

**APPEAL BY POWERFUEL PORTLAND LIMITED
LAND AT PORTLAND PORT, CASTLETOWN, PORTLAND, DORSET, DT5 1PP**

**CLOSING SUBMISSIONS
on behalf of
DORSET COUNCIL**

Introduction

1. As stated in opening the Council relies on three RfRs for resisting this appeal, each of which has been supported by the evidence you have heard during this Inquiry. We summarise that evidence in the order in which it was presented.

RfR 3: Heritage

Introduction:

2. The appeal site's heritage context 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 significance.¹ Indeed, the Appellant

¹ Filmer-Sankey XX

accepts that we are dealing here with a “very, very remarkable”² collection of built heritage assets. They form a nationally significant group and the range of assets and level of survival of them is “exceptional”.³

3. The asset group in Portland is particularly remarkable due to its time-depth, completeness and interrelationships.⁴ 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 the Second World War.⁵ 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 Navy.⁶ 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.⁷ It also includes a range of naval defences specifically oriented to protect the harbour, reflecting advances in military technology and use across two World Wars.⁸
4. In terms of completeness of the group and interrelationships, the Council’s evidence has demonstrated the various functional relationships and deliberate sightlines between the different assets, noting that the group value is duly

² Filmer-Sankey XIC

³ Kelly Proof 3.9 and 8.1.

⁴ Kelly XIC

⁵ Kelly Proof 3.1

⁶ Kelly Proof 3.1

⁷ Kelly Proof 8.1

⁸ Ibid

reflected in a number of the listing descriptions.⁹ These are matters which we come back to below in relation to the individual assets, along with the particular scale of these assets and how this bears on their significance (a point also emphasised by Ms Kelly in XIC).

Legal and policy framework

5. There is no material dispute about the legal and policy framework here. The statutory duties in ss 66¹⁰ and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 are reflected in the policy approach set out in Chapter 16 of the NPPF.¹¹ “Great weight” should be given to the asset’s conservation (the more important the asset, the greater the weight should be).¹² 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.¹³ The various relevant local plan policies align with the approach of national policy.¹⁴

Methodology of competing heritage assessments

⁹ Kelly XIC. See Kelly Appendices pp. 5-6 (7-8 pdf) (Dockyard Offices), p. 8 (p. 10 pdf) (inner and outer breakwater, including the coaling shed, storehouse jetty, coaling jetty, inner breakwater fort and outer breakwater fort), p. 12 (p. 14 pdf) (Battery A), p. 13 (p. 15 pdf) (Battery C), p. 15 (p. 17 pdf) (East Weare Camp), p. 17 (p. 19 pdf) (1 Castletown), p. 18 (p. 20 pdf) (Mulberry Harbour Phoenix Caissons at Portland Harbour).

¹⁰ The courts have interpreted this duty as ensuring that “considerable importance and weight” is given to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise (see *Barnwell Manor Wind Energy Ltd v East Northants DC and others* [2014] EWCA Civ 137 at [24] and [29]). Likewise for the duty in s72 (see *Barnwell Manor* at [16]; see also *Bath Society v Secretary of State for the Environment* [1991] 1 W.L.R. 1303).

¹¹ CD 9.01, see Kelly Proof 2.9-2.18

¹² NPPF (19 December 2023) para 205

¹³ including, where appropriate, securing its optimum viable use, see NPPF para 208

¹⁴ Policy 19 of the Waste Plan (CD 7.01, p. 125); Policy ENV4 of the West Dorset, Weymouth & Portland Local Plan (CD 7.02, p. 33); Policy Port/EN4 of the Portland Neighbourhood Plan (CD 7.04, p. 30).

6. Of course, you and the Secretary of State, will need to reach your own conclusions on the heritage harm arising from the development. But you have before you a number of different heritage assessments seeking to guide you in that exercise: (i) the ES assessment, (ii) the Appellant's appeal assessment by Dr Filmer-Sankey, (iii) the Council's assessment by Ms Kelly and (iv) the R6 party's assessment by Ms Burley.

7. It is clear, through testing 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 which setting makes to their significance and, in consequence, cannot materially assist in terms of assessing the effects of the appeal proposals on that significance.

8. Dr Filmer-Sankey's bold claim that he has followed a "best-practice based methodology",¹⁵ is entirely unsupported by the substance of his evidence, which provides no detail as to his methodology at all. Notably, and by contrast, the ES *had* set out a clear methodology,¹⁶ which aligned with the guidance for a staged approach to the assessment of harm set out in GPA3.¹⁷ The Appellant accepts that the ES' methodology was robust (albeit offering no assistance as to what the Inspector should do with it),¹⁸ yet, for reasons that remain unclear, Dr Filmer-Sankey chose not to adopt it for his assessment.

¹⁵ Filmer-Sankey Proof 7.8

¹⁶ Illustrated in figures 7.4-7.6 on pp. 30 (pdf) onwards of Chapter 7 (Cultural Heritage) of the ES (CD 1.36(h)).

¹⁷ CD 9.30

¹⁸ Filmer-Sankey XX. The Inspector can note that Ms Kelly does not criticise the ES' methodology either, although she does criticise a number of its conclusions and judgments: see Kelly Proof 6.11 and Section 6 in general. She explained in XIC that the approach taken in the ES was normal.

9. Dr Filmer-Sankey gives no comparable details as to what (if any) methodology he did adopt.¹⁹ The only real information he provides,²⁰ is skeletal at best and well short of the standard of assessment these exceptional assets require.²¹ For a number of reasons, the level of detail and analysis required to enable proper scrutiny of Dr Filmer-Sankey's findings is simply lacking.
10. First, his 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" harm.²² 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 , for example, "moderate" or "significant" harm (assuming these terms are on the Filmer-Sankey scale of effects). As a result, you cannot contextualise any of Dr Filmer-Sankey's conclusions.
11. 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 low level of harm ("very minor") as assets that are considerably further away (such as Portland Castle and the Castletown sub-area of the Underhill Conservation Area). Indeed, this issue was bluntly highlighted when Dr Filmer-Sankey refused to give an indication of the level of

¹⁹ To be clear, Ms Kelly's methodology (which broadly aligns with the kind of approach taken in the ES, albeit it uses different descriptor wording) is detailed on pp. 1-2 (pp. 3-4 pdf) of her Appendix to her Proof.

²⁰ Potential Impact on Significance of Assets Table Filmer-Sankey Proof pp. 52-53

²¹ The three headings listed to assess such "potential impacts" (other than the level of designation itself) are simply "intervisibility", "wider visual context" and "traffic", for which "yes"/"no" answers are given.

²² Filmer-Sankey XX

harm caused by the introduction of the cement silo on Portland Castle.²³ It is impossible to second-guess from his “potential impacts” table what level of harm this would be afforded, other than “very minor”.

12. Secondly, Dr Filmer-Sankey’s table of effects is entirely unclear as to what is meant by the respective categories of “inter-visibility” and “wider context”.²⁴ Even he admitted to confusion as to his methodology²⁵, seeking to re-answer questions on it at a later stage but with no real clarity. 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 you might not be able to see one from another. However, none of this was explained in his written evidence, nor is it clear how this distinction has fed into his assessment of the contribution that setting makes to significance, or the overall harm caused, in relation to each individual asset.²⁶

13. Thirdly, and perhaps most notably, his table of effects is entirely silent on a number of obviously relevant considerations to assessing the contribution that setting may have to the significance of a heritage asset. GPA3²⁷ 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 assets; orientation and aspect; functional relationships and communications; history and degree of

²³ Filmer-Sankey XX. See viewpoint 19 shown in Figure JM16, in Appendix JM4 to Mason’s Proof

²⁴ Nor, does Mr Filmer-Sankey’s proof assist at 7.6.

²⁵ In XX

²⁶ Cf. 7.18 of Mr Filmer-Sankey’s Proof which provides no real analysis

²⁷ CD 9.30, p. 11

change over 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, prominence or role as focal point.

14. None of these is addressed in Dr Filmer-Sankey’s table.²⁸ Worse still, nor, are they assessed in his written evidence either.²⁹ He nonetheless maintained that he had taken these considerations into account in his assessment (and they were all “in his mind” when assessing setting³⁰). Leaving aside the fact that this was incapable of being tested, there is not a hint in his proof of evidence that his internal cognitive process involved a proper assessment of the contribution to significance of the setting of the relevant assets. There is no “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”.³¹

15. So whilst the Appellant provides you with a detailed assessment of the history of the assets and their significance, its evidence cannot be relied upon in relation to the key issue in this appeal i.e. the assessment of the contribution which the setting of those assets make to the assets’ significance and the level of harm caused by the appeal proposal in light of that.

²⁸ Fairly accepted by Mr Filmer-Sankey in XX

²⁹ Filmer-Sankey XX

³⁰ Filmer-Sankey XX

³¹ Cf. Filmer-Sankey XIC. See Historic England’s Advice Note 12 (Statements of Heritage Significance) #14. We add here a further comment that it was not clear from Mr Filmer-Sankey’s XIC why he had not chosen to carry out the type of “technical analysis”, such as sensitivity matrices and scoring systems that this paragraph recommends for cases involving more significant assets, multiple assets, or changes considered likely to have a major effect on significance. Cf. the ES and Ms Kelly who both do carry out such an analysis. Mr Filmer-Sankey’s stated in XIC that he did not consider the use of matrixes as a best approach, particularly for cases involving setting, but without clearly explaining why not.

16. When scrutinised, it is clear that Dr Filmer-Sankey's assessment was fundamentally flawed due to his 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 port,³² he erroneously confused "context" with "setting", notwithstanding these are clearly separate concepts.³³ For this appeal, the "context" is the port. But the "setting" of each individual asset needs to be individually assessed and will relate to the asset's function and particular intervisibility and the surroundings in which it is experienced. This confusion of context and setting, and over-reliance on the port context, effectively airbrushes out any detailed analysis of the GPA3 considerations and thus seriously underestimates the effects of the appeal proposal on the asset's significance.

17. This is shown by the Appellant's assessment of impact on the Dockyard Offices. It is agreed³⁴ that this asset was built to oversee the creation of the breakwaters and its design was intended to facilitate a view out over the breakwaters. In other words, there was designed inter-visibility between these assets and this is reflected in the Dockyard Offices' list description.³⁵ Yet, nowhere in Dr Filmer-Sankey's evidence does he expressly recognise this intervisibility. Indeed, his

³² Filmer-Sankey Proof 6.19-6.20. It can also be seen at 7.19-7.20 of his proof where, having set out a basic factual description of the assets' visibility, he returns to a clearly functional assessment of the port context leading him to a conclusion that any harm caused by the appeal proposal to the setting of the heritage assets will (in this context) fall as the "very lowest range of 'less than substantial'".

³³ Agreed by Mr Filmer-Sankey in XX (also agreeing that setting is also separate to curtilage and character). This is evident in GPA 3, CD 9.30, p. 3 para 7 under the heading "Difference between setting and curtilage, character, context and landscape".

³⁴ Filmer-Sankey XX

³⁵ Kelly Appendix to Proof, p. 6 (p. 8 pdf): "The Dockyard Engineer's Office was a central focal point during this extended period of construction and the projecting bay at the east end of the building was designed to provide views of the breakwaters."

most detailed description of the Dockyard Offices' setting³⁶ still groups the asset along with breakwaters, without mentioning that intervisibility.³⁷

18. Overall, and in light of all of the above, we suggest that no material weight can be placed on the Appellant's heritage evidence.

19. In stark contrast, Ms Kelly has provided a clear methodology for her assessment,³⁸ of which no critique was made.³⁹ She has followed the staged approach in GPA3 and has transparently assessed each individual asset and the contribution that its setting makes to its significance in detail (including expressly considering the factors listed in the GPA3 checklist). She has gone on to consider the additional group value associated with the assets collectively. Her evidence must be preferred in light of the robustness of her methodology.

Impacts on relevant heritage assets

20. With all this in mind, we turn to considering the most relevant heritage assets, their significance (including the contribution that their setting makes to their significance) and a summary of the development's impacts on that significance. We emphasise that this is a summary only, for which we rely on Ms Kelly's detailed analysis as set out and explained in her evidence.

The development

³⁶ See table on p. 37 of Mr Filmer-Sankey's appendices (internal p. 33 of Appendix WFS1 Heritage Statement).

³⁷ The lacuna in Mr Filmer-Sankey's evidence was also highlighted through the discussion during XX over the impacts that a hypothetical Empire State Building on the appeal site would have on the Dockyard Offices. At first, he indicated that there would possibly be no impacts at all, before seeming to accept that there would be some harm (but only in relation to the impact on the dominance of the Verne Citadel and weare), before finally appearing to accept that there would be some minor level of harm, seemingly due to intervisibility but also on the "wider visual context". This approach was unclear at best.

³⁸ Kelly Appendix pp. 1-2 (pp. 3-4 pdf)

³⁹ Kelly XX

21. In assessing the impacts of the development, you must consider the entirety of the proposals, which include not just the ERF building and stack but its associated development, including the 4m high switch gear located immediately next to the Dockyard Offices.⁴⁰ Ms Kelly explained how such an assessment had duly factored into her consideration of impacts on the Dockyard Offices and views of the breakwaters.⁴¹ It was, with respect, quite obvious that Dr Filmer-Sankey had, by contrast, focussed solely on the ERF building and stack. He accepted it was “fair to say” he was not as aware as perhaps he should have been about the switch gear until relatively recently, although he was unable to give specifics as to how long before Ms Kelly’s evidence on Day 1 he became so aware.⁴² Again, this seriously undermines the robustness of his approach.

Group Value

22. That group value of the 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 Citadel.⁴³ There is a functional link connecting these assets to one another and to the Port’s military and naval history. That group value adds to the heritage significance of the individual assets.

The port context

⁴⁰ See CD 1.04 (proposed site plan), CD 1.17 (Powershore Layout) and CD 1.18 (Powershore Details)

⁴¹ Kelly XIC

⁴² Filmer-Sankey XX

⁴³ Kelly XIC

23. Finally, as already noted, there is an important distinction between the port *context* to the appeal site and the *setting* of the various heritage assets. The Appellant places considerable weight on the port context, and its constantly evolving nature. 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.⁴⁴ However, the port context whilst contributing to the significance of the assets is only part of the contribution to their significance derived from their surroundings.

24. Furthermore, whilst change over time is normal in the setting of a heritage asset, there needs to be a nuanced assessment as to what the impact of that change has been. GPA3 is clear that changes over time and cumulative change can be both positive and negative.⁴⁵ Here, the changes that have occurred within the port context and appeal site have not necessarily had a negative impact on setting⁴⁶ and have not resulted in lost or damaged relationships between the assets.⁴⁷ In particular, whilst both sides are agreed that there have previously been other buildings on the appeal site, the parties are also agreed that nothing that previously existed on the site was comparable in scale to what is now being proposed through this appeal.⁴⁸ The Appellant's reliance on the earlier creosote pressure chamber and chimney does not assist it,⁴⁹ as no party has put forward any evidence to suggest a similar built form (to the ERF)

⁴⁴ Save Dr Filmer-Sankey's example of the Empire State Building

⁴⁵ See CD 9.30, p. 4

⁴⁶ Kelly XX. Of course, each setting needs to be duly assessed.

⁴⁷ Kelly XIC

⁴⁸ Filmer-Sankey XX; Kelly XIC

⁴⁹ Filmer-Sankey Rebuttal 2.12. Especially bearing in mind that whilst there is evidence to suggest there was a chimney located on the site, there is no evidence it was actually a creosote factory chimney (Kelly XX).

previously existed on site. Any previous buildings did not raise the same issues of competition in scale vis-à-vis the surrounding heritage assets.⁵⁰

Dr Filmer-Sankey fairly agreed that change over time has made a positive contribution to the assets.⁵¹

25. Crucially, the fact that there has been change over time to the appeal site and its surrounds, does not in any way lessen the need for there to be a robust assessment of the development's heritage impacts. It is to that which we now turn.

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

26. These assets were constructed between 1849 and 1882. The natural harbour at Portland was selected as the site for a safe refuge based on its location between Portsmouth and Plymouth and 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 create a coaling port for the navy's

⁵⁰ Kelly XIC. Likewise, the Appellant's regular references to the presence of large cruise ships in the port do not assist. Mr Filmer-Sankey did not adopt the Appellant's "party line" on the cruise ships and agreed that these were transient (Filmer-Sankey XIC). Not only that, but they vary in size and are clearly fully port-related compared to the ERF.

⁵¹ Filmer-Sankey XIC

fleet of steam-drive warships. When completed the breakwaters formed the largest man-made harbour in the world. As the navy began using the port, the need to provide associated fortifications was realised with the construction of Verne Citadel and East Weare Batteries.⁵² Their aesthetic, historic and communal heritage value is further described in the Council's written evidence,⁵³ 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).

27. The setting of the breakwaters includes the group value and intervisibility with the Verne Citadel, the East Weare Batteries, and with the Dockyard Offices, as well as longer views of Portland Harbour which include its association with Bincleaves Groyne, the North-Eastern Breakwater and the seascape in which it is experienced.⁵⁴ The non-designated Breakwater Railway was the Admiralty's branch railway linking the breakwaters to the Weymouth and Portland Railway and 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

⁵² Kelly Proof 3.6 and 3.9. Further details as to the design engineers is provided at 3.11.

⁵³ Kelly Proof 3.11

⁵⁴ Kelly Proof 3.13

makes a significant positive contribution to the breakwaters' heritage value.⁵⁵

The visual prominence of the Breakwaters, their scale⁵⁶ and role as a focal point further contributes to their heritage value.⁵⁷

28. The development is located immediately adjacent to the listed building in this group of assets.⁵⁸ The scale, of what will be a substantial building, will detract from the visual prominence of the Breakwaters⁵⁹ and introduce a detracting element in views of and from the Breakwaters from the surrounding area and towards associated assets.⁶⁰ It would impact on the important intervisibility between the Dockyard Offices, the Breakwaters, as well as with the Verne Citadel and East Weare Batteries.⁶¹

29. Overall, there would be a medium/high level of effect resulting in less than substantial harm at the high end of that category.⁶²

(2) Dockyard Offices

30. The Grade II listed Dockyard Offices were built in 1848 specifically to oversee the construction of the breakwaters. It is described in the listing description as the focal point of the breakwater construction with group value as part of a complete naval base of considerable importance.⁶³ 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

⁵⁵ Ibid

⁵⁶ They are "enormous" (Kelly XIC), representing an engineering feat at the time.

⁵⁷ Kelly Proof 4.1

⁵⁸ Kelly Proof 4.1

⁵⁹ Scale being a really important aspect of their value (Kelly XIC)

⁶⁰ Ibid and 4.3

⁶¹ Kelly Proof 4.5

⁶² Kelly Proof 4.6

⁶³ Kelly Proof 3.5

Offices and the breakwaters is very clearly a key element of the heritage value of the asset.⁶⁴ Again, further details as to its aesthetic and historic interest are provided in the Council's written evidence.⁶⁵

31. The setting of the Dockyard Offices includes its intervisibility and association with the assets listed above and with Portland Harbour and the port within which it is 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 interest.⁶⁶

32. Whilst the later 20th century alterations to the building have detracted from the original design, they do not obscure the view between it and the Breakwaters, with the orientation of the Dockyard Offices towards the Breakwaters remaining readily apparent.⁶⁷ Overall, setting makes a significant positive contribution to the heritage value of the asset.⁶⁸

33. The proposed development's scale, again, 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 building.⁶⁹ It would significantly detract from the ability to appreciate and understand the important intervisibility between the Dockyard Offices and the Breakwaters and

⁶⁴ Ibid

⁶⁵ Kelly Proof 3.14

⁶⁶ Kelly Proof 3.16

⁶⁷ Kelly Proof 3.18

⁶⁸ Ibid

⁶⁹ Kelly Proof 4.6

the views between them.⁷⁰ Overall, there would be a medium/high level of effect resulting in less than substantial harm at the high end of that category.

(3) *The Verne Citadel*

34. The Verne Citadel is staggering in terms of its built form and formidable in scale.⁷¹ This is unsurprising as it was designed to defend the harbour, having been built between 1858 and 1885 under the supervision of the Royal Engineers.⁷² It is, itself, an asset of the highest value (as a scheduled monument) and includes three grade II* listed buildings, the north entrance, south entrance and 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 association with 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 area).⁷³ It is a rare example of a purpose built mid-19th century fortification associated with a Royal Navy port, and its prominent position and visual dominance contributes to its high value.⁷⁴

35. Its setting includes the surroundings in which it is experienced and the expansive views from it, particularly towards Portland Harbour which it was built

⁷⁰ Kelly Proof 4.7, n.b. this includes the impact of the switch gear as well as the ERF building and stack.

⁷¹ Kelly XIC

⁷² Kelly Proof 3.25. See further Kelly Proof 3.8

⁷³ Kelly Proof 3.26

⁷⁴ Kelly Proof 3.27

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 (i) Verne Citadel, (ii) the defensive structures of the batteries and East Weare Camp and (iii) the breakwaters and the harbour that the Citadel was seeking to defend is a key element of the Citadel's special interest. Overall, setting makes a positive contribution to its significance.⁷⁵

36. The proposed development would evidently detract in views of and from the Citadel by introducing a building of considerable scale and mass, along with a 80m high stack. This includes those views from the north towards and including Portland Harbour and the breakwaters which the Citadel was built to defend, which the Appellant accepted were key to the asset's significance.⁷⁶ The scale of the development would detract from the ability to appreciate and understand this important intervisibility and also to a degree the visual prominence of the Citadel.⁷⁷ In light of this, there would be a medium level of effect, considered to be less than substantial harm in the mid-range of that category.⁷⁸

(4) East Weare Camp and the Batteries

⁷⁵ Kelly Proof 3.28

⁷⁶ Filmer-Sankey XX

⁷⁷ You will, of course, best appreciate this impact from your own experience on site, but notably, the limits of the viewpoint shown from the Jailhouse Café in figure JM10 (viewpoint 16) of Mr Mason's Appendix JM4 are illustrated by both the bottom photograph on p. 27 (p. 29 pdf) of Ms Kelly's appendices and photograph C on p. 26 of Mr Williamson's appendices.

⁷⁸ See Kelly Proof 4.14-4.15

37. 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 Breakwaters.⁷⁹ 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 in 1870-1880, it provided secure accommodation for the gunners and garrison of the East Weare Batteries A-E. Further details of the individual assets, their designated or non-designated status and their historic, evidential, aesthetic and communal value are provided in the Council's written evidence.⁸⁰

38. Overall, the 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 including a scheduled monument (E Battery), as 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.⁸¹ Batteries B and D (both non-designated) are also considered to have moderate value, recognising that they contribute to appreciating this nationally significant group.⁸² Setting makes a significant positive contribution to the historic, aesthetic and communal heritage values of these assets.⁸³ In particular, the relationship between the batteries, East Weare

⁷⁹ Kelly Proof 3.20

⁸⁰ Kelly Proof 3.21-3.22

⁸¹ Kelly Proof 3.23

⁸² See Kelly Proof 3.23

⁸³ Kelly Proof 3.24

Camp, the Citadel and the breakwaters is a key element of these assets' special interests; views towards Portland Harbour are particularly significant to understanding 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 to the area's historical development.⁸⁴

39. 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 Citadel or from Portland Harbour.⁸⁵ The development would detract from the ability to appreciate and understand the important intervisibility and group value, notwithstanding the presence of vegetation.

40. For the batteries, there would be a medium level of effect, considered to be less than substantial harm in the mid-range of that category.⁸⁶ For East Weare Camp, recognising that intervisibility with the breakwaters contributes less to the asset's significance than compared to 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 category.⁸⁷

(5) Underhill Conservation Area and the Grade II Listed 1 Castletown

⁸⁴ Kelly Proof 4.9

⁸⁵ Kelly Proof 4.9-4.10

⁸⁶ Kelly Proof 4.12

⁸⁷ Kelly Proof 4.13

41. Castletown, within the Underhill Conservation Area, was the site of wharfs and a pier associated with the Portland stone industry before developing as the gateway to Portland's naval base following the construction of the breakwaters.⁸⁸ No. 1 Castle Town, a former customs house also situated within the Underhill Conservation Area, particularly demonstrates the clear links between the settlement at Castletown and the port. In its listing the building is considered to be part of the naval base building group, shown by its documented historic uses and stone shield with carved royal monogram 'VR' illustrating the support shown by Queen Victoria and Prince Albert to the creation of the harbour of refuge.⁸⁹ The link between 1 Castle Town and Portland Port is therefore a key element of its special interest.⁹⁰

42. In terms of their settings, views along Castletown allow for intervisibility between the port and No. 1 Castletown 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 value.⁹¹

43. The development's introduction will impact on views along Castletown towards Portland Port, that include Portland 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, there would be a minor level of effect, resulting in less than substantial harm at the low end.⁹²

⁸⁸ Kelly Proof 3.17. See 3.3-3.4 for further details as to the history of Castletown and No. 1 Castle Town.

⁸⁹ Kelly Proof 3.4

⁹⁰ Kelly Proof 3.4. Further details on these assets' aesthetic and historic value is provided at 3.17 of Ms Kelly's proof.

⁹¹ Kelly Proof 3.19

⁹² Kelly Proof 4.17

(6) Grade II listed Mulberry Harbour Phoenix Caissons

44. 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 considerable military history,⁹³ 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 value.⁹⁴

45. 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 history.⁹⁵ They also contribute to appreciating 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 from across Portland Harbour.⁹⁶ The intervisibility with Portland Part is part of the asset's setting and contributes positively to its significance, as does its visual prominence in views of it.⁹⁷

46. The development would be situated in views that include the Caissons and its significant scale and mass would detract from, and compete with, their visual prominence.⁹⁸ However, again, it is recognised that the Development's impact would be in wider views and that a number of views of and from the Caissons

⁹³ This is further set out in Kelly Proof 3.29

⁹⁴ Kelly Proof 3.30

⁹⁵ Kelly Proof 3.31

⁹⁶ Ibid

⁹⁷ Kelly Proof 4.18

⁹⁸ Kelly Proof 4.17-4.18

would be unaffected. Therefore, there would be a minor level of effect resulting in less than substantial harm at the low end.⁹⁹

(7) Portland Castle

47. Portland Castle is a Grade I listed building and scheduled monument and, therefore, an asset of the highest significance. It was built as an artillery fort for King Henry VIII in 1539-41. It was built alongside Sandsfoot Castle to guard the natural anchorage known as Portland Roads. The two forts were situated on either side of the bay and are intervisible. That intervisibility and the locations of the forts is a key element of their special interest.¹⁰⁰ Further details of aesthetic, evidential and historic value are in the Council's written evidence.¹⁰¹

48. In terms of its setting, a degree of intervisibility remains across Portland Harbour with Sandsfoot Castle, notwithstanding modification by modern development.¹⁰² Views across Portland to Balaclava Bay make a positive contribution to appreciating the strategic location chosen as the site of the Portland Castle and also subsequent periods of military defensive developments in this strategically important location.¹⁰³

49. 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 this asset, and, as such, there is only a negligible level of effect resulting in less than substantial harm at the lowest end.¹⁰⁴

⁹⁹ Kelly Proof 4.18

¹⁰⁰ Kelly Proof 3.2

¹⁰¹ Kelly Proof 3.32

¹⁰² Kelly Proof 3.33

¹⁰³ Kelly Proof 3.33

¹⁰⁴ Kelly Proof 4.19

Overall conclusions on impacts:

50. In light of all of this, there are two key heritage impacts from the proposed development. First, the development would detract¹⁰⁵ both from intervisibility between and from views of and from the assets, resulting in detraction from the group value of the assets in a context in which intervisibility is a key part of their special interest.¹⁰⁶ Secondly, the development would detract from the deliberate and appreciable scale of the assets, particularly the Verne Citadel and the Breakwaters.¹⁰⁷

Heritage Mitigation Strategy:

51. The benefits offered by the Heritage Mitigation Strategy – through the provision of the permissive path and scrub clearance to Battery E to enable it to be removed from the at risk register – are recognised, but have obvious limitations.

52. In relation to the path, whilst this will open up public access and views of the Batteries and Breakwaters (with the potential for interpretation boards), any benefit¹⁰⁸ arising from this is seriously 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 benefit this can be given only very little weight.

¹⁰⁵ Ms Kelly was very clear in her oral evidence that she does not go so far as to allege that any views were be “severed” completely. Her focus is, instead, on detraction from views.

¹⁰⁶ Ms Kelly noted in XX that it is views across the assets that convey their links to other assets and their group value. This in turn affects how one experiences and understands their functional relationship.

¹⁰⁷ An example of the competition against the Citadel’s dominance can be seen in figures JM21 and JM22 within Mr Mason’s Appendix JM4 (HK XX).

¹⁰⁸ And, the benefit of facilitating public access is, strictly speaking, a public benefit as opposed to a heritage benefit.

53. In terms of the works to E Battery, 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 scheme.¹⁰⁹ Ms Kelly explained how a CMP would usually come first in order to guide what mitigation is being proposed.¹¹⁰ Here, there is no CMP which explains how the works to E Battery can somehow be said to address all of the (considerable) levels of heritage harm. So, from the information available, you can only assume that these works would be mitigation for the harm to E Battery only, and not for any harm further afield.¹¹¹

54. Ultimately, in relation to the mitigation strategy, it is difficult to see how Dr Filmer-Sankey felt able to conclude that these limited benefits outweigh the totality of the harms to the multiple assets affected. Even Dr Filmer-Sankey had to concede that it was unlikely the heritage benefits could be described as “substantial”.¹¹² But even taken his terminology of “very significant”, the benefits only directly relate to one heritage asset. That cannot on any proper or sensible assessment be said to outweigh *all* of the heritage harms. Whether or not this

¹⁰⁹ Historic England also called for a CMP in their response dated 9 March 2023 (CD 4.89).

¹¹⁰ For this reason, this issue cannot be dealt with by condition.

¹¹¹ We add that whilst it is obviously a benefit to remove E Battery from the heritage at risk register, the threshold for doing so is not actually the “very high bar” that has been emphasised by the Appellant (see e.g. Filmer-Sankey’s rebuttal at 2.24). This is because E Battery, as a Scheduled Monument, is dual listed as an archaeological and heritage asset. The requirements for removing archaeological entries from the register is a much lower bar than the one referred to by Mr Filmer-Sankey (see Filmer-Sankey Proof 1.4.8) for other heritage assets and, as Ms Kelly explained, where there is a dual designation, the less onerous scheduling requirements (i.e. for the asset as an archaeological asset) take precedence. In light of this, Ms Kelly noted that theoretically E Battery could be removed from the register through quite a low amount of scrub clearance.

¹¹² Filmer-Sankey XX, contrary to what is stated in Filmer-Sankey Proof 7.31

is assessed as part of a general para 208 NPPF¹¹³ exercise, or through the more complicated 2-part heritage benefit assessment undertaken by Dr Filmer-Sankey, 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:

55. Overall, the public benefits of the proposals come nowhere near outweighing the significant heritage harm found in this case and, in light of that, there is conflict with Policy 19 of the Waste Plan, Policy ENV4 of the West Dorset, Weymouth & Portland Local Plan, Policy Port/EN4 of the Portland Neighbourhood Plan, and paragraphs 203 and 208 of the NPPF¹¹⁴.

RfR 2: Landscape and Visual

Introduction:

56. The appeal site sits within a highly sensitive location in landscape and visual terms.¹¹⁵ It is situated at the foot of the slumped cliffs of the Weare, within the northern skyline of Portland, and visible from a myriad of viewpoints within the Dorset and East Devon Coast World Heritage Site (“WHS”),¹¹⁶ the West Dorset Heritage Coast (that includes Chesil Beach) (“Heritage Coast”), the South West Coast Path and the Dorset AONB (“AONB”) (now known as the Dorset National Landscape).

¹¹³ Previously paragraph 202 of the September 2023 NPPF

¹¹⁴ Previously paragraphs 197 and 202 of the September 2023 NPPF

¹¹⁵ Williamson XIC

¹¹⁶ Also known, and referred to, as the Jurassic Coast WHS

57. The island of Portland's landform is aptly described as "iconic",¹¹⁷ reflecting its unique profile in views from Chesil Beach and the north-west and there can be no question that the introduction of the appeal proposal – its mass, scale and height – will disturb that. Notably, RfR 2 encompasses not only the development's impact 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 ("SW coast path") and across Portland Harbour including from views from within the WHS and Heritage Coast.¹¹⁸

58. A key focus in the assessment of the 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 leaving from an 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 journey¹¹⁹ and any impacts on this experience must be fully considered.

59. Overall, it is agreed that the appeal proposal will be of a mass and scale larger than any built development currently in the port.¹²⁰ It will obviously skyline and

¹¹⁷ See the Council's RfR 2, CD 6.01

¹¹⁸ Ibid. For ease of reference, the text of RfR2 in full is: "The proposed development, as a result of its scale, massing and height, in the proposed location, would have a significant adverse effect on the quality of the landscape and views of the iconic landform shape of the Isle of Portland within the setting of the Dorset and East Devon Coast World Heritage Site, particularly when viewed from the South West Coast Path and across Portland Harbour. As such, the proposal is contrary to Policy 14 of the Waste Plan, Policy ENV1 of the West Dorset, Weymouth & Portland Local Plan, Policies Port/EN7 and Port/BE2 of the Portland Neighbourhood Plan, and paragraph 174 of the NPPF." Paragraph 174 of the September 2023 NPPF is now paragraph 180.

¹¹⁹ Mason XX, Williamson XIC

¹²⁰ Mason XX

be silhouetted in a number of views, particularly from the north-west along Chesil Beach, the SW coast path, the Heritage Coast and WHS. The Appellant's ES World Heritage assessment recognised that there would be significant adverse effects on the setting and significance of the WHS in this respect.¹²¹ As with its heritage assessment, the appellant's appeal LVIA seeks to downplay the proposals' effects. However, its assessment is entirely unconvincing.

Evidence and methodology:

60. Of course, you will make your own judgments on the development's landscape and visual impacts. But, as with heritage, there are competing professional assessments seeking to guide you. For a number of reasons, the weight to be given to the Appellant's appeal assessment evidence¹²² should be limited.

(a) First, as one of a number of qualified landscape architects to have assessed the appeal proposal,¹²³ the Appellant's appeal LVIA is the only one to conclude that the impacts will be so limited as to result in just one significant effect. It is an outlier.¹²⁴

(b) Secondly, the methodology used provides no clear basis for the judgment as to the significance of effects and is not in keeping with GLVIA3. Where categories of harm are used (such as "moderate" or "minor"), GLVIA 3¹²⁵ expects a clear explanation as to which of these are considered significant

¹²¹ ES Chapter 13 13.73 & 13.76 p13-17

¹²² Evidence of Mr Mason

¹²³ For example, Terence O'Rourke Ltd (LVIA), Mr Williamson (on behalf of the Council) and Mr Mason (on behalf of the Appellant). N.b. also numerous responses from Dorset Council qualified officers.

¹²⁴ Mason XX (see Mason Proof Table 6.1 for summary of viewpoint assessment; see also Williamson Rebuttal Tables 3 and 4 for a comparison)

¹²⁵ Guidelines for Landscape and Visual Impact Assessment, Third edition

and which are not.¹²⁶ On any reading, the Appellant’s appeal LVIA does not do that.¹²⁷ 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 (i.e. greater than moderate), has now been set two notches above that set by the original LVIA (“slight to moderate” or above) without any explanation being given.¹²⁸ It ultimately leaves all this to a judgment call without proper explanation for how that judgment has been exercised.¹³⁰ This lacuna was evident when the Appellant’s evidence was tested.¹³¹

(c) 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 refers¹³² to there being a “strong degree of integration” of the ERF with the existing development at the Port (which there would plainly not be) but fails to make any mention of this for the viewpoint at Rodwell Trail above Castle Cove Sailing Club (VP25) notwithstanding you would expect this point to be *more* relevant here as

¹²⁶ GLVIA 3 3.34; accepted by Mason XX

¹²⁷ See, in particular, Mason Proof 6.4.3 (and to similar effect JM3 2.3.7 (p. 36 (p. 40 pdf))

¹²⁸ Williamson XIC (see also Williamson Rebuttal 4-9). Mr Williamson explained during XX that he had read the methodology in JM3 (pp. 37-38 (pp. 39-40 pdf)) carefully but it gave no explanation for the higher threshold.

¹²⁹ It is also in a context whereby the Appellant judges a number of adverse impacts to be “moderate” but judges only one of them to be significant, making the need for explanation even more explicit.

¹³⁰ Ibid

¹³¹ The Inspector will recall the example given that for Sandsfoot Castle (VP9), the explanation under “Significant Effect: No” in JM2 p. 19 (p. 20 pdf) is simply “The underlying nature and composition of the view would remain materially the same as existing.” The same single-line explanation is given for Jailhouse Café (VP16) p. 9 (p. 11 pdf); Hamm Beach South (VP21) p. 14 (p. 16 pdf); Chesil Beach (VP22) p. 15 (p. 17 pdf); Hamm Beach North (VP23) p. 16 (p. 18 pdf); South west end of Rodwell Trail (VP24) p. 17 (p. 19 pdf); Rodwell Trail above Castle Cove Sailing Club (VP25) p. 18 (p. 20 pdf); Nothe Fort and Nothe Gardens (VP10) p. 20 (p. 22 pdf). If you were to disagree with any of these conclusion that would fundamentally undermine the assessment.

¹³² JM2 p. 19 (p. 21 pdf) under the bullet point “Degree of contrast/integration”

VP25 is closer to the port. No explanation could be given for this in XX.¹³³

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61. There are therefore serious question marks as to how Mr Mason has reached his judgments, in a context in which he is the outlier landscape witness. Whilst further critique may be given,¹³⁵ these headline points give ample reason to prefer the Council's evidence. The Council's landscape witness, Mr Williamson, has methodically reviewed the LVIA carried out for the ES and explained (where necessary) why he differs in view to its authors.¹³⁶ His evidence is clear and transparent, using the same matrix-based methodology as the LVIA itself¹³⁷ (which the Appellant agrees is sound¹³⁸ and reasonable¹³⁹). Given the high sensitivity of the site, the significance threshold chosen by the LVIA ("slight to moderate") is reasonable.¹⁴⁰ But, in any event, Mr Williamson also explains how even if the significance threshold were to be raised one notch (i.e. to "moderate or above"¹⁴¹) this would not change his conclusions.¹⁴²

62. Mr Williamson also correctly identifies a number of omissions in the LVIA, most notably the failure to assess the two most directly relevant landscape character

¹³³ Mason XX for VP25: "Can't explain why I haven't said integration as with other viewpoints".

¹³⁴ Another example is the fact that the same magnitude of change - "small to medium" - is given to both VP21 and VP22 despite their clear differences in distance from the site and with no further explanation given.

¹³⁵ Not least that Mr Mason failed to address any of the relevant planning policies in his proof (Mason XX). Notwithstanding that he accepted that the policies inform the issue of landscape and visual susceptibility

¹³⁶ Overall, the LVIA underestimates the extent and degree of adverse landscape and visual impacts and Mr Williamson's evidence explains why.

¹³⁷ See CD 1.36(j) Part 1, figures 9.1-9.3 (landscape) and 9.4-9.6 (visual) p. 83 onwards

¹³⁸ Mason Proof 6.2.2 noting that the methodology "aligns with the good practice guidance contained within GLVIA 3rd edition"

¹³⁹ Mason XX.

¹⁴⁰ Williamson XIC

¹⁴¹ Which Mr Williamson considers would also be reasonable, see Williamson Rebuttal 11 (p. 4)

¹⁴² See Williamson Rebuttal tables 3 and 4

areas (“LCA”)¹⁴³ – the Chesil Beach, The Fleet and The Causeway LCA and the Portland Peninsula LCA – as well as a number of relevant viewpoints.¹⁴⁴ The erroneous and under-representative nature of the ES has led to the effects of the scheme being underplayed. The Appellant obviously agrees with the Council that there were omissions within the ES as its Appellant’s landscape witness has now assessed these two LCAs and 11 new viewpoints but only within the context of Mr Mason’s methodology which appears designed to further understate the significance of effects. For all these reasons, Mr Williamson’s evidence must be preferred.

Viewpoints and visuals:

63. Representations of landscape and visual impact should be relied upon only as an indicative guide to likely effects. On site judgment is central to the assessment in this case and must take into account different weather conditions, the movement of the sun and the wide range of receptors with which this case is concerned. To take just one example, for the Jailhouse Café (VP16), it is self-evident that the photomontage JM10¹⁴⁵ only shows the impact of the development were one to look straight ahead towards the horizon. If the viewer were to look both outwards and downwards (which would be the most natural line of vision), the appeal proposal’s impacts would undoubtedly be far greater.¹⁴⁶

¹⁴³ Due to the LVIA’s use of the wrong character assessment (the 2017 Isle of Purbeck Heritage and Character Assessment (CD 12.31)) when it should have used the 2013 Weymouth and Portland Landscape Character Assessment (CD 12. 30).

¹⁴⁴ This is unsurprising in light of the deficiencies in the LVIA’s zones of theoretical visibility mapping, see Williamson Proof 4-3-4.8, and 4.9-4.17.

¹⁴⁵ In JM4 of Mason’s appendices

¹⁴⁶ See Williamson’s Appendix 5, photograph C. Mr Williamson confirmed in XIC that this photograph was taken at eye level but looking downwards.

64. In terms of the accuracy of the photomontages, the Council has reviewed the “viewpoint verification information” note, submitted to the Inquiry on Friday 15 December 2023 in response to the apparent inconsistency in the visible stack height shown in VP15 (E Battery) and VP17 (Royal Naval Cemetery).¹⁴⁷ It seems from the diagrams presented, that the precise location chosen for VP15 is not where the development would be most visible from within Battery E. In contrast to VP17, which shows a red dotted line of vision pointing downwards, the red dotted line for VP15 is positioned at a perpendicular angle meaning only a small proportion of the stack is visible. The topography indicates that if the viewpoint had been taking just a short distance to the north, the angle would better align with VP17, with a similar proportion of 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. In light of this, the Council would ask that you revisit the area in the vicinity of these two viewpoints again.

The WHS:

65. The fact that this appeal involves proposals that could have an adverse impact on the outstanding universal value (“OUV”), integrity, authenticity and significance of a WHS is the reason why the matter has been recovered.¹⁴⁸

¹⁴⁷ Raised during Mason XX

¹⁴⁸ Recovery letter dated 30 October 2023

Overall, the evidence shows that there will not only be an adverse impact on the WHS setting and significance, but that impact will be a significant one.¹⁴⁹

66. The Council and Appellant agree that the WHS is designated as a natural, and not a cultural, heritage asset.¹⁵⁰ It is also agreed that, whilst the appeal site lies outside the WHS, it would be visible from and within the setting of the WHS.¹⁵¹

67. 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 that their conservation has been deemed our collective responsibility.¹⁵² UNESCO's 'Guidance and Toolkit for Impact Assessments in a World Heritage Context' (2022)¹⁵³ reiterates that WHSs "should always be considered as a highly sensitive environment",¹⁵⁴ and the "international importance" of a WHS' OUV "needs to be considered when evaluating the significance of any potential impacts".¹⁵⁵ ¹⁵⁶

68. Notably, the Toolkit states right at the outset that "[c]hanges both within and outside World Heritage properties need to be managed in line with the

¹⁴⁹ Relying on Mr Williamson's evidence, see in particular see his Proof 4.68.

¹⁵⁰ See CD12.06 WHS Nomination Document, p. 1 recording 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 life during Mesozoic times.

¹⁵¹ SoCG 7.23(vii)

¹⁵² CD12.07 UNESCO's 'Guidance and Toolkit for Impact Assessments in a World Heritage Context' (2022) ("UNESCO Toolkit"), short summary (p. 3 pdf)

¹⁵³ CD 12.07 UNESCO Toolkit. Nb. the Toolkit is appropriate to use in relation to the Dorset Coast WHS, as it applies to both natural and cultural WHSs (see IUCN letter dated 7 April 2023) CD 4.97

¹⁵⁴ UNESCO Toolkit p. 27 (p. 31 pdf), para 6 "Evaluating impacts"

¹⁵⁵ Ibid

¹⁵⁶ The Toolkit further stresses the importance of protecting the "wider heritage" of a WHS, beyond its OUV (UNESCO Toolkit p. 44 (p. 48 pdf) at 6.9: "Significant negative impacts on the wider heritage will generally be unacceptable, and on a World Heritage property's OUV they will always be unacceptable."), stating that ensuring the protection and conservation of the OUV may, in turn, "require protection of other heritage/conservation values" (UNESCO Toolkit p. 7 (p. 11 pdf) para 1).

Convention's objectives",¹⁵⁷ reflecting the fact that developments outside the WHS may well impact on its OUV and significance.¹⁵⁸ In line with this approach, the Toolkit recognises the differences between the WHS property, its buffer zone, and wider setting,¹⁵⁹ emphasising the need to consider impacts affecting the WHS' wider setting and ensure the WHS is not "viewed in isolation".¹⁶⁰ Indeed, the wider setting's value is further emphasised through its definition:¹⁶¹

"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 organization 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."

69. In line with this approach, all parties accept the different concepts of (i) OUV, (ii) buffer zone and (iii) wider setting applying 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 AONB and Heritage Coast) and(notably¹⁶²) the local and national policy protections that apply to them

¹⁵⁷ UNESCO Toolkit p. 6 (p. 10 pdf) second paragraph, emphasis added

¹⁵⁸ Agreed by Mr Mason in XX, as in the case of Navitus Bay (see further below). See also the Jurassic Coast Partnership Plan 2020-2025, p. 20 quoting from UNESCO Guidelines on nominations of cultural or natural properties on the WH List: "properties must be protected from all threats or inconsistent uses. These developments can often take place beyond the boundaries of a property."

¹⁵⁹ UNESCO Toolkit p. 14 (p. 18 pdf) at 3.2.3; see also p. 7 (p. 11 pdf) para 3

¹⁶⁰ Ibid, last paragraph: "While buffer zones typically cover the immediate area around the World Heritage property, the wider setting may be unprotected or protected by different legislation. This can lead to the risk that a proposed action is planned for the wider setting without considering the potential impacts on the World Heritage property. (...) Due to the relationship between a World Heritage property and its wider setting, some proposed actions might have an impact on OUV. Hence, it is important that impact assessment looks at the wider setting of the World Heritage property." See also p. 27 (p. 31 pdf) para 5: "During impact identification and prediction, it is important to remain aware of how a World Heritage property is interconnected with its buffer zone and wider setting, and that it cannot be viewed in isolation."

¹⁶¹ UNESCO Toolkit p. 63 (p. 67 pdf), emphasis added

¹⁶² Emphasised by Mr Williamson during XX. Mr Williamson further emphasised in XX that the AONB was just one mechanism through which to protect the WHS' landscape and visual issues (contrary to any indication by the Appellant that it was the only way).

confer sufficient protection without the need for a separately designated buffer zone. That is reflected in the WHS Nomination Document,¹⁶³ the Jurassic Coast Partnership Plan 2020-2025 (“Partnership Plan”),¹⁶⁴ and in the Examining Authority’s recommendation on the Navitus Bay development.¹⁶⁵

70. But, whilst there is no buffer zone, it is simply wrong to suggest (as the Appellant does) that there is no setting.¹⁶⁶ The WHS’ setting must be separately considered.¹⁶⁷ The extent of that setting will be informed by a variety of components, requiring judgment to be applied,¹⁶⁸ but such consideration are not limited to impacts on the AONB (or Heritage Coast) on the basis that these formed part of the reason why no separate buffer zone exists.¹⁶⁹ Whilst both of those designations form part of the WHS’ setting, the setting of this WHS is wider and extends also to areas protected by local landscape policies and beyond the designations.

71. Moreover, setting includes “experiential setting”, which is critical to the Dorset WHS as undeveloped coastline and must be considered in relation to this appeal.¹⁷⁰ That is evident from the Partnership Plan,¹⁷¹ and is fully appraised in

¹⁶³ CD 12.06 pp. 9-10 (pp. 12-13 pdf)

¹⁶⁴ CD 12.09 p. 17: “There is no defined buffer zone as the wider setting of the property is well protected through the existing designations and national and local planning policies.” See also p. 23, last paragraph.

¹⁶⁵ CD 12.08 Navitus Bay Examining Authority’s Recommendation, see, for example, at 9.1.4 and 9.3.14

¹⁶⁶ Cf. Mason Rebuttal 1.6.7 “Firstly there is no buffer zone or ‘setting’ to the WHS in itself.”

¹⁶⁷ Evidently, the WHS has a setting that should be conserved and enhanced, see Partnership Plan (CD 12.09) Strategic Aim 2, p. 48.

¹⁶⁸ Agreed by Mason in XX

¹⁶⁹ Williamson XX

¹⁷⁰ Williamson XIC

¹⁷¹ CD12.09 p. 22: “[a]lthough the Coast was not inscribed on the World Heritage list for its natural beauty, , UNESCO recognised its value with respect to this criterion as ‘nationally important’ (...) An assessment of landscape and seascape character provides a starting point for evaluation of the impact of change in the setting. The special qualities of the AONBs, such as tranquillity and undeveloped character of coast and seascapes, are important for helping to determine how people experience and enjoy the setting of the WHS.” See also Theme 3 on p. 52 seeking to enhance visitor experience of the WHS.

the Navitus Bay recommendation report,¹⁷² 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”. The panel ultimately concluded that:¹⁷³

...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.

72. This is entirely in keeping with the UNESCO Toolkit¹⁷⁴ and led to a conclusion that the proposed offshore windfarm in that case “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.”¹⁷⁵ In terms of approach, you are invited to apply the same approach to the assessment here.

73. The JCT expressly 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,

¹⁷² CD 12.08, see in particular 9.3.20.

¹⁷³ CD 12.08, 9.3.22

¹⁷⁴ Agreed by Mason in XX

¹⁷⁵ Navitus Bay Examining Authority’s Recommendation, CD 12.09, 9.3.24. See also at 9.3.25.

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 coastline.¹⁷⁶

These concerns chime with those of the Council.

Impact of development:

74. Here, the proposed development will undoubtedly have a significant impact on the WHS's setting, including its experiential setting.¹⁷⁷ The sensitivity of the WHS is high and the development's introduction will clearly impact on landscape character and on a number of viewpoints within the WHS itself, impacting, in particular, on viewpoints along Chesil Beach and north of the harbour around Sandsfoot castle.¹⁷⁸ Moreover, the development (as a large-scale ERF) would negatively affect the perception and quality of experience for visitors, in conflict with the Partnership Plan.¹⁷⁹

75. These conclusions notably align with those in the Appellant's ES.¹⁸⁰ We also note that these impacts affect the WHS as a whole and it not appropriate, as the Appellant does, to suggest impact on only parts of the WHS.¹⁸¹ Again, Mr Mason is the clear outlier in (wrongly) concluding no significant harm.

¹⁷⁶ CD4.12

¹⁷⁷ Williamson Proof 4.68, 4.88 and 5.5

¹⁷⁸ The effects can be seen, for example, in VP9 (Sandsfoot Castle) (Figure JM6 in Appendix JM4); VP21 (South West Coast Path adjacent to Portland Beach Road) (Figure JM20 in Appendix JM4); VP22 (Chesil Beach) (Figure JM22 in Appendix JM4); VP23 (South West Coast Path, south of Ferry Bridge Marina) (Figure JM24 in Appendix JM4); VP24 (south west end of Rodwell Trail) (Figure JM26 in Appendix JM4); and, VP25 (Rodwell Trail, north west of the Castle Cove Sailing Club) (Figure JM28 in Appendix JM4).

¹⁷⁹ Williamson Proof 4.84-4.88

¹⁸⁰ See CD 1.36(n) (chapter 13 on World Heritage Site) at 13.76 on p. 17 (p. 18 pdf)

¹⁸¹ See Mason Rebuttal 1.6.2

76. His error is to fail to recognise that the location of the appeal proposal, coupled with its scale, will disrupt the existing profile of Portland in multiple views from the north west. The ERF would be seen as a visible, skylining extension to the landform, disrupting its profile. It is of a different height and scale to any existing development at the Port, and tial cement silo development, (if built) would not have the same skylining impact on the landform, being backdropped by the island to a far greater extent. Indeed, the ERF is of such scale that the ES and Mr Williamson identify significant adverse effects 4.5km away. It will, 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.

77. Underlying Mr Mason'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 of medium value,¹⁸² reflective of the fact that they both possess many positive landscape characteristics (see below), his principal focus is on identifying how the appeal proposal would integrate with the identified detrimental features. That effectively airbrushes out the key characteristics which in both instances include skylines, exposure and open and extensive views. As a result of downplaying sensitivity to the change which the ERF would bring about, Mr Mason concludes that the effects on landscape

¹⁸² See Jason Appendix JM1 pp2-6

character would not be significant. When properly assessed, the effects are both significant and unacceptable.¹⁸³

Heritage Coast:

78. This receptor is of high sensitivity,¹⁸⁴ 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 significant.¹⁸⁵ This reflects the fact that there would be a notable change to the skyline due to the development's presence at the foot of the landform, projecting built development outwards and disturbing the iconic form of the island.¹⁸⁶

Chesil Beach, The Fleet and The Causeway LCA:

79. This receptor is one of the iconic features along the south coast¹⁸⁷ and the Appellant agrees that its value is high¹⁸⁸ notwithstanding the various detrimental features listed in the Weymouth and Portland Landscape Character Assessment 2013 ("2013 LCA"),¹⁸⁹ such as the heavy traffic on the A354 and urbanising influence of development at Osprey Quay.¹⁹⁰

80. The Appellant's contention that the sensitivity to change is only "low to medium",¹⁹¹ reflects an over-reliance on the more urbanised northern and southern ends of the Causeway and insufficient attention being paid to the more

¹⁸³ Williamson main proof para.4.77 p.31

¹⁸⁴ Williamson Proof 4.67, in line with the LVIA assessment.

¹⁸⁵ Williamson Proof 4.67, re-confirmed in XX

¹⁸⁶ Williamson XX, by reference to VP22 (Chesil Beach) Figure JM22 of Appendix JM4.

¹⁸⁷ Agreed by Mason in XX

¹⁸⁸ See JM1 p. 2

¹⁸⁹ CD 12.30 at 6.5 on p. 16 pdf

¹⁹⁰ Accepted by Mason in XX

¹⁹¹ JM1 p. 2

open, natural and exposed character of the area in between.¹⁹² It also reflects an unjustified over-emphasis on the influence of transient (and irregular¹⁹³) cruise ships.¹⁹⁴ The Council maintains that sensitivity is high.

81. The magnitude of change will 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.

82. Overall, this results in an effect that is moderate adverse and significant. We further note that, on the assumption that the “Harbour/Wetland/Lagoon” landscape character area assessed in the LVIA falls outside of the Chesil Beach, The Fleet and The Causeway LCA,¹⁹⁵ it too would experience a significant effect, with the level of effect being moderate to slight adverse.¹⁹⁶

Portland Peninsula LCA:

83. The Isle of Portland forms a dramatic and distinctive wedge-shaped peninsula at the end of Chesil Beach.¹⁹⁷ 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 character.¹⁹⁸ This LCA has 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 influences (including the port).¹⁹⁹

¹⁹² This open and exposed character is expressly recognised at 6.1 of the 2013 LCA (CD 12.30 p. 15 pdf)

¹⁹³ Both temporally and in terms of size.

¹⁹⁴ See Williamson Rebuttal 12 (pp. 4-5) for further reasons as to why the on and off presence of large cruise ships does not undermine the landscape and visual impacts of the appeal proposal.

¹⁹⁵ This is not clear from figure 9.15 of the LVIA (CD 1.36(j) (part 1) p. 97 of the pdf; see Williamson Proof 4.34

¹⁹⁶ See Williamson Proof 4.34

¹⁹⁷ Williamson Proof 4.42

¹⁹⁸ Williamson Proof 4.42

¹⁹⁹ Williamson XIC

Overall, the receptor value is high,²⁰⁰ the susceptibility to change is medium,²⁰¹ the sensitivity is medium to high,²⁰² and the magnitude of change is medium adverse (with a conspicuous new industrial element breaking the skyline and altering the iconic profile of the rugged limestone island).²⁰³ This results in a moderate adverse effect that is significant.²⁰⁴

Residential receptors and the South West Coast Path:

84. In a number of respects, the LVIA downplayed the effects on residential receptors, primarily in Weymouth but also in Portland itself.²⁰⁵ There are a very large number of residential receptors in Weymouth enjoying valuable coastal views over the harbour towards Portland that would be impacted by the development.²⁰⁶ There would be significant adverse effects on visual amenity for large numbers of residential properties.²⁰⁷

85. In terms of the South West Coast Path, the Council agrees with the assessment of sensitivity in the LVIA (high) but the assessment of 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 Path.²⁰⁸

²⁰⁰ Williamson XIC

²⁰¹ Williamson XIC

²⁰² Williamson XIC, Williamson Proof 4.42

²⁰³ Williamson XIC, Williamson Proof 4.42

²⁰⁴ Williamson XIC, Williamson Proof 4.42

²⁰⁵ See Williamson Proof 4.47-4.51

²⁰⁶ Williamson Proof 4.48

²⁰⁷ See Williamson Proof 4.47-4.51, noting that the assessment of level of effect varies depending on the location of these residential receptors (e.g. 4.49-4.50).

²⁰⁸ Williamson Proof 4.52; see also 4.53-4.54 and photographs F, G, H, J, and K in Williamson Appendix 5

Overall landscape and visual impacts:

86. In the interests of brevity, we have not summarised every finding of significant adverse landscape and visual impacts, focussing only on some of the key findings.²⁰⁹ In summary, the evidence shows that there would be a significant effect on three landscape receptors:²¹⁰

- (i) Harbour/ wetland/ lagoon – moderate to slight adverse
- (ii) Chesil Beach, The Fleet and The Causeway – moderate adverse
- (iii) Portland Peninsula – moderate adverse

87. There would also be significant effects on eleven visual receptors:²¹¹

- (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, 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
- (xi) PRoW south of Littlemoor – moderate/slight adverse

88. On visual effects, we note that the ES also found significant effects on a number of visual receptors.²¹² This is notwithstanding the serious deficiencies in the number of viewpoints it chose to assess.²¹³

89. Overall, it is clear that the development will introduce a major new built form into the port (larger than anything existing at the port²¹⁴), which will be visible

²⁰⁹ For a summary of all of the Council's findings of significant effects see Williamson Proof 4.43 and 4.69, Appendix 4 (Tables 1 and 2), as well as Williamson Rebuttal Tables 3 and 4.

²¹⁰ Williamson Proof 4.43

²¹¹ Williamson Proof 4.69

²¹² See ES CD 1.36(j) part 1, table 9.3 and 9.144-9.145 p. 78 (p. 79 pdf) and 9.148-9.149 p. 79 (p. 80 pdf)

²¹³ See Williamson Proof 4.3-4.17

²¹⁴ JM XX

from a myriad of views, including at great distances, and with significant effects extending to at least 4.5km from the site.²¹⁵ Those impacts cannot (on any sensible basis) be said to be “localised” or “very localised”.²¹⁶ The development would obviously skyline, and be silhouetted, in many of the views assessed, particularly from the north-west,²¹⁷ and it would detrimentally impact on the iconic landform of Portland.

90. Consequently, there would be non-compliance with Policy 14 of the Waste Plan, Policy ENV1 of the Local Plan, Policy Port/EN7 of the Neighbourhood Plan and paragraph 180 of the NPPF.²¹⁸ The extent of harm to the setting of the WHS is such that the appeal proposal is unacceptable on landscape grounds.

²¹⁵ Williamson Proof 5.3

²¹⁶ Cf. Appellant’s Statement of Case (CD 11.01) 2.55, 2.57-2.59, 4.1(XVI) and 4.8 (commentary to topic 6 in the table).

²¹⁷ See, for example, VP9, VP21, VP22, VP23, VP24 and VP25 in JM4

²¹⁸ See, in more detail, analysis in Williamson Proof 4.71-4.83

RfR1: Waste Management

(1) Need

Introduction:

91. It is not only reasonable, but entirely appropriate,²¹⁹ that the Council has provided an updated assessment of the need for residual waste management capacity in the Waste Plan area. As explained in opening,²²⁰ given the age of the Waste Plan's forecast (2018) and the data upon which it relies (2015 baseline data), it is important that the Secretary of State has a current assessment of need to weigh in the planning balance.²²¹ In fact, this is the first occasion since the Waste Plan's adoption, that the validity of its forecasts and capacity gap estimations have been tested at appeal and, as the Waste Plan itself requires in the context of proposals on unallocated waste sites, they be supported by contemporary data. It would not have been appropriate to rely on the dated 2018 forecasts.²²²

92. The fact that the Council has provided an updated assessment of the capacity gap forecasts does not mean the Council considers the Waste Plan, itself, to be "out of date" (notwithstanding the Appellant's assumption to contrary²²³). The Waste Plan is careful to stress that the Table 7 assessment of potential residual

²¹⁹ Questioning in XX of Mr Potter only served to highlight the reasonableness of providing an updated assessment in a context where the plan forecasts were a number of years old.

²²⁰ AD.04, para 6

²²¹ See Potter Appendix 1, A1.3-A1.12 for further reasons why the Waste Plan's forecasts (nb. not the plan itself) are considered to be out of date.

²²² See Potter Appendix 1, A1.23, which records that whilst an annual monitoring report (AMR) was produced in 2020, this stated that the waste management capacity had not yet been tested (see CD 12.41, table 4).

²²³ Roberts Proof 3.1.13 and 3.4.35(i) (see also Roberts Proof 3.4.25 incorrectly alleging that Mr Potter had argued that the relevant waste plan documents were "out of date" as his case for the Northacre Appeal (CD 10.01)).

waste arisings and capacity should be seen only as a guide²²⁴ and assumes that annual published monitoring reports (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 assessment.²²⁵

93. Overall, the Council's updated needs assessment shows the following:

- (a) Projected need (i.e. 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 to fall over the plan period.
- (b) At an early point during its operating lifetime, the capacity of the appeal proposal will significantly outstrip the predicted plan area's need.²²⁶ This is regardless of the numerous sensitivity tests applied. Indeed, in three of the five scenarios tested, there will be insufficient plan-area residual waste to exclusively feed the plant from the very outset.²²⁷
- (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 Waste Plan area in such circumstances.²²⁸
- (d) Not only does the appeal proposal challenge the Waste Plan's spatial strategy it also challenges the objective of driving waste up the Waste Hierarchy.

Competing evidence on need:

94. Forecasting future residual waste arisings is complex and cannot be done with certainty. All assessments will be sensitive to certain parameters and

²²⁴ CD 7.1 para.7.72 p.54

²²⁵ Hart XX

²²⁶ Potter XIC

²²⁷ Potter XIC

²²⁸ See Roberts Proof 3.2.4 for recognition that the facility will (in line with all such merchant plants) be capable of serving a wider sub-regional commercial and industrial waste market beyond Dorset and BCP ("The precise markets served by the Appeal Proposal are almost certainly going to vary over time as supply and demand shifts due to any number of factors. Such is the nature of a merchant facility.").

assumptions, including baseline arisings, growth rates and recycling rates that are difficult to predict. In this context, there are two key reasons to prefer the Council's assessment:

95. First, the Council's expert, Mr Potter, has presented his assessment in a fully transparent and replicable way, providing all necessary details of his methodology and data inputs including screenshots of the dataset relied upon.²²⁹ This means it can be properly scrutinised and tested.²³⁰ By contrast, the Appellant's expert, Mr Roberts, relies solely on an assessment carried out by Tolvik with input on certain assumptions from him, without providing any proper explanation as to the derivation of the raw data inputs that fed into it,²³¹ 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. You are being asked simply to accept what Mr Roberts tells you Tolvik has told him, very little of which can be scrutinised. Whilst the inquiry was treated to a lengthy cross examination of Mr Potter, at times this appeared to be a continuation of whatever went on at the Northacre inquiry, very much focussing on the man rather than the ball.

96. Beware of being distracted by such a diversionary approach. In reality, the attack on Mr Potter's objectivity effectively narrowed to his original acceptance of the Waste Plan's position that the capacity of Canford Magna²³² ought to be counted as recovery capacity in Table 7, and his exclusion of bulky waste from

²²⁹ See Appendix 3 to Mr Potter's Proof (see also Appendices 1-5 of his Rebuttal).

²³⁰ Indeed, to withstand a full day of XX.

²³¹ As would be expected in a PPG compliant assessment – see ID 28 para.36

²³² Stated in the Waste Plan to be 125,000 tpa - see CD 7.1 Table 7 p.55

the wastes which would be suitable as feedstock for the proposed ERF. Neither of which undermine his principal conclusions. There was also a late raised suggestion that his assessment of the component wastes in residual waste arisings from Dorset and Waste include incorrect figures in relation to EWC 20 03 01,²³³the suggestion being that Mr Potter's figures²³⁴ were out by 11,832 tpa.²³⁵

97. In relation to Canford Magna, Mr Potter reviewed the position on receipt of Mr Robert's evidence and accepted that 95,000 tpa of the stated capacity of the MBT facility should not be included and he adjusted his analysis accordingly. That is hardly a display of an absence 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 proposed EFW cannot be ascertained with any certainty. Either you include the whole figure which is likely to exaggerate the forecasts or you exclude it which results in an underestimation. Neither Tolvik nor Mr Potter added caveat to the figure, reflective no doubt of the acknowledgement that this element is understood to be uncertain. Whether you include it or exclude it, it does not begin to explain the very much higher residual waste tonnage identified as suitable for combustion advanced by Tolvik. Hence no doubt the diversionary flak directed at Mr Potter.

98. As to the claimed WDI residual waste tonnage error, this was not put to Mr Potter and Table 1 of Mr Potter's rebuttal proof accurately reflects the content

²³³ Roberts XIC

²³⁴ See Rebuttal proof Table 1 p.4 Line 2 Mixed municipal waste 26,129 and 20,261

²³⁵ Mr Roberts claimed the figures should be 36,507 and 21,715

of the WDI for EWC 20 03 01.²³⁶ No source for Mr Robert's alternative figure was provided and it is entirely unsubstantiated. It should be rejected. Also to be rejected is the contention that Mr Potter's assessment of the tonnage of combustible waste ignores the evidence of the refuse derived fuel which leaves Canford.²³⁷ Mr Potter has separately accounted for that waste in his methodology²³⁸ and it is clearly set out in his Table 3 as the export of RDF from Canford.²³⁹

99. The suggestion made by Mr Roberts that there was uncertainty as to how Mr Potter had extracted data from the WDI also falls to be rejected. Appendix 3 to Mr Potter's proof allows his assessment to be precisely replicated (including, but not limited to, the use of screenshots²⁴⁰) and, had there been any errors, the Appellant would no doubt have identified them, together with the reason for them. It has failed to do so.

100. The reality is that there is a large difference between the parties,²⁴¹ despite claimed reliance on the same source of data. The difference cannot be explained by reference to the bulky waste issue alone and, given the evidence before the inquiry as to the source of Mr Potter's figures, the most likely source of error is Tolvik. When the reasons advanced by Mr Roberts for the difference are considered, that conclusion becomes stronger still.

²³⁶ See Potter Appendix 3 p.5

²³⁷ EWC Code 19 12 10 Table 1 entry 20,932. The claim being that 54,800 tpa had been ignored

²³⁸ Appx 3 p.9

²³⁹ Main proof Table 3 p.20 line 3

²⁴⁰ Mr Roberts claimed that he could not tell from these screenshots what filters were applied, but the filters are obvious from the outputs that are shown in the screenshots. Showing these outputs ensures Mr Potter's approach is completely transparent, again in stark contrast to Mr Roberts who provides no equivalent.

²⁴¹ 76,095 tpa

101. To be clear, the Council *did* ask for the Appellant's source data on a number of occasions so that it might understand just what Tolvik purported to be doing.²⁴² Whilst the Appellant can try to criticise the Council for not asking enough times,²⁴³ it was ultimately the Appellant's choice not to disclose the full details of the workings of the assessment to the Inquiry.

102. This lack of information matters. A few examples amply illustrate the point. For example, the Appellant relies on a table showing the residual waste quantities generated and its fate in 2022.²⁴⁴ Yet, there remains little clarity as to how any of these figures were derived or where they come from. Mr Roberts advised that "certain adjustments"²⁴⁵ have been made, but there is a want of detail and no means of testing whether they are appropriate to this plan area and are justified by evidence.²⁴⁶ We know that they do not align with the figures Mr Potter has arrived at using his empirically based transparent methodology.²⁴⁷ Nor, do we know what EWC Waste Codes were included in the Appellant's definition of "residual waste" when assessing the WDI data presented by Mr Potter in Table 1 of his rebuttal – which is crucial to determining the baseline starting value.²⁴⁸ It appears from Mr Roberts' evidence in chief that they include the same four principal EWC codes relied upon by Mr Potter²⁴⁹ but then another

²⁴² Potter XX and RIX

²⁴³ Counsel's questioning during Potter XX

²⁴⁴ Roberts Proof Table 3.2

²⁴⁵ Roberts Proof 3.4.28

²⁴⁶ Potter Rebuttal 2.4.

²⁴⁷ The figures on line 1 of Table 3.2 for waste "Treated in England as per WDI" (including 82,429 for incineration) do not align with the WDI-derived figures Mr Potter uses, as shown in Screenshot 5 of his Appendix 3 to his Proof: Potter XX. Nor does line 2, "estimated share of tonnage from SW region but not WPA coded", give any explanation for how it was calculated. See further Potter Rebuttal at 2.4.

²⁴⁸ This point is raised in Mr Potter's Rebuttal at 2.3.

²⁴⁹ Not 3 as suggested by Mr Roberts. The four are 20 02 01, 19,12 10, 20 03 01 and 19 12 12

unidentified 70 EWC codes generating arisings of 4,469 tpa. A small tonnage but one which cannot be tested.

103. In relation to the other adjustments made by Tolvik,²⁵⁰ Mr Potter has demonstrated that none is justified having regard to the specific circumstances of this plan area and other evidence.²⁵¹ The Tolvik assumption that 70% of the landfill input of EWC 19 12 12 is combustible²⁵² has little evidential basis compared to Mr Potter's 50% assumption which has been fully justified.²⁵³ There is no evidence that there is any underreporting of RDF for export with more waste shown to be going into incineration plants from the Plan area than is reported as leaving Plan area waste sites.²⁵⁴ In relation to uncoded waste, the data for waste not coded at sub region level shows very little unaccounted for waste of the codes that might be suitable for incineration.²⁵⁵ 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 which is being managed in an existing facility.

104. Similar problems of transparency arise with the newly submitted "Appellant Amendment of Table 5 of Mr Potter's Rebuttal Proof (R08)",²⁵⁶ the Appellant presents its own starting value of 258,275tpa (2022) for tonnes of "Commercial (actually Municipal C&I)" waste derived from Tolvik's forecast.²⁵⁷

²⁵⁰ See NR8 Table 3.2 lines 2, 3 and 4

²⁵¹ See Rebuttal Proof Table pp. 21 and 22

²⁵² Which Mr Roberts asserted explained 7735 tpa of the difference

²⁵³ See CD 12.40 "Technical Note submitted to Medworth DCO Examination" (15 August 2023)

²⁵⁴ Potter Rebuttal Appendix 2

²⁵⁵ Ibid Appendix 3

²⁵⁶ AD.05

²⁵⁷ See NR9

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.²⁵⁸ The Appellant's forecasts are also undermined by the use of inappropriate recycling rates for LACW. These show forecast rates lower than rates already being achieved in BCP which simply cannot be right and further undermines confidence in the robustness of Tolvik's work.

105. Ultimately, the Council's assessment uses the Environment Agency's Waste Data Interrogator ("WDI") 2022 inputs to calculate baseline arisings which, as Mr Potter explained, is the best available data source to use.²⁵⁹ Mr Potter is, here, drawing on his considerable expertise and experience in the field, having worked for 35 years in waste management planning, having carried out countless waste needs assessments for waste planning authorities across the country and having acted as a serving member on DEFRA's Advisory Panel on Waste Data (informing the development and monitoring of national waste and resources policy).²⁶⁰ 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 fully explored by Mr Potter

²⁵⁸ Further, as explained by Mr Potter in evidence, bearing in mind that only a proportion of commercial and industrial waste will actually be a residual waste input (see Potter Proof Appendix 1 A1.5), if the 258,275tpa figure is being used as the starting basis for C&I "municipal" waste, then Mr Potter had sought to reverse engineer from the value supplied by Tolvik of commercial municipal waste, what the likely total C&I waste arisings were, which resulted in a much higher figure far beyond any estimate for C&I arisings. This contrasts with Mr Potter's previous understanding – as set out in 2.26 of his Rebuttal – that the 258,275tpa figure had been the total C&I waste figure, from which he then derived the appropriate proportion of 108,518tpa actually being residual commercial municipal.

²⁵⁹ NPPG on Waste, para 035 "Planned provision of new capacity and its spatial distribution should be based on robust analysis of best available data.."

²⁶⁰ Further details on Mr Potter's credentials are at 1.1-1.2 of his Proof.

and found not to warrant adjustment as has been undertaken by Tolvik in its analysis for this Plan area.^{261 262} Overall, nothing has occurred at this 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 planning.²⁶³

106. By contrast, we do not know what data sources the Appellant's assessment has actually relied upon or whether they have been correctly reported. Mr Roberts' proof provides a long list of potential "information sources" that Tolvik can draw upon,²⁶⁴ but tells us nothing about which of these actually fed into the assessment here, nor to what extent.²⁶⁵ The Council's reliance on WDI inputs must be preferred to the Appellant's untestable "basket" of inputs.

Council's assessment of need:

107. 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 value proposed by Mr Roberts. Following this reassessment, the total residual waste arisings in the plan area suited to combustion is within the range 161,900 tpa – 184,100 tpa depending on whether Mr Robert's position on transfers is accepted or not.²⁶⁶ 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

²⁶¹ See Potter rebuttal Table pp.20-22

²⁶² Potter XX e.g. the issues associated with uncoded waste.

²⁶³ Potter RIX

²⁶⁴ Roberts Proof 3.4.23

²⁶⁵ Potter XX

²⁶⁶ See Potter Rebuttal Table 9 p.18

capacity proposed. Growth in waste arisings will not support the facility as recycling rates are expected to accelerate at a faster pace.²⁶⁷

108. 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 assessment²⁶⁸) to 62,000tpa (2023) falling to 25,000tpa (2033).²⁶⁹ 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 & Waste Strategy (November 2022)²⁷⁰ 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."²⁷¹ 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 National Planning Policy for Waste 2014 ("NPPW")²⁷² requires waste planning authorities to consider when formulating their waste plans.²⁷³ The Appellant's scepticism that the Government's targets will be met,²⁷⁴ is telling. It ignores the reality that these targets (even if stretching) have now been set

²⁶⁷ See Potter Rebuttal figure 2 p.16

²⁶⁸ Potter Proof

²⁶⁹ Table 5, Appendix 1 to Mr Potter's Proof, p. 21 (p. 23 pdf).

²⁷⁰ CD 12.38

²⁷¹ CD 12.38, p. 25

²⁷² CD 9.02, para 2, bullet point two, point (ii), p. 4

²⁷³ Potter XX. Mr Potter also explained cogently in XX why he did not refer to the impact assessment of the Environment Act (28 April 2022) CD 9.25, as this uses a different definition of waste and overall the NPPW directs waste planning authorities to consider government advice on what can be recycled, not on what has been recycled.

²⁷⁴ See for example Roberts Proof 3.4.17(iv) and 3.4.19.

through legislation, are binding, and that we should be planning for success, not failure.²⁷⁵

109. Applying reasonable growth and recycling rates, Mr Potter's assessment identifies a residual waste arisings figure of 155,600 tpa (2025) and 109,400 tpa (2050)²⁷⁶

110. The final line of challenge to Mr Potter's assessment of need was to seek to argue that there was a significant mismatch between his assessment of residual waste arisings and the tonnage of residual LACW waste identified as being managed in Table 1 of his main proof which contains his comparative distance calculation. As Mr Potter explained,²⁷⁷ there is no "significant mismatch" in the Council's evidence for total residual waste.²⁷⁸ The Council has clearly explained,²⁷⁹ in response to the Appellant's critique, why (quite rightly) two different figures do not equate,²⁸⁰ and the difference is not a significant one having regard to the uncertainties inherent in waste data accuracy.

111. The Council's assessment further assessed both regional need in the South West and national need, concluding that there was sufficient capacity to meet need within the region²⁸¹ (even without factoring in government targets

²⁷⁵ Potter XX

²⁷⁶ Rebuttal Table 9 p.18

²⁷⁷ Evidence in chief

²⁷⁸ Table 1 on p. 13 (p. 15 pdf) vs Table 3 on p. 20 (p. 22 pdf) of Mr Potter's Proof

²⁷⁹ Potter XIC

²⁸⁰ The starting values for these tables are 183,938tpa for LACW in Table 1 and 184,100 tonnes for WDI total (i.e. LACW and C&I) in Table 3. The key differences are that the figures on Table 1 include all residual waste whether combustible and no allowance is made for the mass loss at Canford of 34,444 tpa (in contrast to the position in Table 1). Table 1 also include all Bulky Waste. Adjusting for these the difference between Table 3 and Table 1 with the residual C&I waste removed leaves a difference of just 14,627 tpa between the two tables as Mr Potter explained.

²⁸¹ See Tables 6 and 7 and A1.24-A1.27 in Appendix 1 to Mr Potter's Proof, pp. 22-24 (pp. 24-26 pdf).

noted above)²⁸² and there was no compelling need case nationally as current operational capacity has been found to be sufficient to meet the projected residual waste capacity requirement.²⁸³ 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 recycled.²⁸⁴

112. 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 landfill.²⁸⁵ 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) circa 7.0Mt or less,²⁸⁶ which of course needs to be distributed across England (for which the South West accounts for just under 7% of the total).²⁸⁷ 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 demand.²⁸⁸ The Government's aim is to achieve the near

²⁸² See A1.27 in Appendix 1 to Mr Potter's Proof, p. 24 (p. 26 pdf).

²⁸³ See A1.28-A1.33 in Appendix 1 to Mr Potter's Proof, pp. 24-26 (pp. 26-28 pdf).

²⁸⁴ The risk expressly recognised by EN1 see CD 9.03 para.3.3.40 and EN3 CD 9.04 para.2.7.29

²⁸⁵ Roberts Proof 3.4.17(v) and Rebuttal 2.1.11(i)

²⁸⁶ Were the Appellant's position that 70% of wastes going to landfill are combustible to be accepted

²⁸⁷ Examination of WDI data shows that 9.4Mt of target waste went to landfill in England in 2022, but only 7.7MT was waste code 191212. The Council has presented up-to-date evidence to show that only 50% of waste code 19 12 12 is combustible (CD 12.40, Technical Note submitted to the Medworth DCO Examination), which means the total value of 9.4Mt falls to 5.6Mt. Even if a 70% combustion rate (used by Tolvik, albeit for which no actual supporting evidence is provided (see Potter Rebuttal p. 21 (p. 24 pdf) line (d) middle column)) is applied, the amount falls to 7.1Mt.

²⁸⁸ Roberts Rebuttal 2.1.11(ii), see Potter Rebuttal 2.17-2.18.

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 waste data tables presented by Mr Potter (Table 1 rebuttal) shows how little other biodegradable waste is actually going to landfill from the Plan area.

113. 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 Edmonton ERF in North London (planned to close in 2025) will be replaced with a much larger facility.²⁸⁹ Overall, Mr Potter's analysis of national need also remains robust.

114. Mr Potter has also sought to test the Tolvik assessments to the extent that can be done without the underlying source data. Whilst this sensitivity analysis shows that there would be greater levels of residual waste arisings in the early years of the 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's capacity.²⁹⁰

115. Overall, the results of this sensitivity testing have not undermined the Council's primary position that there is insufficient plan-area need to fully supply the development throughout its operational life. In only 2 out of 5 of the scenarios tested, will there be sufficient waste to feed the facility in 2025 and in all cases, the amount of suitable residual waste forecast to be available from the Plan area is significantly less than the plant's capacity by 2040.²⁹¹ We

²⁸⁹ Potter XX

²⁹⁰ See Potter rebuttal p.13 Table 5 2042 – 136,520 tpa.

²⁹¹ Potter XIC

maintain that the “bottom up” approach,²⁹² relying on the WDI is the most accurate method as it draws on actual data, rather than hypotheticals.

116. As to the issue of capacity, in assessing the capacity gap, the recent permission for the Parley site (allocated site 7), for up to 60,000tpa, should be included in capacity. It is clear from the NPPG on Waste,²⁹³ that consideration of capacity can include more than just existing operational capacity including consented developments due to come on line at a later date.²⁹⁴ Judgment needs to be applied and Mr Potter cogently explained why this permission should be included: it is a recent permission, on an allocated site, granted to an experienced and long-standing waste management firm.²⁹⁵ The 10,000tpa of this capacity for the pre-sorting of recyclables, should also be counted towards residual waste management capacity.²⁹⁶

117. Further, the potential for other of the 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 Waste Plan was adopted, facilitated two applications for residual waste management capacity in the form of energy

²⁹² Reflected in Line C of Table 9 of Mr Potter’s Rebuttal, p. 18 (p. 21 pdf).

²⁹³ See Annex 2 to the NPPG on Waste

²⁹⁴ The capacity assessment table in Annex 2 refers to “planned capacity (with approximate start date)”. Furthermore, paragraph 7 of the NPPW’s (CD 9.02) reference to waste planning authorities considering the extent to which “capacity of existing operational facilities” would satisfy identified need does not say that existing operational facilities are the “only” capacity that can be considered. (cf. Roberts Rebuttal 2.1.9(ii)). See also EN3 (CD 9.04) at 2.7.44 referring to “taking into account existing residual waste treatment capacity and that already in development” (in the context of whether capacity supports long-term recycling targets).

²⁹⁵ Potter XX. Mr Potter also explained in XX why the fact that the operator had not formally applied for a permit yet did not justify a conclusion that they thought it was not worth pursuing. He explained that he had also had regard to advice of officers of the Council and the track record of development on site.

²⁹⁶ For the reasons given by Potter in evidence.

recovery facilities. That shows the benefit of both allocating sites and according them priority in policy as against unallocated sites. Whilst the Appellant exhausted much energy seeking to knock MVV's proposed ERF on the Canford Magna site, the merits of that proposal will be for BCP Council to assess and are not for this inquiry. The site does suffer from constraints both in terms of ecology and Green Belt and the acceptability of any given proposal will fall to be considered in the context of a planning application.

118. However, all of the sites were identified as having realistic potential to deliver residual waste management capacity over the plan period and the original Plan 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 implications of this 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 inclusion of the site in the Waste Plan and also with ensuring that waste is driven up the Waste Hierarchy (in accordance with the spatial strategy).

119. 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 Plan Area waste arisings, when regard is had to what would actually be secured through the section 106 agreement in this case. In

particular, Canford Magna as a location appears to offer the potential to deliver CHP and also IBA processing through co-location. While the appeal site may be able to offer shore power, the weight which can be accorded to that is limited given the uncertainty associated with its actual delivery.

Spatial Strategy:

120. 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 risk compromising local recycling initiatives.²⁹⁷ 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)²⁹⁸ 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,²⁹⁹ as well as conform with the waste hierarchy.³⁰⁰ Wales has gone so far as to impose a moratorium on permitting new ERFs over 10Mw in order to address the threat to recycling rates and sub 10Mw proposals need to address need.³⁰¹ Further recognition of the inherent tension is found in the Examining Authority’s recommendations in the Kemsley DCO.³⁰² The Appellant’s attempts to somehow disassociate ERF capacity from recycling rates runs up against all of this and must be rejected.

²⁹⁷ Potter XIC, see CD 12.82, WRAP 2022-23 Gate Fees Report, p. 66, penultimate paragraph.

²⁹⁸ CD 9.04

²⁹⁹ EN3 (CD 9.04) 2.7.29

³⁰⁰ EN3 (CD 9.04) 2.7.43 and 2.7.102

³⁰¹ For EfW proposals of 10MW or greater - see Appendix 6 to Mr Potter’s Rebuttal.

³⁰² CD 12.84, 4.10.109, 4.10.132-133, 4.10.144.

121. There is also harm to the Plan's Spatial Strategy that underpins the whole Waste Plan. There is no disputing that Dorset's (adopted) Spatial Strategy is focussed on directing new ERF capacity to south east Dorset and that this proposal would not align with that focus.³⁰³ Mr Roberts went so far as to argue that this focus needed to change ("needs to re-focus"³⁰⁴), seemingly on the basis of the current status quo (including movements to Bridgwater). But that ignores the fact that the Spatial Strategy is a long-term, locally endorsed solution to addressing Dorset's waste needs – one that has recently been found sound and included in an adopted Waste Plan. It reflects the collective vision of the area in line with national policy.³⁰⁵ Mr Roberts may well disagree with it and it may not say what he wants it to say in support of his client's proposal, but there is no escaping that this is the *planned* approach and the proposed development does not comply with it.

122. Likewise, in terms of self-sufficiency, Dorset's Waste Plan chooses to define this by reference to the concept of "net self-sufficiency".³⁰⁶ Given the Appellant 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 local Waste Plan in Dorset and you must have regard to it in considering this appeal.

³⁰³ CD 7.01 Waste Plan, p. 27; Roberts XX

³⁰⁴ Roberts XIC

³⁰⁵ NPPW CD 9.02 paragraph 3, p. 4 bullet point 1 (see also paragraph 7, p. 6, bullet point 2)

³⁰⁶ See CD 7.01, Policy 1, p. 20 and Objective 2, p. 24

123. Whilst from a legal perspective, the Proximity Principle operates at a national level, it is entirely appropriate for WPAs to require, as 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 will increasingly be reliant on, as plan-area arisings fall) is likely to travel beyond the nearest appropriate facility due to competition attracting them to the site on Portland.³⁰⁷ The Appellant allows for a wide catchment effectively equating to a travel time to the appeal site of 3 hours,³⁰⁸ which extends far beyond the plan area.³⁰⁹

124. The Council's waste miles assessment concludes³¹⁰ - 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 vis-à-vis a facility on one of the allocated sites in the Waste Plan.³¹¹ To be clear, the Council's assessment compares the appeal site to the plan's spatial strategy, not what is currently happening in practice.³¹² 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 waste).³¹³ But

³⁰⁷ Potter XIC

³⁰⁸ Roberts Proof 3.4.38

³⁰⁹ Potter XIC. Mr Roberts arbitrarily limits the study area to certain WPA boundaries (Roberts Proof 3.4.38(a)).

³¹⁰ See Table 1 of Mr Potter's Proof, p. 13 (p. 15 pdf). This used LACW as a proxy, as data on the spatial distribution of C&I waste is not readily available (although it is expected to be similar to LACW as businesses are largely located in urban areas). Nb. the fact that the WRAP report shows lower gate fees for recycling than ERFs does not undermine the Council's point here, especially as gate fees are just one cost to be factored into the economics of supplying waste (Potter XX). It is also not appropriate to compare MRF and ERF gate fees, as MRFs are taking pre-sorted waste (Potter RIX).

³¹¹ This assessment used Canford Magna MBT as a proxy for the allocated sites.

³¹² See Figure 1 of Mr Potter's Proof, p. 10 (p. 12 pdf).

³¹³ Potter XX

the allocated sites allow for this need to be addressed, if appropriate, in locations which are much better suited for the *long term* management of residual waste arisings from the Plan area. Again, it is the spatial strategy, not the current “spatial reality”³¹⁴, 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:

125. Overall, consenting this development will irreparably damage the local Waste Plan’s spatial strategy and planned approach to residual waste management capacity provision. Contrary to the NPPW and Waste Management Plan for England,³¹⁵ this would be a facility of the wrong type,³¹⁶ in the wrong place,³¹⁷ and at the wrong time.³¹⁸

Development Plan Compliance and Planning Balance

126. In view of the above, the proposed development would not accord with the development plan as a whole:

- a. In heritage terms, it would conflict with Policy 19 of the Waste Plan, Policy ENV4 of the West Dorset, Weymouth & Portland Local Plan, Policy Port/EN4 of the Portland Neighbourhood Plan;

³¹⁴ Roberts XX

³¹⁵ See Waste Management Plan 2021 (CD 9.07) p. 41 (p. 45 pdf)

³¹⁶ ERF requiring up to 202ktpa residual waste through to 2065, assuming a usual 40 year lifespan (Potter XIC).

³¹⁷ A non-allocated site a considerable distance from the principal sources of waste arisings in the plan area.

³¹⁸ Binding government targets requiring residual waste to halve by 2042 and be almost eliminated by 2050.

- b. In landscape terms, it would conflict with Policy 14 of the Waste Plan, Policy ENV1 of the Local Plan, Policy Port/EN7 of the Neighbourhood Plan;
- c. In light of the evidence on waste need, it would not support the delivery of the Spatial Strategy (in particular, contributing to meeting the needs identified in the Plan, moving waste up the waste hierarchy and adhering to the proximity principle), nor the delivery of the key underlying principles of the Waste Plan (i.e. those relating to the waste hierarchy, self sufficiency and proximity) and so would conflict with Policy 1, Policy 4(c), and Policy 6(a) and (b) of the Waste Plan; and,
- d. Consequently, there would also be conflict with Policy 4(d) as the proposal does not comply with the relevant policies of the Waste Plan.

127. Furthermore, when the advantages of the appeal site are properly weighted they are not such as to outweigh the priority accorded by policy 4 to the allocated sites such that there is also non-compliance with Policy 4(a) (second limb). Again, the correct comparator for Policy 4(a) is the “allocated site”, not any particular application for an allocated site.³¹⁹ Mr Roberts’ was quite simply wrong to contend otherwise.³²⁰ The policy is requiring an unallocated “site”³²¹ (such as here) to provide an overall advantage compared

³¹⁹ Hart Rebuttal 2.34

³²⁰ His answers in XX appeared to suggest that where there is a particular scheme put forward for an allocation (such as the current proposal at Canford Magna) you compare an unallocated site’s scheme against that, but if there were no schemes on the table for the allocated sites then you must try to imagine the effects of the unallocated site’s scheme were it to be situated on the allocated sites. Quite obviously this is both confused and wrong.

³²¹ We note that that is the express wording used in Policy 4(a), see CD 7.01 p. 35.

to the allocations, bearing in mind that those allocations have successfully gone through local plan examination and been found to be sound.³²²

128. To be clear, even were you to accept the Appellant's case on need (i.e. assuming there would be compliance with policies 1, 4 and 6 of the Waste Plan), the development would still not accord with the development plan as a whole due to the very significant landscape and heritage harms. Indeed, as stated in opening, the three RfRs each independently justify a refusal of permission by the Secretary of State and stand in their own terms.

129. Due to the proposal's obvious non-compliance with the development plan, permission must be refused unless material considerations indicate otherwise. Whether considered individually or in combination, the benefits of the appeal proposal come nowhere near outweighing the development plan conflict.

Benefits:

130. The Appellant relies on a host of claimed benefits for the scheme. Yet, they are either very uncertain (some not even forming part of this application, with others offering no guarantee of delivery) or are overstated. We deal with each in turn.³²³

(1) Shore Power

³²² See supportive text at 6.11, CD 7.01, p. 33

³²³ For brevity's sake, we do not repeat the Council's position in relation to the entries in Table 1 (benefits table) to Ms Hart's Rebuttal on lines 2 (waste hierarchy), 3 (spatial strategy), and 4 (cost of waste management and transport) as these are covered in substance above in relation to the Council's position on waste need.

131. The Appellant heavily relies on the site’s potential to deliver shore power to visiting vessels (both cruise ships and Royal Fleet Auxiliary (“RFA”) vessels), placing far greater emphasis on this than at the time of the original application.³²⁴ Yet, there remains no certainty as to whether there would be *any* shore power take up, let alone how much or over what period of time.³²⁵ Even were shore power to be offered, the port cannot dictate that visiting vessels use it³²⁶ 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 and other ships. It depends on the price at which the power will be offered (to be determined by the future merchant operator, with no control by the port),³²⁷ which in turn will 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 grid.³²⁸ 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 (ERF operator) and customer (vessel operator³²⁹),³³⁰ none of which can be guaranteed. To suggest otherwise would be commercially naïve.

132. Moreover, experience elsewhere suggests caution is needed in predicting shore power uptake. The actual uptake of shore power at

³²⁴ See Othen Proof 2.3.1 last sentence. Roberts XX (by R6) that it is a “key facet” of the development.

³²⁵ Othen XX

³²⁶ Othen XX

³²⁷ Othen XX

³²⁸ Othen XX

³²⁹ Evidenced by the letter from Carnival PLC dated 15 December 2022 (see Appendix E to the Appellant’s Statement of Case (CD 11.01)), which makes clear that any commitment to use shore power at the port is “subject to the power being made available on commercially viable terms”.

³³⁰ Othen XX

Southampton by cruise ships has so far been poor, with the key barrier being high electricity prices.³³¹ There can be no confidence that this would not be a similar deterrent at Portland,³³² particularly where a future ERF operator can choose to supply straight to the grid in light of such prices.³³³ Whilst at Southampton the source of the shore power supply 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. We also note that the ERF will need to shut down annually for a 4.5-5 week period. Shut down periods usually take place in summer (i.e. cruise season), and it is unclear how this would impact on shore power delivery.³³⁴

133. In light of all of this uncertainty, it is surprising (to say the least) that there has been no assessment of supplying shore power via battery storage, as an obvious alternative.³³⁵ The Port has simply not investigated it³³⁶ and there is no evidence before you to demonstrate that it could not be viably delivered.³³⁷ Indeed, the Appellant accepts that it is technically feasible subject to grid capacity, and that a number of companies are constructing comparable systems in the UK (evidencing the commercial viability of such schemes).³³⁸ Any constraint imposed by current grid capacity serving the Port could be remedied by seeking an upgrade to the grid. This would not need to be the 25 MVA upgrade which the Port has previously applied for. SSE has confirmed to

³³¹ Norton Proof 3.2

³³² Cf. Othen XIC

³³³ For RFA vessels, Mr Norton further points out that these have a record of supplying their own shore power via the use of batteries (Norton Proof 3.12).

³³⁴ Norton Proof 5.4. Likewise, if the ERF were shut down in winter, it is unclear how this impacts on any DHN.

³³⁵ See Norton Proof 3.16-3.20

³³⁶ Othen XX

³³⁷ Othen XX

³³⁸ Othen XX

the Port that lesser upgrades can be provided in a much shorter time than the 2037 date associated with a circuit with a continuous MVA rating of 25 MVA³³⁹ 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 an ERF for the delivery of shore power. Whilst the Appellant's expert Mr Othen may speculate on its expense, without any actual assessment before you and without any meaningful evidence from the Port on the sources of finance available to it, you (and the Secretary of State) cannot discount the potential for the benefit to be delivered in a less harmful way. This must affect the weight which you accord to this benefit. Further, battery storage would link the grid which would benefit from its ongoing decarbonisation (expected to be fully decarbonised by 2050).³⁴⁰ Indeed, Mr Norton estimates (and the Appellant agrees³⁴¹) that grid-supplied shore power would result in a reduction of 18,935 tCO_{2e}, which is equivalent to the ERF-supplied shore power emissions reductions in the Appellant's revised carbon assessment.³⁴²

134. This is in a context where we know that 4.2MW grid supply could be available to the Port even without the ERF.³⁴³ Mr Othen's note, seeking to respond to cross-examination, fails to address this point. He refers to the fact

³³⁹ See Roberts Appx NR2 p.14

³⁴⁰ Othen XIC

³⁴¹ Othen XX

³⁴² Norton Proof 3.21. Mr Norton also highlights, at 3.12, that the Royal Navy has a track record of developing its own shore power provision through the use of batteries, for example at Portsmouth.

³⁴³ See letter from Portland Port Ltd dated 23 November 2020 (CD 12.81) p. 1, second paragraph, which refers to spare capacity of 4.2MW if the ERF is not built.

that the Port currently uses diesel generators to supply crane operations (and the fact that diesel engines are used to supply the Bibby Stockholm),³⁴⁴ but that fact is not inconsistent with there being 4.2MW spare capacity *to the island*. 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, Mr Othen's note provides no firm indication that the grid supply situation *on the island* has changed since the Port's earlier assessment.. It is perhaps not surprising that, with the appeal running and the possibility that the Appellant might ultimately fund electrical improvements within the Port that alternative sources of supply are presently being used. As for the Bibby Stockholm, this 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 supply quickly. None of this indicates that there are capacity constraints preventing the Port's access to the 4.2MW of grid power.

135. 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 (estimated at only 1.5-3%).³⁴⁵ The Appellant takes no issue with the Claimant's evidence on this point.³⁴⁶ It is a *de minimis* proportion, illustrating the significant mismatch between the scale of the ERF and the shore power offering.³⁴⁷

³⁴⁴ Referring a letter from the Port dated 6 November 2023, Appendix NR2 to Mr Roberts' Proof.

³⁴⁵ Norton Proof 3.9-3.10.

³⁴⁶ Othen XX

³⁴⁷ Norton Proof 3.11

136. In light of all of this, the potential delivery of shore power cannot be afforded substantial weight. It attracts moderate positive weight at best.³⁴⁸

(2) District Heating Network (“DHN”)

137. The provision of a functioning DHN forms no part of this application. The scheme will be combined heat and power (“CHP”) “ready” only and any future delivery of a DHN will need to secure all necessary permissions and consents. There are no proposals before you as to how a CHP system will actually be delivered.³⁴⁹

138. You will have seen that the s106 obligation relating to a DHN secures very little.³⁵⁰ It requires the exercise of “reasonable endeavours” to “progress discussions” with large heat off-takers in the vicinity of the Development in respect of a connection to a DHN³⁵¹ 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 has been found.³⁵² That 10 year limitation reflects the fact that 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 its cost.

139. It is quite obvious from this that a DHN will only be provided if it is in the developer’s commercial interests to provide it (again, this is entirely unknown).

³⁴⁸ Hart Rebuttal Table 1, p. 8 (p. 9 pdf)

³⁴⁹ Othen XX

³⁵⁰ Schedule 2 of draft s106

³⁵¹ Clause 1.1, Schedule 2, draft s106

³⁵² Clause 7, Schedule 2, draft s106

Indeed, despite the fact that the Appellant was investigating external financial support as early as September 2020,³⁵³ no interested DHN provider has yet been found.³⁵⁴

140. 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 separated.³⁵⁵ But when one properly looks at those legs, neither is shown to be economically viable.³⁵⁶

141. 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 suitable³⁵⁷ and the third (Comer Homes) is unlikely to be able to retrofit its existing properties to accommodate a new heating supply.³⁵⁸ It is agreed that without these three off-takers the northern leg is unviable.³⁵⁹

142. 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 DHN.³⁶⁰ That is again, commercially naïve. Further, whatever high-level support there has been from

³⁵³ CD 1.27, CHP heating plan (including R1) (September 2020), 5.1 (p. 14 pdf)

³⁵⁴ Othen XX

³⁵⁵ Othen XIC agreeing with Mr Norton's evidence, see Norton Proof 4.10.

³⁵⁶ Norton Proof 4.12, 4.23-4.24

³⁵⁷ Othen XX

³⁵⁸ Othen XX, 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.

³⁵⁹ Othen XX

³⁶⁰ Othen XX

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.

143. But there is more. The identified route for the southern leg is also unclear. Mr Othen identified a new route in his rebuttal evidence,³⁶¹ but as Ms Hart explained,³⁶² this will need a series of further consents (traversing, as it does, a SAC and running through the Scheduled Monument Verne Citadel). Contrary to the previous route suggested, it also does not run entirely under existing roads.³⁶³ It will also need to breach the moat and require a visible pipe bridge.³⁶⁴ No costings for this have been provided, nor has there been any landscape, heritage or geological assessment.³⁶⁵ 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 you to enable you to conclude that it would be feasible or acceptable in planning terms.

144. Policy 6(d) of the Waste Plan requires 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 capability to deliver heat in the future”. The proposal does not conflict with this policy, but certainly – in light of all of the above - no weight can be given to the potential of future

³⁶¹ Othen Rebuttal p. 9

³⁶² Hart XIC

³⁶³ Othen XX (cf. questioning of Ms Hart in XX)

³⁶⁴ Othen XX

³⁶⁵ Othen XX

CHP delivery where that has no guarantee of success. This is why the Council affords this benefit only “neutral weight”.³⁶⁶

(3) Grid supply

145. 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 is 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 generation”.³⁶⁷ Baseload power requires consistent supply, which the ERF simply 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 grid,³⁶⁸ and, of course, the more this were to happen, the more interruptions there would be.³⁶⁹ 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 ERF’s annual shut down there would be no supply of energy to the grid, further weakening the grid supply credentials of the appeal proposals. All this uncertainty explains why the Council only affords this benefit limited moderate weight.³⁷⁰

³⁶⁶ Hart Rebuttal Table 1, p. 13 (p. 14 pdf)

³⁶⁷ See Hart Rebuttal, Table 1 p. 10 (p. 11 pdf)

³⁶⁸ Othen XX

³⁶⁹ Othen XX

³⁷⁰ Hart XIC, Hart Rebuttal, Table 1, p. 10-11 (pp. 11-12 pdf)

(4) Disposal of IBA by sea

146. Again, this purported benefit is in no way secured through the proposal. Of course, the Council accepts there is a *potential* for IBA waste to be exported via sea, given the port's location, but ultimately the Appellant offers no commitment to this.³⁷¹ The s106 obligation 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 the Council's Waste Plan.³⁷² The long distance transportation of this waste rather than its local treatment is why the Council affords this purported benefit negative weight.³⁷³

(5) Climate change and air quality impacts

147. You have heard commentary from the Appellant on the potential of a CCS plant near to the appeal site, but this is no part of the current application and, were it proposed, a variety of issues would fall to be considered not least the heritage and landscape and visual impacts of such 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 available.³⁷⁴ 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 being part of the project).

³⁷¹ Hart XIC, there is nothing definite for shipping waste.

³⁷² See Policy 6, last two paragraphs.

³⁷³ Hart Rebuttal, Table 1, p. 10 (p. 11 pdf)

³⁷⁴ Othen XX

148. No weight can be given to the possibility of connecting a CCS unit to the proposed development some day in the future.³⁷⁵

149. Turning to the Appellant's carbon assessment, clearly this is highly sensitive to the assumptions it relies on,³⁷⁶ 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 comparators³⁷⁷ (in Mr Othen's words, shore power and DHN delivery is "what gives it advantages over other alternatives").³⁷⁸ It is also dependent on assumptions that shore power and district heating provision will ramp up during the lifetime of the assessment.³⁷⁹ Of course, we have already addressed above the uncertainties relating to delivery of shore power and district heating and this must, consequently, reduce the weight (if any) you give to any purported carbon savings.

150. It is worth re-emphasising that, contrary to some suggestion in the ES,³⁸⁰ the Appellant is not proposing that the development would be "net zero".³⁸¹ So you cannot place any weight on there being an overall outweighing of emissions overall.³⁸² In fact, we know that the ERF will produce greenhouse gas ("GHG") emissions from its stack which are in an order of magnitude 4.7 times greater

³⁷⁵ Indeed, you might consider it surprising, in view of Mr Roberts' confidence that CCS will in future become a policy requirement for ERFs, that this proposal (with a lifespan of at least 25 years) does not include CCS.

³⁷⁶ Othen XX

³⁷⁷ See for example Table 19 in Appendix SO3 to Othen's Proof p. 27 (p. 43 pdf), showing that without shore power and a DNH the development would be worse than either the Canford Magna or Parley sites.

³⁷⁸ Othen XIC

³⁷⁹ Othen XIC, see the revised carbon assessment (Appendix SO3 to Othen's Proof) pp. 32-34 (pp. 48-50 pdf) and in particular points 2 and 3 in section 5.

³⁸⁰ CD 1.36(f) at 5.53

³⁸¹ Othen XX

³⁸² Othen XX

than any emissions abated through the supply of shore power energy to berthed vessels (even if this were to occur).³⁸³ So locally, there would be a net disbenefit in terms of GHGs produced.

151. Overall, there are no significant climate change benefits from the development, the Appellant accepting that any such benefits would not be categorised significant under the 2022 IEMA Guidance,³⁸⁴ hence why the Council has continued to afford such alleged improvements only neutral weight.³⁸⁵

(6) Socio-economic

152. The socio-economic benefits in terms of construction and operational jobs. The development will 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 weight.³⁸⁶

(7) Use of previously developed land

153. As explained by Ms Hart in evidence, the Council does not object in principle to development of the appeal site, particularly as it is previously developed land (“PDL”) and an allocated employment site. What it objects to is the scale, height and massing of the proposed development and its associated

³⁸³ Norton Proof 3.22-3.24. Mr Othen accepted in XX that there was no dispute over the stack emission figures at 3.23 of Mr Norton’s proof.

³⁸⁴ Othen Proof 5.3.5; Othen XX

³⁸⁵ Hart Rebuttal, Table 1, p. 11 (p. 12 pdf)

³⁸⁶ Hart Rebuttal, Table 1, p. 13 (p. 14 pdf)

harms. So whilst some weight can be attributed to the re-use of a PDL site, it is limited.³⁸⁷

(8) Heritage mitigation strategy and permissive path

154. These are dealt with above but in short, only slight positive weight is given to the heritage mitigation strategy in light of the fact that it does not address the substantive heritage impacts of the proposal and only neutral weight is given to the permissive path due 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 a wide power to close it.³⁸⁸

PD rights:

155. To the extent the Appellant relies on it, the fact that the port benefits from various permitted development rights and rights under the Harbour Revision Orders, this is dealt with in the Council's written evidence.³⁸⁹ Put simply, the Council does not dispute that such rights exist, but they do not permit a development of function and the scale of the appeal proposal. It is agreed that any EIA development (such as this) would fall outside the scope of the PD regime.

Conclusion

³⁸⁷ Hart Proof 8.74

³⁸⁸ Hart Rebuttal, Table 1, pp. 11-12 (pp. 12-13 pdf); draft s106 schedule 6

³⁸⁹ Hart Rebuttal 2.6-2.10

156. For the reasons set out above and as more 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 will cause significant harm to the landscape of an iconic island, the heritage of a remarkable group of assets and risks seriously compromising Dorset's adopted waste management spatial strategy. You are therefore invited to recommend to the Secretary of State that his dismisses the appeal.

SIMON BIRD KC
MERROW GOLDEN
21 DECEMBER 2023