Ltd

William Patrick Filmer-Sankey MA DPhil FSA
MCIFA
Senior Director, Alan Baxter Ltd

⁸¹⁶ Tony Norton Head of the Centre for Energy and Environment at the University of Exeter provided evidence to the Inquiry but was unfortunately unable to appear while Neil Dackham, Monitoring and Enforcement Officer (Minerals and Waste), Dorset Council took part in the discussion around the conditions and obligations

⁸¹⁷ Simon Elliott of Bidwells LLP, Ian Awcock chair of the Awcock Ward Partnership, and Jeff Picksley Ecological Consultant to Tor & Co and Director of Artemis Ecological Consulting Ltd provided evidence to the Inquiry but were not called as witnesses

FOR THE PORTLAND ASSOCIATION and STOP PORTLAND WASTE INCINERATOR

Barney McCay, Counsel

Instructed by TPA and SPWI

They called

Clive Bentley BSc(Hons) CIEH MIEnvSc MIOA
CEnv CSci
Acoustic Consultant and Partner, Sharps
Acoustics LLP

Nichola Burley MA Dip Cons Arch MRTPI IHBC
Director Heritage Vision Ltd

Jim de Bertrand BA(Hons) PGDipLA CMLI
Senior Landscape Architect, Coe Design
Landscape Architecture Ltd

Debbie Tullet
Research Officer, The Portland Association

Paula Klaentschi BA(Hons) Dip Arch Retired
Architect
Stop Portland Waste Incinerator

INTERESTED PERSONS:

Brian Heatley

Local (Dorset) Councillor

Clare Sutton

Local (Dorset) Councillor

Barry Walsh

Local Resident

Jan Edward Bergman

Weymouth Town Councillor

Guy Dickinson

Chair, Dorset CPRE

Kate Wheller

Mayor of Weymouth

David Harris

Leader of Weymouth Town Council

Lucy Hamilton

Weymouth Town Councillor

Giovanna Lewis

Local (Dorset) Councillor

Nigel Stevens

Local Resident

Paul Kimber

Local (Dorset and Portland) Councillor

John Orrell

Local (Dorset and Weymouth) Councillor

Shlomo Downen and Josh Downen	UKWIN
Amanda Newby de Saulles	Local Resident
Janet Davis	Dorset Ramblers
Catherine Bennett	Portland Biodiversity Group
Chris Moyle	Chair, Weymouth and Portland Civic Society
Ian Barrett	Weyfish
Douglas Pigg	Portland Youth Council
Rebecca Kemp	Local Resident
Amanda Wallwork	Local Resident
Gerry Hinde	Local Resident
Amanda Frankham-Hughes	Local Resident
Dr John Webb	
Etienne Stott MBE	Local Resident
Carralyn Parkes	Mayor of Portland
Rocca Holly-Nambi	Director, Beeside
Kathryn Pearce	Local Resident
Hilary Breakwell	Local Resident
Dr Tony Dobbs	Local Resident
Avril Harris	Swanage Town Councillor
Laura Baldwin	Local Resident
Esmari Steencamp	Local Resident
Finn Caldecoat	Local Resident
Professor Tony Walter	Local Resident
Penny Quilter	Local Resident
Gillian Pearson	Local Resident
Kim Wilcocks	Local Resident

Jonathan Tweddle	Local Resident
Rob Hughes	Dorset and Portland Councillor
Lesley Saunders	Local Resident
Andrew Matthews	Chair, Portland Community Partnership
Steve Coggins	Local Resident
Andrew McQueen	Local Resident
Pauline Scott	Local Resident
Seb Brooke	Eden Portland Project

Annex B: DOCUMENTS

CORE DOCUMENTS

CD1: Original Application Drawings

- CD1.01 Site Location Plan
- CD1.02 Existing Site Plan
- CD1.03 Existing Topographical Plan
- CD1.04 Proposed Site Plan
- CD1.05 Proposed Aerial Roof Plan
- CD1.06 Proposed Floor Plans
- CD1.07 Proposed Floor Plans
- CD1.08 Proposed Floor Plans – Main Building-Plant Control Area
- CD1.09 Proposed Floor Plan -Office Building
- CD1.10 Proposed Elevations Sheet 1 – Main Plant Building
- CD1.11 Proposed Elevations Sheet 2 – Main Plant Building and T
- CD1.12 Proposed Elevations Sheet 3 – Office Building
- CD1.13 Proposed Elevations Sheet 1 – Main Plant
- CD1.14 Proposed Sections Sheet 1 – Main Plant Building
- CD1.15 Proposed Sections Sheet 2 – Boiler House & RDF
- CD1.16 Proposed Landscape Strategy
- CD1.17 Powershore Layout
- CD1.18 Powershore Details

CD1: Original Application Documents

- CD1.19 Covering Letter
- CD1.20 Application Form
- CD1.21 Design and Access Statement Part 1
- CD1.21 Design and Access Statement Part 2
- CD1.21 Design and Access Statement Part 3
- CD1.21 Design and Access Statement Part 4
- CD1.21 Design and Access Statement Part 5
- CD1.21 Design and Access Statement Part 6
- CD1.22 Planning Statement

CD1.23	Comparative Assessment against Waste Local Plan
CD1.24	Waste Need Statement
CD1.25	Shadow Appropriate Assessment
CD1.26	Pre-Application Consultation Report
CD1.27	CHP Plan (including R1 status confirmation)
CD1.28	Noise Impact Assessment
CD1.29	Lighting Statement
CD1.30	Flood Risk Assessment and Drainage Study
CD1.31	Energy Need Statement
CD1.32	Shore Power Strategy Report
CD1.33	Facility Utilities Assessment
CD1.34	Framework Site Waste Management Plan
CD1.35	Achieving Carbon Neutrality Report
CD1.36a	ES Non Technical Summary
CD1.36b	ES Chapter 1: Introduction
CD1.36c	ES Chapter 2: Site Description and Development Proposals
CD1.36d	ES Chapter 3: Environmental Issues and Methodology
CD1.36e	ES Chapter 4: Air Quality
CD1.36f	ES Chapter 5: Carbon Balance and Greenhouse Gas Emissions
CD1.36g	ES Chapter 6: Community Health and Economic Benefits
CD1.36h	ES Chapter 7: Cultural Heritage
CD1.36i	ES Chapter 8: Ground Conditions and Water Quality
CD1.36j1	ES Chapter 9: Landscape, Seascape and Visual Effects Part 1
CD1.36j2	ES Chapter 9: Landscape, Seascape and Visual Effects Part 2
CD1.36j3	ES Chapter 9: Landscape, Seascape and Visual Effects Part 3
CD1.36k	ES Chapter 10: Natural Heritage
CD1.36l	ES Chapter 11: Traffic and Transport
CD1.36m	ES Chapter 12: Waste
CD1.36n	ES Chapter 13: World Heritage Site
CD1.36o	ES Chapter 14: Summary Tables
CD1.36p	ES Glossary

CD1.37a	ES TApdx A: Scoping
CD1.37b	ES TApdx B: Competent Experts Involved in the Preparation of the ES
CD1.37c	ES TApdx C: Framework CEMP
CD1.37d	ES TApdx D1: Air Quality Baseline Analysis
CD1.37e	ES TApdx D2: Air Quality Process Emissions Modelling
CD1.37f	ES TApdx D3: Air Quality Roads Emissions Modelling
CD1.37g	ES TApdx E: Carbon Balance
CD1.37h	ES TApdx F1: Economic Effects – Socio- Economic Baseline
CD1.37i	ES TApdx F2: Economic Effects – Economic Impact Assessment
CD1.37j	ES TApdx G: Health Risk Assessment and Health Impact Assessment
CD1.37k	ES TApdx H: Cultural Heritage
CD1.37l1	ES TApdx I1: Ground Conditions Technical Assessment Part 1
CD1.37l2	ES TApdx I1: Ground Conditions Technical Assessment Part 2
CD1.37m	ES TApdx I2: Water Quality Technical Assessment
CD1.37n	ES TApdx J: Landscape, Seascape and Visual Effects
CD1.37o	ES TApdx K1: Natural Heritage Ecological Assessment
CD1.37p	ES TApdx K2: Natural Heritage Winter Birds Results
CD1.37q	ES TApdx K3: Natural Heritage Invertebrate Survey
CD1.37r1	ES TApdx L1: Traffic and Transport – TA Part 1
CD1.37r2	ES TApdx L1: Traffic and Transport – TA Part 2
CD1.37s	ES TApdx L2: Traffic and Transport – Construction Traffic
CD1.37t	ESTApdx M: World Heritage Site

CD2: Post-Submission Documents

Documents Submitted October 2020

CD2.01	Dorset Natural Environment Team Biodiversity Plan
CD2.02	DBAP Certificate of Approval

Documents Submitted August 2021

CD2.03	Supplementary Planning Supporting Statement
CD2.04	Consultation Response Summary Document
CD2.05	Updated Shadow Appropriate Assessment Part 1
CD2.05	Updated Shadow Appropriate Assessment Part 2

CD2.06	Design and Access Statement Addendum Part 1
CD2.06	Design and Access Statement Addendum Part 2
CD2.07	District Heating Report
CD2.08	Updated Shore Power Strategy Report
CD2.09	Waste Need Paper
CD2.10	Post Combustion Capture Plant – Pre-Feasibility Assessment
CD2.11	Flood Risk Assessment Addendum
CD2.12	Incinerator Bottom Ash (IBA) Paper
CD2.13	Grid Connection Paper
CD2.14	BS4142 Noise Impact Assessment
CD2.15	Fire Prevention Plan Part 1
CD2.15	Fire Prevention Plan Part 2
CD2.16	Access Path Strategy
CD2.17a	ES Addendum: Main Report
CD2.17b	ES Addendum Appendix 1.1: Dorset Council letter of 30 April 2021
CD2.17c	ES Addendum Appendix 2.1: Potential District Heating Routes
CD2.17d	ES Addendum Appendix 3.1: Air Quality – Additional Dispersion Modelling
CD2.17e	ES Addendum Appendix 3.2: Air Quality – Update Tables for Technical Appendix D2
CD2.17f	ES Addendum Appendix 3.3: Air Quality – Modelling Results at Discrete Receptor Locations
CD2.17g	ES Addendum Appendix 4.1: Updated Carbon Assessment
CD2.17h	ES Addendum Appendix 5.1: Human Health Risk Assessment Addendum
CD2.17i	ES Addendum Appendix 5.2: Health Impact Assessment Addendum
CD2.17j	ES Addendum Appendix 6.1: Framework Heritage Mitigation Strategy
CD2.17k	ES Addendum Appendix 7.1: Preliminary Slope Stability Assessment
CD2.17l	ES Addendum Appendix 8.1: Plume Visibility Modelling Results
CD2.17m	ES Addendum Appendix 8.2: Replacement ES Figures 9.16 and 9.17 and new ES Figures 9.38 to 9.47
CD2.17n	ES Addendum Appendix 9.1: DERC Report
CD2.17o	ES Addendum Appendix 9.2: Phase 1 Walkover of East Weare Heritage Features

CD2.17p ES Addendum Appendix 9.3: Potential Marine Impacts of the Proposed Portland ERF

Documents Submitted November 2012

CD2.18 ES Chapter 6: Community, Health and Economic Effects Erratum Version

CD2.19 ES TApdx D2: Air Quality Process Emissions Modelling Erratum Version

CD2.20 ES TApdx G: Health Risk Assessment and Health Impact Assessment Erratum Version

CD2.21: ES Addendum Main Report Erratum Version

CD2.22: ES Addendum Appendix 3.1: Air Quality – Additional Dispersion Modelling Erratum Version

Documents Submitted December 2021

CD2.23 ES Addendum Main Report Second Erratum Version

CD2.24 ES Addendum Appendix 3.1: Air Quality – Additional Dispersion Modelling 2nd Erratum Version

Documents Submitted January 2022

CD2.25 Updated Proposed Elevations – Sheet 1: Main Plant Building

CD2.26 Updated Proposed Elevations – Sheet 2: Main Plant Building and Transformer Compound

CD2.27 Updated (2) Shadow Appropriate Assessment Part 1

CD2.27 Updated (2) Shadow Appropriate Assessment Part 2

CD2.28 Statement of Common Ground – Ecology Enhancements

CD2.29a ES Second Addendum Main Report

CD2.29b ES Second Addendum Appendix 1.1: Dorset Council's Letter of 26 January 2022

CD2.29c ES Second Addendum Appendix 3.1: Diesel Generator

CD2.29d ES Second Addendum Appendix 3.2: Air Quality Modelling Uncertainty

CD2.29e ES Second Addendum Appendix 3.3: Air Quality PM2.5 Clarification Response

CD2.29f ES Second Addendum Appendix 3.4: Air Quality Additional Dispersion Modelling

CD2.29g ES Second Addendum Appendix 3.5: Air Quality Updated Appendix D3: Roads Emissions Modelling

CD2.29h ES Second Addendum Appendix 5.1: Health Impacts of Dioxins Using the TDI Approach

CD2.29h ES Second Addendum Appendix 5.2: Health Impacts of Metals Using the TDI Approach

CD2.29j ES Second Addendum Appendix 6.1: Replacement Drawing 1081-02-38: Proposed Access Route

CD2.29k ES Second Addendum Appendix 9.1: Potential Marine Impacts

CD2.29l ES Second Addendum Appendix 10.1: TA Addendum

Documents Submitted March 2022

CD2.30 ES Addendum Appendix 3.3: Air Quality Modelling Results at Discrete Receptor Locations Erratum

CD2.31 ES Second Addendum Appendix 3.4: Air Quality Additional Dispersion Modelling Erratum

CD2.32 Updated (2) Shadow Appropriate Assessment Part 1 Erratum

CD2.33 Clarifications in Response to AQC Review dated 22 February 2022

CD2.34 Clarification Response to EA on Emergency Diesel Generator Modelling

Documents Submitted November 2022

CD2.35 Updated Shadow Appropriate Assessment – Working Draft

Documents Submitted February 2023

CD2.36 Access Path Strategy Paper – with Clarifications

CD2.37 Landscape Response to Dorset Landscape Officer

CD2.38 Proposed ERF Proposal Summary – Final

Documents Submitted March 2023

CD2.39 East Weare Camp and Military Battery Structures – Review of Proposed Mitigation

CD3: Post-Determination Documents Submitted with Appeal

CD3.01 Updated (Rev.B) Proposed Elevations – Sheet 1 Main Building

CD3.02 Updated (Rev.B) Proposed Elevations – Sheet 2 Main Plant Building and Transformer Compound

CD3.03 Updated (Rev.A) Proposed Elevations – Sheet 3 Office Building

CD3.04 Updated (Rev.A) Proposed Site Elevation

CD3.05 Updated Access Path Strategy Paper (August 2023)

CD4: Key Consultation Responses

Responses to original September 2020 application consultation

CD4.01 DC AONB Officer

CD4.02 DC Archaeology Officer

CD4.03 DC Conservation Officer

CD4.04	DC Flood Risk Management
CD4.05	DC Landscape Officer
CD4.06	BCP Council
CD4.07	Environment Agency
CD4.08	Highways England
CD4.09	Historic England
CD4.10	HSE
CD4.11	Jurassic Coast Trust
CD4.12	Jurassic Coast Trust (2)
CD4.13	MoD
CD4.14	MoJ
CD4.15	Marine Management Organisation
CD4.16	Natural England
CD4.17	New Forest DC
CD4.18	Office for Nuclear Regulation
CD4.19	Owermoigne Parish Council
CD4.20	Portland Town Council
CD4.21	Public Health Dorset
CD4.22	Public Health England
CD4.23	Ramblers Association
CD4.24	Wessex Water
CD4.25	Weymouth Town Council
CD4.26	Councillor Rob Hughes (Portland)
CD4.27	Councillor Brian Heatley (Rodwell and Wyke)
CD4.28	Councillor Jon Orrell (Melcombe Regis)
CD4.29	Councillor Clare Suttin (Rodwell and Wyke)
CD4.30	Dorset CPRE
CD4.31	Osmington Parish Council
CD4.32	Councillor Paul Kimber
CD4.33	DC Environmental Health Officer
CD4.34	Dorset Waste Partnership

CD4.35	Chickerell Town Council
CD4.36	Richard Drax MP
Responses to August 2021 Regulation 25 (Further Information) Consultation	
CD4.37	DC AONB Officer
CD4.38	DC Conservation Officer
CD4.39	DC Contamination Officer
CD4.40	DC Emergency Planning Officer
CD4.41	DC Highways Officer
CD4.42	DC Highways Officer (2)
CD4.43	DC Flood Risk Management
CD4.44	Environmental Health Officer – Environmental Permit
CD4.45	Dorset and Wiltshire Fire and Rescue
CD4.46	Environment Agency
CD4.47	Hampshire County Council
CD4.48	Highways England
CD4.49	Historic England
CD4.50	HSE
CD4.51	Jurassic Coast Trust
CD4.52	MoD
CD4.53	Natural England
CD4.54	Office for Nuclear Regulation
CD4.55	Portland Town Council
CD4.56	Public Health England
CD4.57	Public Health England (2)
CD4.58	Public Health England (3)
CD4.59	Tetra Tech Landscape obo DC
CD4.60	Weymouth Town Council
CD4.61	MoJ
CD4.62	The National Trust
CD4.63	Councillor Jon Orrell (Melcombe Regis)
CD4.64	Public Health Dorset

- CD4.65 Ramblers Association
- CD4.66 Dorset Wildlife Trust
- CD4.67 Councillor Brian Heatley (Rodwell and Wyke)
- CD4.68 Councillor Clare Sutton (Rodwell and Wyke)
- CD4.69 Councillor Rob Hughes

Response to January 2022 Regulation 25 (Further Information) Consultation

- CD4.70 DC Contamination Officer
- CD4.71 DC Environmental Health Officer
- CD4.72 DC Public Rights of Way Officer
- CD4.73 South Somerset District Council
- CD4.74 Dorset and Wiltshire Fire and Rescue
- CD4.75 Historic England
- CD4.76 Natural England
- CD4.77 Public Health England
- CD4.78 DC Ecology
- CD4.79 Portland Town Council
- CD4.80 Environment Agency
- CD4.81 DC Highways Officer
- CD4.82 National Highways
- CD4.83 Marine Management Organisation
- CD4.84 Wessex Water
- CD4.85 Councillor Rob Hughes (Portland)

Subsequent Consultation Responses Late 2022 and 2023

- CD4.86 DC Conservation Officer
- CD4.87 Historic England (1)
- CD4.88 Historic England (2)
- CD4.89 Historic England (3)
- CD4.90 Jurassic Coast Trust
- CD4.91 DC Landscape Officer (1)
- CD4.92 DC Landscape Officer (2)
- CD4.93 Natural England (1)

- CD4.94 Natural England (2)
- CD4.95 Natural England (3)
- CD4.96 Cushman & Wakefield for the MoJ
- CD4.97 UNESCO
- CD4.98 DC Conservation Officer
- CD4.99 Natural England (4)

CD5 Committee Reports and Papers

- CD5.01 Portland ERF Dorset Council Strategic and Technical Planning Committee Report
- CD5.02 Portland ERF Dorset Council Strategic and Technical Planning Committee Update Sheet
- CD5.03 Portland ERF Dorset Council Strategic and Technical Planning Committee Minutes

CD6 Decision Notice

- CD6.01 Portland ERF Refusal Notice

CD7 The Development Plan

- CD7.01 Bournemouth, Christchurch, Poole and Dorset Waste Plan 2019
- CD7.02 West Dorset, Weymouth and Portland Local Plan 2011-2031
- CD7.03 Bournemouth, Dorset and Poole Minerals Strategy 2014
- CD7.04 Portland Neighbourhood Plan 2017-2031
- CD7.05 Dorset Council Local Plan Options Consultation Document – Volume 2 – Central Dorset

CD8 Other Local Policy Guidance

- CD8.01 Bournemouth, Dorset and Poole Renewable Energy Strategy to 2020
- CD8.02 Future Portland – Portland Economic Vision and Plan
- CD8.03 A Strategic Vision for Dorset
- CD8.04 West Dorset Economic Growth Strategy
- CD8.05 Long Term Economic Plan for the South-West

CD9 National Policy and Practice Documents

- CD9.01 National Planning Policy Framework 2023
- CD9.02 National Planning Policy for Waste 2014
- CD9.03 Overarching National Policy Statement for Energy 2023 (EN-1)

CD9.04	National Policy Statement for Renewable Energy Infrastructure 2023 (EN-3)
CD9.05	Draft National Policy Statement for Energy
CD9.06	Draft National Policy Statement for Renewable Energy Infrastructure
CD9.07	Waste Management Plan for England
CD9.08	Energy from Waste – a Guide to the Debate
CD9.09	Our Waste, Our Resources – A Strategy for England
CD9.10	Energy White Paper – Powering Our Net Zero Future
CD9.11	The UK Low Carbon Transition Plan
CD9.12	UK Draft Integrated National Energy and Climate Plan
CD9.13	The Carbon Plan – Delivering Our Low Carbon Future
CD9.14	The Clean Growth Strategy
CD9.15	A Green Future – Our 25 Year Plan to Improve the Environment
CD9.16	National Infrastructure Plan 2014
CD9.17	Fixing the Foundations – Creating a More Prosperous Nation
CD9.18	Net Zero Strategy – Build Back Greener
CD9.19	Maritime 2050 – Navigating the Future
CD9.20	Clean Maritime Plan
CD9.21	National Planning Practice Guidance
CD9.21a	National Planning Practice Guidance – Historic Environment
CD9.21b	National Planning Practice Guidance – Noise
CD9.22	Progress in Adapting to Climate Change
CD9.23	Progress in Reducing UK Emissions 2023 Report to Parliament
CD9.24	The Environmental Improvement Plan
CD9.25	Resource Efficiency and Waste Reduction Targets
CD9.26	Energy Recovery for Residual Waste – a Carbon Based Modelling Approach
CD9.27	Conservation Principles: Policy and Guidance
CD9.28	Historic Environment Good Practice Advice in Planning Note 2
CD9.29	Historic England Advice Note 2: Making Changes to Heritage Assets
CD9.30	Historic Environment Good Practice Advice in Planning Note 3
CD9.31	Historic England Advice Note 12

- CD9.32 Resource Efficiency and Waste Reduction Targets – Detailed Evidence Report
- CD9.33 The Waste Prevention Programme for England – Maximising Resources, Minimising Waste
- CD9.34 UK Marine Policy Statement
- CD10 Relevant Appeal Decisions/Judgments**
- CD10.01 Northacre ERF Appeal Decision APP/Y3940/W/22/3302008
- CD11 Inquiry Documents**
- CD11.01 Portland Energy Recovery Facility (ERF) Statement of Case
- CD11.02 Portland Energy Recovery Facility (ERF) Supplementary Statement of Case
- CD11.03 Dorset Council: Statement of Case of the Waste Planning Authority
- CD11.04 Stop Portland Waste Incinerator and the Portland Society Rule 6(6) Joint Statement of Case
- CD11.05 Statement of Common Ground Final
- CD11.06 Not used
- CD11.07 Case Management Conference Note
- CD11.08 Updated Carbon Assessment
- CD11.09 Dorset Council Outline Statement on Waste Need
- D12 Other Relevant Information**
- CD12.01 UK Energy from Waste Statistics 2021
- CD12.02 UK Energy from Waste Statistics 2022
- CD12.03 Dorset Population Statistics
- CD12.04 BCP Population Statistics
- CD12.05 Not used
- CD12.06 WHS Nomination Document
- CD12.07 Guidance and Toolkit for Impact Assessments UNESCO
- CD12.08 Navitus Bay Wind Park – Examining Authority’s Report of Findings
- CD12.09 Jurassic Coast Partnership Plan
- CD12.10 Portland Green Energy Plant LVIA
- CD12.11 The Impact on Health of Emissions to Air from Municipal Waste Incinerators
- CD12.12 Ghosh et al 2018: Foetal growth, stillbirth, infant mortality, and other birth outcomes near UK municipal waste incinerators

- CD12.13 Douglas et al 2017: Estimating Particulate Exposure from Modern Municipal Waste Incinerators in Great Britain
- CD12.14 Freni-Starrantino et al 2019: Bayesian spatial modelling for quasi-experimental designs – an interrupted time series study
- CD12.15 Parkes et al 2019: Risk of congenital abnormalities near municipal waste incinerators in England and Scotland
- CD12.16 Review of Landfill Emissions Modelling
- CD12.17 Review and revision of empirical critical loads of nitrogen for Europe
- CD12.18 Portland Energy Recovery Facility Report to Inform Appropriate Assessment
- CD12.19 Stage 1 and Stage 2 Habitat Regulations Assessment
- CD12.20 IEMA Guidelines for the Environmental Assessment of Road Traffic
- CD12.21 Developing the UK Emissions Trading Scheme (UK ETS)
- CD12.22 Developing the UK Emissions Trading Scheme – Main Government Response
- CD12.23 National Design Guide 2021
- CD12.24 National Character Area Profiles – Portland
- CD12.25 Dorset AONB Management Plan
- CD12.26 Dorset Landscape Character Assessment
- CD12.27 Dorset AONB Landscape Character Assessment
- CD12.28 Dorset Coast Landscape and Seascape Character Assessment 2010
- CD12.29 West Dorset Landscape Character Assessment 2009
- CD12.30 Weymouth and Portland Landscape Character Assessment 2013
- CD12.31 Isle of Portland Heritage and Character Assessment
- CD12.32 Waste Plan Sustainability Appraisal Report
- CD12.33a Committee Report 8-21-0207-FUL - Eco Composting Ltd ERF 2021
- CD12.33b Decision Notice 8-21-0207-FUL – Eco Composting Ltd ERF 2021
- CD12.34 Inspector’s Report on Dorset Waste Plan
- CD12.35 Background Paper 1 – Waste Arisings and Projections
- CD12.36 DEFRA Future Waste Arisings – Eunomia Report 2022
- CD12.37 Commercial and Industrial Waste Survey 2009 – Final Report
- CD12.38 Third Annual Monitoring Report Resource & Waste Strategy
- CD12.39 Excise Notice LFT1 – A General Guide to Landfill Tax

- CD12.40 Technical Note submitted to the Medworth DCO Examination
- CD12.41 Annual Monitoring Report 2020 – Minerals and Waste
- CD12.42 Market Due Diligence – Northacre EfW Merchant Waste
- CD12.43 The Second National Infrastructure Assessment
- CD12.44 Waste Infrastructure Technology Mix – Ricardo for NIC
- CD12.45 The Environmental Targets (Residual Waste) (England) Regulations 2023
- CD12.46 Revue and Evaluation of Heritage Coasts in England
- CD12.47 Communities and Local Government Circular 07-2009 – Circular on the Protection of World Heritage Sites
- CD12.48 Operational Guidelines for the Implementation of the World Heritage Convention
- CD12.49 Periodic Report – Second Cycle Section II – Dorset and East Devon Coast
- CD12.50 Consistency in Household and Business Recycling in England – Government response 25 October 2023
- CD12.51 South-West Exeter DH Network and Energy Centre Design
- CD12.52 Appraisal of Conservation Areas in Portland
- CD12.53 C-SCOPE Socio-Economic Study of the Dorset Marine Management Area
- CD12.54 Combustion energy from waste examples for your adapting to climate change risk assessment
- CD12.55 Forgotten Towns – Weymouth, Portland, and the coastal economy
- CD12.56 Dorset’s Environmental Economy – Placing an Economic Value on the Jurassic Coast
- CD12.57 National Value of UNESCO Designations to the UK
- CD12.58 Navitus Bay – Secretary of State Decision Letter and Statement of Reasons
- CD12.59 Noise and Soundscape Action Plan
- CD12.60 Preparing World Heritage Nominations
- CD12.61 The State of Natural Resources Report (SoNaRR) – Annex Acronyms Glossary of Terms
- CD12.62 Tranquillity – an overview - Technical Information Note 012017 (revised)
- CD12.63 Tranquillity Mapping – Developing a Robust Methodology for Planning Support

- CD12.64 Good Practice Guidance for Assessing the GHG Impacts of Waste Incineration
- CD12.65 Incineration Overcapacity Annex
- CD12.66 Understanding Tranquillity CRN 92
- CD12.67 DCMS Letter 23 October 2023 – Response to SPWI
- CD12.68 Portland Energy Recovery Facility CHP-Ready Assessment
- CD12.69 MVV Environment Ltd – Statement to Inspector
- CD12.70 Portland Bunkers (13 October 2023) – Interested party Statement to Inspector
- CD12.71 PPL objection to Canford EfW planning application (29 September 2023)
- CD12.72 Environment Act 2021
- CD12.73 Planning (Listed Buildings and Conservation Areas) Act 1990
- CD12.74 Independent Review of the Role of Incineration in the Waste Hierarchy in Scotland
- CD12.75 Commercial Renewable Energy Development and the Historic Environment – HE Advice Note 15
- CD12.76 Portland Port Harbour Revision Order 2010
- CD12.77 Cruise Ship Schedules for 2023 and 2024
- CD12.78 Near Elim Biodegradable Waste to Landfill CfE
- CD12.79 Historic England Appeal Representation
- CD12.80 PAC Waste Committees Parliament pp1-8 and Web Extract Summary
- CD12.81 Portland Port Ltd Representation – 23 November 2020
- CD12.82 WRAP 2022-23 Gate Fees Report
- CD12.83 EN010083-001007-EN010083 – Secretary of State Decision Letter
- CD12.84 EN010083-001012-EN010083 – Final Recommendations Report
- CD12.85 MVV on PPL Representation Response November 2023
- CD12.86 MVV on PPL Representation Response November 2023 Addendum

PARTIES' PROOFS OF EVIDENCE, APPENDICES, AND REBUTTALS

Appellant

PPF01	Mr Roberts PoE: Planning
PPF02	Mr Roberts PoE: Planning – Appendices
PPF03	Mr Roberts Summary PoE
PPF04	Mr Mason PoE: Landscape
PPF05a	Mr Mason PoE: Landscape Appendices JM1, JM2, JM3, and JM6
PPF05b	Mr Mason PoE: Landscape Appendix JM4
PPF05c	Mr Mason PoE: Landscape Appendix JM5
PPF06	Mr Mason Summary PoE
PPF07	Dr Filmer-Sankey PoE: Heritage
PPF08	Dr Filmer-Sankey PoE: Heritage Appendices
PPF09	Dr Filmer Sankey Summary PoE
PPF10	Mr Othen PoE: Climate Change, Air Quality and Permit
PPF11a	Mr Othen PoE: Climate Change, Air Quality and Permit – Appendices SO1-SO5
PPF11b	Mr Othen PoE: Climate Change, Air Quality and Permit – Appendices SO6-SO9
PPF12	Mr Othen Summary PoE
PPF13	Mr Elliot PoE: Socioeconomic Impact Assessment
PPF14	Mr Elliott PoE: Socioeconomic Impact Assessment – Appendices
PPF15	Mr Elliott Summary PoE
PPF16	Mr Awcock PoE: Transport
PPF17	Mr Awcock PoE: Transport – Appendices
PPF18	Mr Awcock Summary PoE
PPF19	Mr Picksley PoE: HRA
PPF20	Mr Picksley PoE: HRA – Appendices
PPF21	Mr Picksley Summary PoE
R01	Mr Roberts Rebuttal PoE
R02a	Mr Mason Rebuttal PoE (Visual)
R02b	Mr Mason Rebuttal PoE (Visual Assessment Comparison Table)
R02c	Mr Mason Rebuttal PoE (Overlay Zoom)

- R02d Mr Mason Rebuttal PoE (ZTV Overlay 10km Study Area)
- R03 Dr Filmer-Sankey Rebuttal PoE
- R04 Mr Othen Rebuttal PoE
- R05 Mr Elliot Rebuttal PoE

Dorset Council

- PPF22 Ms Hart PoE: Planning
- PPF23 Mr Williamson PoE: Landscapae
- PPF24 Mr Williamson PoE: Landscape – Appendices
- PPF25 Mr Williamson Summary PoE
- PPF26 Ms Kelly PoE: Heritage
- PPF27 Ms Kelly PoE: Heritage – Appendices
- PPF28 Mr Potter PoE: Waste plus Appendices 1 and 2
- PPF29 Mr Potter PoE: Waste – Appendix 3
- PPF30 Mr Potter PoE: Waste – Figure 1 LACW Flows and Adopted Waste Plan Spatial Strategy
- PPF31 Mr Norton PoE: Energy plus Appendices 1 and 2
- PPF32 Mr Norton PoE: Energy – Appendix 3
- R06 Ms Hart Rebuttal PoE
- R07 Mr Williamson Rebuttal PoE
- R08 Mr Potter Rebuttal PoE
- R09 Mr Norton Rebuttal PoE

Rule 6(6) Parties

- PPF33 The Portland Association PoE Waste and Planning
- PPF34 The Portland Association PoE Waste and Planning – Appendices
- PPF35 Coe Design Landscape Architecture PoE: Landscape
- PPF36 Ms Burley PoE: Heritage
- PPF37 Ms Burley Summary PoE
- PPF38 Stop Portland Waste Incinerator PoE: Climate
- PPF39 The Portland Association PoE: Traffic, Amenity and Socioeconomics
- PPF40 The Portland Association Summary PoE
- PPF41 The Portland Association PoE: Traffic, Amenity and Socioeconomics – Appendices

PPF42 Sharps Acoustics PoE
R10 The Portland Association Rebuttal PoE (Socioeconomics)

INQUIRY DOCUMENTS

AD01 Appellant's Opening Statement
AD02 Rule 6 Parties' Opening Statement
AD03 Council's List of Appearances
AD04 Council's Opening Statement
AD05 Appellant's amendment to Table 5 of Mr Potter's Rebuttal PoE (R08)
AD06 Representation from Ms C Green (R6 landscape evidence)
AD07 Proposed Site Plan at Canford Magna and proposed development components
AD08 Notice of variation and consolidation to Permit at Canford Magna MBT
AD09 Canford Magna MBT 2022 – all removals
AD10 Draft CIL Compliance Statement
AD11 Draft Obligation under s.106
AD12 Draft Conditions
AD13 Appellant's Supplementary Note on 3P Submissions
AD14 UKWIN response to AD13
AD15 District Heating Connection Plan
AD16 Appellant's Closing Submission
AD17 Council's Closing Submission
AD18 Rule 6 Parties' Closing Submission
AD19 Appellant's Supplementary Note on Water Supply (response to Mr Gwillim AD63)
AD20 *R (Checkley Campaign) v Mole Valley* [2014] EWCA Civ 567
AD21 Extracts from Tolvik ESA Report UK Residual Waste 2030 Market Review
AD22 Proposed Canford Magna ERF – Dorset Council consultation response
AD23 Submissions of Ms Newby de Saulles
AD24 Submissions of Ms Wallwork
AD25 Submissions of Ms Frankham-Hughes
AD26 Submissions of Mr Matthews – Portland Community Partnership

AD27	Submissions of Mr McQueen
AD28	Submissions of Mr Walsh
AD29	Submissions of Ms Parkes – Mayor of Portland
AD30	Submissions of Mr Moyle – Weymouth Civic Society
AD31	Submissions of Councillor Harris
AD32	Submissions of Councillor Heatley
AD33	Submissions of Councillor Sutton
AD34	Submissions of Councillor Lewis
AD35	Submissions of Councillor Kimber
AD36	Submissions of Councillor Hughes
AD37	Submissions of Ms Gill
AD38	Submissions of Ms Stott
AD39	Submissions of Mr Finn Caldecoat
AD40	Submissions of Mr Sterritt
AD41	Submissions of Mr Hindle
AD42	Submissions of Ms Pearson
AD43	Submissions of Mr Dickinson - CPRE
AD44	Submissions of Ms Sofaer – Portland Sculpture and Quarry Trust
AD45	Submissions of Ms Berry
AD46	Submissions of Ms Breakwell
AD47	Submissions of Ms Collison
AD48	Submissions of Ms Davis – Ramblers Association
AD49	Submissions of Mr Jackson
AD50	Submissions of Mr John Webb (1)
AD51	Submissions of Mr John Webb (2)
AD52	Submissions of Mr John Webb (3)
AD53	Submissions of Mr John Webb (4)
AD54	Submissions of Mr John Webb (5)
AD55	Submissions of Mr Twedde
AD56	Submissions of Ms Pearce
AD57	Submissions of Ms Wilcocks

AD58	Submissions of Ms Baldwin
AD59	Submissions of Ms Saunders
AD60	Submissions of Ms Anderson
AD61	Submissions of Mr Toft
AD62	Submissions of Ms Quilter
AD63	Submissions of Mr Gwillim
AD64	Submissions of Portland Youth Council
AD65	Submissions of Ms Kemp
AD66	Submissions of Mr Cheeseman
AD67	Submissions of Mr Coggins
AD68	Submissions of 'Steve'
AD69	Submissions of Ms Barker
AD70	Submissions of Mr Dobbs (1)
AD71	Submissions of Mr Dobbs (2)
AD72	Submissions of Mr Dobbs (3)
AD73	Submissions of Mr Dobbs (4)
AD74	Submissions of Mr Walter
AD75	Presentation from UKWIN
AD76	List of References for UKWIN Presentation
AD77	Un-named written submission
AD78	Un-named written submission
AD79	Submissions of Weyfish, and Hatch, Catch and & Weyfish Boat Co.
AD80	Submissions of Weymouth Town Council (Councillors Harris [Leader], Wheller, Hamilton and Bergman)
AD81	Appellant's viewpoint verification note
AD82	Final list of suggested conditions (21 December 2023)
AD83	Completed Obligation under s.106 (9 February 2024)
AD84	Final CIL Compliance Schedule (9 February 2024)
AD85	Post-Inquiry submissions about DEFRA/EA correspondence

Annex C: Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1081-01-07 Issue 04 - Site Location Plan; 262701B-TOR-XX-XX-DR-A-P002 - Existing Site Plan; 262701B-TOR-XX-XX-DR-A-P003 - Existing Topographical Plan; 262701B-TOR-XX-XX-DR-A-P004 - Proposed Site Plan; 262701B-TOR-XX-XX-DR-A-P005 - Proposed Aerial Roof Plan; 262701B-TOR-XX-XX-DR-A-P006 - Proposed Floor Plans; 262701B-TOR-XX-XX-DR-A-P007 - Proposed Floor Plans; 262701B-TOR-XX-XX-DR-A-P008 - Proposed Floor Plans: Main Building: Plant Control Area; 262701B-TOR-XX-XX-DR-A-P009 - Proposed Floor Plans: Office Building; 262701B-TOR-XX-XX-DR-A-P010 - Updated (rev B) Proposed Elevations - Sheet 1 Main Plant Building; 262701B-TOR-XX-XX-DR-A-P011 - Updated (rev B) Proposed Elevations - Sheet 2 Main Plant Building & Transformer Compound; 262701B-TOR-XX-XX-DR-A-P012 - Updated (rev A) Proposed Elevations - Sheet 3 Office Building; 262701B-TOR-XX-XX-DR-A-P013 - Updated (rev A) Proposed Site Elevation; 262701B-TOR-XX-XX-DR-A-P014 - Proposed Sections - Sheet 1 Long Section through Main Plant Building; 262701B-TOR-XX-XX-DR-A-P015 - Proposed Sections - Sheet 2 Long Section through Boiler House and RDF; 262701B-TOR-XX-XX-DR-L-P016 - Proposed Landscape Strategy; 1081-02-32 Issue 05 - Powershore Layout; and 1081-02-33 Issue 05 - Powershore Details.
- 3) The developer shall notify the Waste Planning Authority in writing of the date of the start of each material phase of development at least 7 days before each phase commences. The material phases of development shall comprise: Phase A: the commencement of development; Phase B: the commencement of commissioning trials ('commissioning trials' being operations in which waste is processed under specified trials to demonstrate that the development complies with its specified performance); and Phase C: the date when the development becomes operational ('operational' being the point at which commissioning trials have been successfully completed and when the plant begins the treatment of waste for any purpose other than commissioning).
- 4) Before the development enters Phase A, a schedule of materials, finishes, and samples to be used for the external walls (including the profiled steel sheet cladding with louvres to the lower 6m of the walls), roofs, flue stack, and air cooled condenser structure of the proposed building(s), shall be submitted to and approved in writing by the Waste Planning Authority. The development shall be constructed in accordance with the approved details and retained as such thereafter.
- 5) Before the development enters Phase A, final details of the design of the shore power related switch gear, including site layout, appearance and any enclosures, pursuant to drawings Powershore Layout (1081-02-32 Issue 05) and Powershore Details (1081-02-33 Issue 05), shall be submitted to and approved in writing by the Waste Planning Authority. The development shall be constructed in accordance with the approved details and retained as such thereafter.
- 6) Before the development enters Phase A, a Landscaping Scheme with hard and soft landscape proposals, in accordance with the approved Landscape Strategy, (262701B-TOR-XX-XX-DR-L-P016), shall be submitted to and approved in

writing by the Waste Planning Authority. The Landscaping Scheme shall include: a) details of all species (including grass species), planting sizes and nursery stock types, densities, planting method and soil amelioration; b) details of fencing and hard surfaces; c) a programme for implementation and provision for future maintenance. The approved Landscaping Scheme shall be fully implemented in the first growing season following the first receipt of waste for commissioning within Phase B of the development, as defined in Condition No.3. Any planting that fails to establish, is damaged, becomes diseased or dies within 5 years of planting shall be replaced in the next growing season in accordance with the approved Landscaping Scheme.

- 7) Before the development enters Phase A, a Construction and Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Waste Planning Authority. The CEMP shall be consistent with the Framework CEMP (provided in Technical Appendix C to the Environmental Statement) and shall include (but shall not be limited to) details on the following matters: a) the method of construction, including phasing, and material to achieve development levels; b) the method of filling/compaction of below ground voids; c) staff site accommodation, construction compounds and laydown areas; d) details of the construction phase communications strategy which will set out how the developer will provide information to the community during the construction works and include key contact details, the indicative construction programme and appropriate procedures for maintaining good public relations including complaint management; e) dust suppression measures; f) litter control measures; g) measures to minimise and manage waste resulting from construction activities including off-site disposal of waste; h) the use of temporary lighting; i) the erection and maintenance of construction screening/hoardings/security fencing; j) the provision during the construction phase of wheel washing and/or other works required to mitigate the potential impact of mud/dirt on the public highway; k) measures to minimise noise arising from construction activities; l) measures to prevent spills, contamination and mobilisation of sediment on-site or address any spills that might occur; m) a scheme for the management of surface water until the fully operational phase is commenced; and n) measures to prevent accidental damage to heritage assets during construction. Construction of the development permitted herein shall be carried out in accordance with the approved CEMP.
- 8) Before the development enters Phase A, a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the Waste Planning Authority. The CTMP shall include (but shall not be limited to) details on the following matters: a) time limits for heavy goods vehicle (HGV) movements during the construction period which are to be between the hours of 0700 and 1900 on Monday to Friday (inclusive), 0700 and 1300 on Saturday with no HGV movements on Sunday or Public Holidays; b) procedures for approval by the Waste Planning Authority for exceptional HGV movements which would fall outside of the above hours; c) a framework for the management of abnormal loads; d) a scheme of appropriate signage for the HGV route to and from the site; e) a route plan for all contractors and suppliers to be advised of; f) temporary traffic management measures; g) a plan showing areas for the parking for the vehicles of construction staff and visitors; and h) measures to encourage the use of sustainable modes of travel to and from the site by contractors. Construction of the development permitted herein shall be carried out in accordance with the approved CTMP.

- 9) Before the development enters Phase A, details of temporary protection works to the Inner Breakwater (including the commemoratives plaque) and Dockyard Offices shall be submitted to, and approved in writing by the Waste Planning Authority. These works shall be fully implemented prior to the commencement of development, and must be retained in their approved form until such time as the development enters Phase C.
- 10) No piling using penetrative methods in relation to the development hereby permitted shall take place until details of any such piling works have been first submitted to and approved in writing by the Waste Planning Authority. Thereafter, the piling works shall be carried out in the form approved.
- 11) In accordance with BS 5228:2009+A1:2014 'Code of Practice for Noise and Vibration Control on Construction and Open Sites,' construction noise shall not exceed 65 dB LAeq,T during the daytime (0700–1900 weekdays and 0700–1300 Saturdays) at the closest accessible points to the curtilages of the nearest sensitive receptors listed below (as identified in Appendix C1 of the Noise Impact Assessment of the ES (Arup Noise Impact Assessment – September 2020 ref. AAc/267701-15/R01). These should be measured at a height of 1.2 m to 1.5 m above local ground height, and in free-field conditions (at least 3.5 m away from the nearest reflecting surface other than the ground): a) Location A: Ayton Drive; b) Location B: Castletown; c) Location D: Crabbers Wharf; d) Location F: East Weare Road/Leet Close/Beel Close; e) Location H: Jailhouse Café (HMP The Verne); and f) the Bibby Stockholm Accommodation Barge (in so far as this remains occupied for residential use within the port.
- 12) Outside the hours of 0700–1900 weekdays and 0700–1300 Saturdays, and at any time on Sundays and Bank Holidays, construction noise shall not exceed the levels set out below at any sensitive receptor listed in Condition 11 above (measured at the closest accessible points to the nearest sensitive receptors, at a height of 1.2 to 1.5m above local ground height, and in free-field conditions (at least 3.5m away from the nearest reflecting surface other than the ground): a) during weekday evenings between 1900–2300; Saturdays between 1300–2300 and Sundays between 0700–2300 the maximum noise limit from construction activities when measured at any nearby residential receptor shall not exceed 55 dB LAeq,T; and b) during the night-time on any day between 2300–0700 the maximum noise limit from construction activities when measured at any nearby residential receptor shall not exceed 45 dB LAeq,T. Abnormal construction activities which exceed 55 dB LAeq,T when measured at any nearby residential receptor which cannot reasonably be halted once they have been commenced (such as concrete pouring, bunker construction, turbine installation and so forth) are permitted to over-run into the evening and night-time period subject to the contractor notifying the Waste Planning Authority and obtaining its prior approval in writing, and then taking all reasonable steps to manage the construction timetable to minimise any period of over-run to ensure the activity is completed at the earliest practicable opportunity.
- 13) Before the development enters Phase A, a scheme detailing the establishment of a Community Liaison Committee shall be submitted to and approved in writing by the Waste Planning Authority. This Committee shall include representatives from the site operator, Portland Port, Dorset Council, Portland Town Council, and interested local residents, as deemed appropriate by the chairperson. The scheme shall include provision for: a) the appointment of a chairperson, from or to be nominated by the Waste Planning Authority; b) the

- appointment of representatives from the site operator; c) a community complaints procedure, including the prompt notification of complaints to the Waste Planning Authority; d) the production, approval, and publication of minutes of the Community Liaison Committee meetings; e) details of how the Committee will operate, including its terms of reference; and f) an implementation programme. Thereafter, the site operator shall implement and adhere to the scheme in accordance with the approved details for the lifetime of the development.
- 14) The total tonnage of waste received at the site shall not exceed 202,000 tonnes in any calendar year. A calendar year shall be taken to be the period between 1 January and 31 December (inclusive).
 - 15) Records of the quantity of waste delivered to the site, the quantity of all residues from the Plant, and the total number of all HGV movements entering and exiting the site, shall be maintained by the site operator. Copies of these records shall be made available to the Waste Planning Authority on request for inspection, within five working days of request. All records must be kept for at least 36 months.
 - 16) All HGVs associated with the delivery of waste to the site, and the removal of waste/treated waste materials/products from the site, shall have their loads covered or enclosed so as to prevent spillage or loss of materials on to the public highway, or any other roads.
 - 17) The total number of daily HGV movements into and out of the site, which are directly related to the development permitted, shall not exceed 80 movements (40 in and 40 out). As stated in Condition No. 15, records of all such movements are to be maintained and be made available to the Waste Planning Authority for inspection within five working days of request.
 - 18) The development is permitted to operate on a 24-hour, 7 days a week basis. HGVs delivering any waste material, process consumables or removing material or residues associated with the operational phase of the development hereby approved shall only take place between the hours of 0700 and 1900 daily. There shall be no delivery of waste, the export of or residues associated with the operational phase or the delivery of consumables on Christmas Day or Boxing Day.
 - 19) Before the development enters Phase C, the vehicle and cycle parking/storage shown on the Proposed Site Plan (262701B-TOR-XX-XX-DR-A-P004), including the accessibility spaces and electric vehicle charging spaces, shall be made available in accordance with the approved details and retained as such thereafter.
 - 20) Within 6 months of the development entering Phase C, an Employee Travel Plan (ETP) shall be submitted to and approved in writing by the Waste Planning Authority. The ETP shall include details of, and provision for, the following: a) the number of staff travelling to the site and when; b) measures to encourage the use of transport other than cars, including car sharing, cycling, and public transport; c) proposals for staff incentives to encourage travel by alternative means, and on-site facilities to make alternatives more attractive; d) specific targets for reducing dependence on single occupancy cars to travel to the site; e) a monitoring and review regime; and f) the appointment by the site operator of a Travel Coordinator. The approved ETP shall be implemented in accordance with the approved details. The results of the implementation and monitoring of

- the ETP shall be kept under annual review, and made available to the Waste Planning Authority upon request.
- 21) Before the development enters Phase B, a Transport Plan for the routing of Heavy Goods Vehicles (HGVs) to and from the site shall be submitted to, and approved in writing by, the Waste Planning Authority. The Transport Plan shall include: a) maps of the proposed route(s); b) details of record keeping; c) details of approved signage and training of drivers in relation to the Transport Plan; and d) details of how the Transport Plan will be managed, including a suitable complaints procedure with appropriate rectification measures. The Transport Plan shall be implemented in accordance with the approved details and adhered to for the lifetime of the development.
 - 22) Prior to the receipt of the first waste for commissioning during Phase B, an Odour Dust and Incinerator Bottom Ash (IBA) Management Plan (ODIBAMP) shall be submitted to and approved in writing by the Waste Planning Authority. The ODIBAMP shall include but not be limited to: a) incorporating and operating negative pressure extraction/ventilation systems in the RDF/waste storage and RDF/waste unloading hall; b) the requirement that all vehicular loading doors to the tipping hall / fuel store remain closed other than when vehicles, plant or equipment are passing through; and c) the requirement that all vehicles leaving the operational site, either to travel to unloading facilities located elsewhere within the port, or other off-site destinations, shall be appropriately covered/sheeted to prevent any potential for the escape of IBA material to air or water (notwithstanding any measures that might be imposed through the environmental permit regime). Thereafter, the ODIBAMP shall be implemented as approved for the duration of the development.
 - 23) Prior to receipt of the first waste for testing and commissioning during Phase B, a scheme for the monitoring of noise emissions from the Plant in accordance with BS4142:2014+A1:2019 'Method for rating and assessing industrial and commercial sound' (or successor) shall be submitted to and approved in writing by the Waste Planning Authority. The scheme shall include the identification of sensitive receptor monitoring locations and monitoring periods, and how the operational noise criteria will be met at any sensitive receptor locations. The rating sound level from normal operation of the Plant shall be measured in accordance with the approved scheme and shall not exceed representative background sound levels at the relevant time of day (0700 to 2300 hours) or night (2301 to 0659 hours) by more than 5dB(A) at approved monitoring locations. This sound level shall be determined either by direct measurement at the stated locations or, if ambient noise precludes this, by a combination of measurement and calculation. The representative background sound level shall refer to Table 1 of the Noise Impact Assessment report (dated 21 May 2021) or as otherwise agreed by the Waste Planning Authority. Thereafter, the scheme shall be implemented as approved for the duration of the development.
 - 24) With the exception of emergency situations, any steam vent safety valve checks and other checks/routine maintenance likely to give rise to noise levels exceeding 85dB(A) @ 1m, shall be carried out during non-sensitive times of the day (that is between 0800-1700 hours Monday to Friday). Noise levels from steam venting should be limited to a sound power level not exceeding 97dB(A) with appropriate silencing.
 - 25) Within three months of the development entering Phase C, the operator shall undertake a noise survey to verify compliance with the approved noise limits. A

- noise compliance monitoring scheme should be agreed in writing with the Waste Planning Authority prior to commencement of the noise survey. The results of the noise survey shall be submitted to the Waste Planning Authority for approval in writing. Should the results of the noise survey suggest that further mitigation measures are necessary, these shall be identified within the report and implemented within a reasonable timescale to be agreed and approved in writing by the Waste Planning Authority.
- 26) The loading doors to the tipping hall/fuel store shall only be opened when required to allow HGV movements or mobile plant into and out of buildings, for maintenance, or in an emergency. The loading doors shall be fitted with a fast-acting closing system that ensures they are closed rapidly following the passage of each vehicle into and out of the building. Doors which allow the movement of personnel into and out of the buildings shall be fitted with self-closing mechanisms that ensure closure when people are not passing through.
 - 27) All vehicles (excluding private commuter vehicles), plant and machinery operated within the site shall be maintained in accordance with the manufacturer's specification at all times and shall be fitted with and use effective silencers where appropriate.
 - 28) Mobile plant machinery used on site must be fitted with broadband noise type reversing alarms at all times.
 - 29) In the event that the Waste Planning Authority receives a noise complaint that it considers to be justified, the operator shall, within a period of 30 days of a written request, submit a noise assessment to the Waste Planning Authority to demonstrate compliance or otherwise with the noise limits that have been imposed. If the prescribed noise levels are exceeded, then the operator must incorporate as part of the noise assessment report a scheme of noise mitigation for approval in writing. The noise mitigation scheme shall thereafter be undertaken in accordance with the details approved by the Waste Planning Authority.
 - 30) Details of any facilities for the storage of oils, fuels or chemicals shall be submitted to and approved in writing by the Waste Planning Authority prior to the development entering Phase B. Such facilities will be sited on impervious bases and surrounded by impervious bund walls. The bund capacity shall give 110% of the total volume for single and hydraulically linked tanks. If there is multiple tankage, the bund capacity shall be 110% of the largest tank or 25% of the total capacity of all tanks, whichever is the greatest. All filling points, vents, gauges and sight glasses and overflow pipes shall be located within the bund. There shall be no outlet connecting the bund to any drain, sewer, watercourse, coastal waters, or discharging onto the ground. Associated pipework shall be located above ground where possible and protected from accidental damage.
 - 31) Before the development enters Phase A, further evidence shall be submitted to the Waste Planning Authority to show that a full CCTV survey of the existing surface water outfall has been carried out along with any remedial work to ensure that the surface water outfall pipes have the required capacity and are in an acceptable condition to manage the necessary surface water discharges from the site into the sea.
 - 32) Before the development enters Phase A, a detailed surface water drainage and management scheme shall be submitted to and approved in writing by the Waste Planning Authority. The details shall be consistent with the principles set

out in the submitted Preliminary Drainage Strategy (PDL-101 Rev D) provided in the Flood Risk Assessment Addendum (August 2021). The surface water drainage and management scheme shall be fully implemented in accordance with the approved details before the development enters Phase B, and shall be retained as such thereafter for the life of the development.

- 33) Before the development enters Phase A, a scheme to deal with the risks associated with contamination of the site shall be submitted to, and approved in writing by, the Waste Planning Authority. This scheme will include the following components: (1) a preliminary risk assessment that has identified a) all previous uses; b) potential contaminants associated with those uses; c) a conceptual model of the site indicating sources, pathways and receptors; and d) potentially unacceptable risks arising from contamination at the site; (2) subject to the findings of (1), and if required, a site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site; (3) the results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, and if required, an options appraisal and remediation strategy giving full details of the remediation measures required, how they are to be undertaken and a programme for the works, which for the avoidance of doubt may extend beyond or take place subsequent to the development entering Phase A; and (4) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The approved scheme shall be implemented and adhered to as approved.
- 34) In the event that previously unidentified contamination is found at any time during the construction of the development hereby permitted, this must be reported in writing promptly to the Waste Planning Authority and in any event within 10 working days. Further investigation and risk assessment, conducted in accordance with recognised good practice, and a proposed remediation measure (a 'Remediation Measure'), if required, shall be submitted to the Waste Planning Authority for consideration and approval. Following completion of any Remediation Measure(s) a verification report shall be submitted to the Waste Planning Authority for approval.
- 35) Before the development enters Phase A, a scheme to address land stability, building on the Preliminary Slope Stability Assessment (ES Addendum Appendix 7.1 dated July 2021) shall be submitted to, and approved in writing by the Waste Planning Authority. The scheme shall include an investigation and assessment report to identify the extent of any land stability matters, the remedial measures (if any) to be taken to render the land fit for its intended purpose and long-term monitoring of slope movements during operation (if any). Land stabilisation must be carried out in accordance with the approved scheme.
- 36) Prior to the development entering Phase B, details of the works proposed within the Framework Heritage Mitigation Strategy, dated August 2021, shall be submitted to and approved in writing by the Waste Planning Authority. This strategy will include the following components: a) a programme for the implementation of the heritage mitigation works to be put in place before the development enters Phase C; b) methodology for scrub/vegetation clearance at E Battery in accordance with structural engineer's recommendations for avoiding

further damage; c) specification of works to be carried out at E Battery to address such repairs as are identified by suitably qualified professional(s) after a further appropriately detailed survey; d) confirmation of those responsible for ongoing maintenance and survey programmes at E Battery, as well as the procedure for, and frequency of, curated visits; e) details of other approvals or consents that may be required; f) text and other content of proposed interpretation boards for A-E Batteries; and g) design of proposed information boards including sample of proposed material. Thereafter, the agreed works shall be implemented in accordance with the agreed programme for such works specified in the approved heritage mitigation strategy. For the avoidance of doubt, details of the Off-site Footpath, which forms part of the Heritage Mitigation Strategy, is addressed in the s.06 planning obligation.

- 37) The railway tracks of the Breakwater Branch Railway present on site shall be retained in situ.
- 38) Before the development enters Phase A, a Habitats and Biodiversity Plan shall be submitted to, and approved in writing by the Waste Planning Authority. This plan shall set out the measures that will be implemented to avoid and minimise impacts on biodiversity and cover measures identified in the Dorset Natural Environment Team Portland ERF Biodiversity Plan (dated and certified on 19th October 2020), including specifying the measures and long-term management strategy for the proposed habitats and ensure a net biodiversity gain of 10% or more above existing baseline. The development shall be carried out in accordance with the approved Habitats and Biodiversity Plan.
- 39) Before the development enters Phase C, the developer shall submit an Emergency Plan and an appropriate Flood Warning and Evacuation Plan to the Waste Planning Authority that specifies how the plant and its operators will collaborate with the emergency services and Portland Port to ensure that the plant approved by this planning permission integrates with existing emergency plans and shall provide copies of the same to future occupants.
- 40) No permanent external lighting shall be installed on the development until a detailed External Lighting Scheme has been submitted to and agreed in writing by the Waste Planning Authority. This scheme shall specify: a) illumination levels on and off the site; b) the siting, height, design and position of lighting; c) how floodlights will be aligned so there is no direct line-of-sight to nearby neighbouring residential premises; and d) any other controls to prevent the light impacting on the amenity of neighbouring residents. The External Lighting Scheme shall be implemented and maintained as approved for the life of the development, and no additional external lighting shall be installed.
- 41) Before the development enters Phase A, details of any proposed stack lighting shall be submitted to and approved in writing by the Waste Planning Authority. All stack lighting shall be installed and maintained in accordance with the approved stack lighting scheme.
- 42) Within 6 months of the end of the calendar year in which the development entered Phase C, and thereafter on each annual anniversary of this date for the duration of the life of the development, the operator shall submit to the Waste Planning Authority verification that the facility has achieved R1 Status for the previous year through certification from the Environment Agency.
- 43) If within a period of 12 months of the development entering Phase C, the Plant has not commenced the export of electricity to one or more electrical

distribution systems, including private export to local users and/or shore power, the Plant shall immediately cease operations. The Plant will only be able to recommence operations once the equipment required for the export of electricity to an electrical distribution system is functioning, including private export to local users or shore power. The Waste Planning Authority will be provided with evidence that the connection is functioning prior to the recommencement of operations. Appropriate connection shall be maintained as installed throughout the lifetime of the development to allow the export of electrical power generated by the Plant.

- 44) Prior to the development entering Phase A, a Shore Power scheme for the supply of power to ships moored in Portland Port, which shall confirm the detailed routes for the supply of power to the specified quays at the Port, the details of the necessary electrical infrastructure and the key operational aspects of the provision of shore power, shall be submitted to and be approved in writing by the Waste Planning Authority. The Shore Power scheme will be fully implemented and operated in accordance with a programme and for a duration to be agreed with the Waste Planning Authority and thereafter retained for the life of the development or the agreed duration.
- 45) The developer shall ensure the Plant is constructed in such a manner that it would be capable of supplying available heat to a future district heating network (DHN) serving off-site users or process or space heating, including steam pass-outs and/or hot water pass-outs.
- 46) Prior to the development entering Phase A, a scheme shall be submitted to and approved in writing by the Waste Planning Authority which identifies a detailed route for the supply of heat from the Plant to the boundary of the site. Thereafter, the proposed route of the heat connection to the boundary of the site shall be safeguarded throughout the operational life of the development unless an alternative safeguarded route is subject to prior written agreement by the Waste Planning Authority. For the avoidance of doubt, the discharge of this condition does not relate to the approval of any future district heating system.
- 47) Within 30 days of final cessation of the operation of the development hereby permitted, the operator of the development shall inform the Waste Planning Authority in writing that all operations have ceased. Within 6 months of the final cessation of the operations, a scheme of restoration for the site shall be submitted to the Waste Planning Authority for approval in writing. The scheme shall include the removal of all buildings, chimney stacks, associated plant, machinery, waste and any material left on the site and shall set out details of restoration of the site following the removal of all such structures. The site shall thereafter be restored in accordance with the approved scheme of restoration, within 24 months of the date of approval by the Waste Planning Authority.
- 48) Copies of any final site condition environmental report(s) provided to the Environment Agency pursuant to the site Environmental Permit shall be submitted to the Waste Planning Authority within 10 working days of its finalisation.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, King's Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.