

Portland Energy Recovery Facility

Appeal Against the Refusal of Planning Permission by Dorset Council

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

LPA Ref: WP/20/00692/DCC

MAIN STATEMENT OF COMMON GROUND

Between the Appellant and Dorset Council

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1.0 Introduction and Context

Introduction

- 1.1 This Statement of Common Ground (**SoCG**) has been produced jointly by Powerfuel Portland Limited (**PPL**), the Appellant, and Dorset Council (**the Council**), the local planning authority.
- 1.2 On 3rd September 2020, PPL applied (ref: WP/20/00692/DCC) to Dorset Council as the waste planning authority for full / detailed planning permission for the proposed Portland Energy Recovery Facility (**ERF**), on land located within, and beyond, Portland Port, off Castletown, Portland, Dorset (see paras 2.2-2.3 below for further details of the appeal site) (**the Appeal Site**). DC registered and validated the application on the 7th of September 2020. The development is hereafter referred to as the '**Portland ERF**' or '**Appeal Proposal**'.
- 1.3 The Council's Strategic and Technical Planning Committee (**STPC**) refused the planning application on the 24th of March 2023, for three reasons. These related to compliance with waste policy, and adverse landscape and heritage impact. STPC, supported by officers, declined to refuse the application on highways grounds.
- 1.4 The Appellant is appealing against the refusal of planning permission and has provided advanced notification to both the Council and the Planning Inspectorate (**PINS**).
- 1.5 This SoCG comprises a written statement containing factual information about the Appeal Proposal that is agreed not to be in dispute between the Appellant and the Council and the key aspects that remain in dispute or represent what might be called uncommon ground.

2.0 Description of the Appeal Site

The Appeal Site

- 2.1 It is agreed that the planning application boundary ('the Appeal Site') is as shown on drawing no. 1081-01-07, titled Site Location Plan. The Appeal Site is located on the Isle of Portland at Portland Port. The proposed Energy Recovery Facility (ERF) building would be sited on the north- eastern coast of Portland, on land at the Port. The agreed location as it appeared for the planning application is "Portland Port Castletown Portland DT5 1PP".
- 2.2 The main part of the Appeal Site where the proposed ERF building would be sited, is broadly triangular in shape. The rest of the Appeal Site shown within the red line boundary includes land needed for proposed cabling routes to the electricity substation, extending beyond Portland Port to Lerret Road, via Castletown and Castle Road, and also to the berths at Queens Pier and the Coaling Pier.
- 2.3 The entire Appeal Site covers an area of 6.29 hectares (ha). The main triangular part of the site where the ERF would be located, extends to 2.14ha, with the cable routes to the substation and berthing piers extending over the remaining 4.15ha. The site is entirely located within the administrative area of Dorset Council, which is the waste planning authority and highways authority.
- 2.4 The main part of the Appeal Site comprises vacant land within the domain of Portland Port, made up of hardstanding that was previously being used for temporary stone storage (the stone was used for construction of the Deep-Water Berth at Portland Port). The previously existing buildings on the site were demolished several years ago.
- 2.5 The Appeal Proposal would be accessed via Castletown Road, through Castletown, using the main Port entrance gate. Once within the port, vehicles accessing the facility would travel along Main Road, past port buildings until they reach the triangular piece of land at the junction of Incline Road and the Inner and Outer Breakwater by Balaclava Bay where the ERF building would be built.

The Surrounding Area

- 2.6 The main part of the Appeal Site, where the ERF would be located, is bounded to the north and north-west by existing operational port development. Balaclava Bay is located to the east of the site of the proposed building. Overland fuel pipes from Portland Bunkers, which are fuel bunkers in the nearby cliffs used for marine bunker fuel supply, run along the ground between the site of the proposed building and Balaclava Bay. Incline Road is to the south-west of the site, which is an internal private road within Portland Port, and a former railway embankment. West of the main part of the Appeal Site is steeply rising open land containing the 'Batteries' which continues up to the Verne Citadel.
- 2.7 To the south and west of the Appeal Site are cliffs which comprise grassland, scrub, woodland habitats and contain heritage features. These cliffs rise steeply to approximately 125 m AOD, with the ground level where the building is proposed to be located being at an elevation of 7m AOD.

3.0 Description of the Appeal Proposal

Introduction

- 3.1 The Appeal Proposal is a thermal treatment plant for the recovery of energy from waste (**EFW**) and is referred to throughout as an energy recovery facility (**ERF**). The Appeal Proposal is a conventional, single line, moving grate combustion plant for the recovery of energy from non-hazardous residual waste, including in the form of refuse derived fuel (**RDF**). The residual waste would be derived from local authority and commercial and industrial (**C&I**) sources. The agreed description of development is: *“Construction of an Energy Recovery Facility (**ERF**) with ancillary buildings and works including administrative facilities, gatehouse and weighbridge, parking and circulation areas, cable routes to ship berths and existing off-site electrical substation, with site access through Portland Port from Castletown”*.
- 3.2 The proposed site layout includes two main buildings. The larger one to the west (**the ‘ERF building’**) would house the ERF plant and the smaller building to the east (**the ‘office building’**) would house the administrative office and welfare facilities.

The ERF Building

- 3.3 The principal plant is proposed to be within the main ERF building and comprises the following elements:
- Reception hall.
 - RDF storage area.
 - Bunker.
 - Boiler hall.
 - Turbine hall.
 - Incinerator bottom ash (IBA) storage.
 - Flue gas treatment plant.
 - A primary substation, and ancillary equipment.
- 3.4 The proposed main ERF building will be 201 m long. It will be 51 m wide and 47m high at its northern end, narrowing to 24m wide and 19m high at its southern end and 47 m high in the north, reducing to 19 m high in the south.
- 3.5 The proposed waste reception area at the rear of the building will comprise separate areas for residual waste (including loose RDF) and baled RDF. Baled RDF will be transported to the waste pit through a de-baler and conveyors, and residual waste / loose RDF will be delivered by HGV either to the waste pit directly or into a short-term storage area at the rear of the building.
- 3.6 The waste will be moved from the waste pit into the main boiler bunker by a waste feed crane and grab which would also feed the boiler feed hopper with waste from the bunker.

- 3.7 Combustion air will be drawn from the waste reception area so that odours would be drawn into the boiler line. The boiler would consist of a grate, furnace (primary combustion chamber), auxiliary burners and a secondary combustion zone. The boiler would have a flue gas treatment plant, a single stack with emissions control and monitoring systems, residue handling systems and a feed water treatment system.
- 3.8 The roof at the southern end of the building rear will be fitted with 3,389 m² of photovoltaic panels which would generate electricity for use within the plant or for export independent from the plant. The 80 m high stack would be around 10 m to the north of the main building and would be painted battleship grey to minimise visibility.
- 3.9 The Appellant's position is that super-heated high-pressure steam will be delivered to a steam turbine which would generate approximately 20.1 MWe of electricity. The proposed ERF will be capable of exporting approximately 17.1 MWe of electricity to the supply of shore power, or the local electricity distribution network or private wire users, with the remainder used within the plant. Air cooled condensers would be located above the turbine hall wing at the north eastern end of the ERF building. These would be used to cool unused steam to water to return to the feed water system. The facility would be installed with a sprinkler system and sprinkler tank, and a standby generator would provide electricity during grid outages with fuel oil stored in an external fuel tank. The Council notes that the gross and net power figures at the time the application was determined were 18.1 and 15.2 Mwe respectively. The Council's position is the supply of shore power is only a 'potential'.
- 3.10 At application stage the exterior of the ERF building was proposed to be partially covered in an innovative printed PVC wrap, designed in a manner to assist in blending into the landscape. The Appellant now proposes to use an alternative metal sheet system, with colour and details of external finish to be agreed via condition.

The Office Building

- 3.11 The Appeal Proposal includes a separate two storey office building to be constructed to the northeast of the main building close to the inner breakwater. This building would be 54m long, between 11m and 23m wide and between 6 metres and 17 metres in height. It would include a reception area, a general office space, management offices, meeting rooms, a plant room, stores and welfare facilities including changing rooms.
- 3.12 The ground floor of the office building is proposed to be clad in the same light grey profiled metal sheeting as the boiler house. Whilst the first floor was proposed to be clad in the printed PVC mesh, the Appellant now proposes the use of an alternative metal sheet system (colour and external finish to match the main ERF building).
- 3.13 The Appellant and Council agree that the final appearance of the ERF and office building (materials, colour etc.) can be determined by a suitably worded planning condition.

Ancillary Buildings and Structures

- 3.14 The Appeal Proposal also includes other smaller ancillary buildings and structures that support the main facilities. These include the following:
- Transformer compound – this will be built to the northwest of the main ERF building and contain a transformer, switch rooms and battery/control room. This building would be 17m x 15m x 4m high.
 - Vehicular access, service yard and internal circulation space.
 - Vehicle weighbridges and weighbridge gatehouse.
 - Employee and visitor parking / bicycle parking including active and passive EV charging.
 - Cable route for electrical connection to off-site substation.
 - Electric distribution cables between the ERF and shore power compound (comprising main switchgear substation, converters and transformers) and the ship berths.
 - Surface water drainage.
 - Service connections, including mains and foul water.
 - Security fencing and gating.
 - Lighting and CCTV.
 - Areas of hard and soft landscaping.
 - Fire water tank and associated pump house.
 - Tanks / silos (containing auxiliary fuel oil, chemical/FGT residues, water).
 - Standby emergency generator.

Waste Capacity, Type and Storage

- 3.15 The Portland ERF is proposed to be a 'merchant plant' and has been designed to recover energy through the controlled combustion of up to 202,000 tonnes per annum (tpa) of non-hazardous residual waste including in the form of RDF. It is expected that some of the input will be local authority collected waste ('LACW'), where the third-party suppliers have local authority contracts, and some will be from commercial and industrial ('C&I') sources. It may also include combustible fractions of the construction and demolition ('C&D') waste stream. All wastes received at the site will be classed as 'residual'.
- 3.16 RDF could be delivered by sea in the form of wrapped bales and / or by road in loose or baled form in HGVs. The storage capacity for bales within the ERF would be suitable for a full ship cargo (approximately 2,500 tonnes). The residual waste (not in the form of RDF) and majority of loose RDF will be delivered directly to the pit, where there would be short term storage space in an area of approximately 247 m². A crane grab would take the waste from the pit to the bunker, which would have an area of approximately 545 m².

Hours of Operation and Vehicle Movements

- 3.17 It is expected that the ERF will normally operate 24 hours a day, seven days a week. Any HGVs delivering any waste material, process consumables or removing material or residues (including Air Pollution Residues) will only arrive and leave between the hours of 07.00 and 19.00 daily, with no such movements permitted on Christmas Day or on Boxing Day. There will however be periods of annual maintenance when RDF processing is much reduced. It is estimated that the facility would operate for an average of 8,000 hours per year over the operational lifetime of the facility.
- 3.18 The operation of the Appeal Proposal is expected to give rise to the following average daily HGV movements / numbers:
- Input: Residual Waste 50 HGV movements (25 in + 25 out)
 - Consumables: 2 HGV movements (1 in + 1 out)
 - Output: Ash / APCR Exports: 20 HGV movements (10 in + 10 out)
 - Total (Input + Output): 72 HGV movements (36 in + 36 out).
- 3.19 However, to allow for variations in the total amount of waste delivered per day, and ensure a realistic worst-case assessment, the Environmental Impact Assessment (**EIA**) has been based on a total of 40 HGV trips each way (80 HGV movements in total). It is agreed that a cap on HGV trips limiting movements to 80 HGV movements a day will be secured by condition.

Residual Materials

- 3.20 There will be two residues resulting from the incineration of the waste: Incinerator Bottom Ash (**IBA**) and Air Pollution Control Residue (**APCR**). Both would be constantly produced during the operation of the facility and would need to be taken away from the site, either by road or ship. In the event that the IBA were to be exported by ship (as the Appellant proposes) it would be shipped to a specialist processing facility where it could be processed in an aggregate product suitable for construction and road projects. The APCR would be exported by road to another specialist reprocessing facility where it could be processed into 'carbon negative aggregate' and used as raw material in making building blocks or other products.

Maintenance

- 3.21 The facility is proposed to be operated to a detailed maintenance programme. This would involve a single shut down period per year. The length of this period may vary depending on the maintenance required, however it is anticipated that there would be a circa four week shut down each year. A four week shut down would result in the facility operating for 8,064 hours per year.

Electricity, Shore Power and CHP

Electrical Distribution Network

- 3.22 The ERF is proposed to export power to the national grid under conditions imposed by an export agreement. A new 33kV substation will be built on the north

western portion of the site area which would serve as the connection point for the Portland ERF to the Scottish and Southern Electricity (**SSE**) distribution network.

- 3.23 A 1.75km 33kV cable will be installed connecting the Portland ERF substation to the SSE supply point (the Victoria Square Substation) near Lerret Road. This new cable will be buried following the route of Incline Road onto Main Road to the main port gate. From there it will follow Castletown, Castle Road and Lerret Road to the substation.
- 3.24 Adjacent to the existing SSE substation on the northern side of Canteen Road a new series of containerised switchgear, converters and transformers alongside a further containerised substation will be installed in order to be able to provide shore power from the Appeal Proposal substation directly to ships berthed at the port.

Shore Power

- 3.25 The Appeal Proposal includes the creation of a shore based power system at the port. The Appellant's position is that it would supply electricity to berthed ships, in particular visiting cruise ships and the Royal Navy's Royal Fleet Auxiliary (**RFA**) vessels that are stationed at Portland. The Council's position is that it has 'potential' to supply berthed ships subject to commercial terms being agreed.
- 3.26 A cable, providing a high voltage electricity supply, will be routed along the Coaling Pier and the Queen's Pier ready for connection for berthing ships to utilise. A cable connection will be routed from the ERF to a converter station to convert the 50 Hz grid electricity to 60 Hz which is required by most shipping. The converter station will be located between Main Road and Old Depot Road. There will be two cable connections from the converter station. Substations will be installed on the Queen's Pier and the Coaling Pier with the former providing up to 10 MW capacity and the latter providing up to 12MW capacity.
- 3.27 The Appellant's position is that the provision of shore power is part of the proposed ERF scheme. The provision of shore power (removing ship unabated emissions) will mean the ERF improves overall air quality around the Port relative to the current position. The Council's position is that the potential provision of shore power could reduce air quality emissions from docked ships.

District Heating

- 3.28 The Appeal Proposal may offer the potential for the future export of heat to a local heat network and will be equipped to offer combined heat and power (**CHP**). As such the ERF will be 'CHP ready'. There are two prisons (**HMP the Verne and HMP Portland**) in close proximity to the Appeal Site and the Appellant has established that a district heat network could be installed in future to provide heating to both prisons, replacing their existing fossil fuelled boilers.
- 3.29 The district heating network is not part of the Appeal Proposal and would be subject to a future planning application. The Appellant's position is that it has held discussions with the Ministry of Justice, which operates the two Portland prisons, and its technical advisors. These indicate that a heat network is technically feasible and economically viable. The Ministry of Justice has confirmed that it is willing to take heat provided by a district heating network if constructed. Thus, the Appellant believes there are strong prospects of delivering CHP subject commercial terms being agreed. The Council's position is that there is, no

guarantee (secured through this application) that CHP will be delivered in the future. The delivery of any future CHP scheme will depend on securing any necessary further consents and/or viability and consumer demand.

Other Electrical Infrastructure

- 3.30 The proposed roof of the ERF building, above the RDF storage area at the rear, will be fitted with approximately 3,400 m² of photovoltaic panels, which are expected to contribute about 750 MWh per annum to the national grid. The Appellant also proposes to fit 10% of the parking spaces with electric charging points, and to fit the remaining spaces with ducting to facilitate the installation of cabling and charging units as required. It is also proposed that the Appeal Proposal will be fitted with LED lighting to reduce its overall electricity use.

Carbon Capture Storage

- 3.31 The Appellant has designed the ERF so that Carbon Capture and Storage (**CCS**) technology could be added at a later date, should this become an economically viable option. The Council notes that there is, however, no guarantee (secured through this application) that CCS will be delivered in the future. The delivery of any future CCS will depend on securing any necessary further consents and/or viability.

Other Aspects of the Appeal Proposal

- 3.32 The Appellant proposes to implement a 'Framework Heritage Mitigation Strategy', through which the Appellant seeks to address the development's impact upon the setting of local heritage assets. The measures proposed are:
- E Battery East Weare (scheduled monument and listed building grade II). Works to include vegetation clearance and agreed repairs and removal of risk factors to enable its removal from the Historic England Heritage at Risk Register and appropriate public presentation of the monument.
 - Public access through the extension of the footpath at East Weare (known as Cemetery Road) to allow an "around the island" circuit of the coastal path by creating a new section of permissive footpath through currently inaccessible parts of the secure port estate to connect to the existing public accessible land/rights of way. The path would be fenced and would be wide enough to allow future access for maintenance vehicles and access for the ongoing management of the SSSI. The Council notes that the extension to the path is, however, located outside the Appeal Site.
 - Enhanced opportunities for public appreciation through the provision of interpretation for the group of related heritage assets at East Weare (the A-E Batteries, the former detention camp and the undesignated WWII features). Information boards would be provided at designated viewing areas, one relating to E Battery, and one allowing clear views of the wider group of assets (the probable location is at the recently created viewing platform to the south). The boards would be designed to integrate with the existing interpretation e.g. the Portland stone features at the Fancys Farm open space at the top of Incline Road near the engine house.
- 3.33 It is agreed that bullet items 2 and 3 in the paragraph above, was formally submitted as part of the planning application, but were withdrawn as a consequence of objections received two weeks prior to the Committee Meeting

in March 2023 from Historic England, the Council's Conservation officer and Natural England, primarily due to their concerns over the impact of security fencing on the setting of heritage assets. The Appellant and Council agree that this element was not considered by the Council's STPC.

- 3.34 The Appellant now requests that the Inspector accept the reinstatement of this element of its Framework Heritage Mitigation Strategy as part of the Planning Appeal.
- 3.35 It is agreed that bullet item 1 in paragraph 3.36, relating to restoration works to E Battery to remove it from the Historic England "at risk" register was not withdrawn and these works were part of the scheme considered by the Council.
- 3.36 It is agreed that E Battery is a Scheduled Monument and that removal of it from the Historic England "at risk" register would represent a significant heritage benefit.

4.0 Planning History of the Appeal Proposal

Introduction

- 4.1 Portland Port was constructed between 1837 and 1890 for use as a naval port to provide a Harbour of Refuge and coaling station for the steam navy. In 1923 Portland and the harbour were designated as HM Naval Base Portland, and from 1958 was used for Flag Officer Sea training.
- 4.2 From 1958 the Appeal Site was used for weapons research which was undertaken on the southeast of the site and the other buildings were used as mechanical repair facilities for military vehicles. The naval base and major weapons research establishments were closed in 1995/1996, and the site started to transition into use as a commercial port.
- 4.3 It is agreed that the Appeal Site has a long history of development related to its former naval base use and its more recent commercial use by Portland Port.

Relevant Site Planning History

Ref	Description	Decision	Date
96/00432/COU	Change of use to a commercial port and commercial and leisure estate (including uses within Classes B1, B2, B8 and leisure and marina uses).	Approved	Nov 1996
09/00440/FULES	Construction of energy plant adjoining Balaclava Bay	Refused	Sept 2009
09/00451/LBC	Construction of energy plant adjoining Balaclava Bay (Listed Building Application)	Refused	Sept 2009
09/00646/FULES	Construction of energy plant adjoining Balaclava Bay	Approved	Jan 2010
09/00648/LBC	Construction of energy plant adjoining Balaclava Bay (Listed Building Application)	Approved	Jan 2010
WP/13/00262/VOC	Variation of condition 2 of planning approval ref 09/00646/FULES to allow for the use of rubber crumb (recycled rubber from tyres) in addition to vegetable oil in its power oil production and power generation plant	Approved	July 2013
12/00622/CMPC	Request for confirmation of compliance with planning conditions 3,5 and 11 of planning approval reference 09/00646/FULES	Approved	Oct 2012
12/00849/CMPC	Request for confirmation of compliance with planning conditions 6 and 10 of planning approval reference 09/00646/FULES	Approved	Dec 2012
WP/19/00565/CLE	Demolition of building 214 within the site of planning permissions 09/00646/FULES - certificate of lawful use or development	Issued	Oct 2019

Planning History for an Energy Plant

- 4.4 Of relevance to this appeal is the former Weymouth and Portland Borough Council's decision to grant full planning permission in early 2010 to develop land within Portland Port for an energy plant (application reference: 09/00646/FULES and 09/00648/LBC). It is agreed that, whilst that permission has been implemented, the plant has not been built and so its ongoing viability, and whether it is likely or there is a real prospect of it being built, is also relevant.
- 4.5 The 2010 scheme comprised 1,337 m² of new built development (1,154 m² industrial space and 183 m² of office space). The process involved the pre-treatment of imported vegetable oils in order to create a fuel, by means of a power oil production plant, which would then be combusted using two 8.9MWe engines. The plant had a designed output capacity of 17.8MW, which would have been exported to the national grid. The exhaust gases produced by the power generation plant would be discharged via two 27 m tall stacks. The approved plant included a:
- 'power' oil production facility capable of processing up to 40,000 tpa of vegetable oil which would be converted into 30,000 tpa of 'power' oil to be used in a power plant;
 - power plant comprising two 8.9MW modified marine diesel engines;
 - tank farm for the storage of up to 10,000 tonnes of vegetable oils; and
 - step up transformer to allow an electrical connection to the local grid.
- 4.6 By means of planning condition the approved energy plant was to be fuelled by "vegetable oil" whilst the description in various application documents clarified this included "waste oils". Whilst the proposal was to bring all vegetable oils into the site by sea, no planning restrictions were placed on the approved scheme in respect to the volume of oils that could be brought to the site and used to fuel the facility.
- 4.7 In 2013, the conditions of planning permission 09/00646/FULES were varied through a section 73 application to enable waste rubber crumb from end-of-life tyres to be used as an alternative fuel source under application 13/00262/VOC.
- 4.8 The rubber crumb was to undergo thermal treatment similar to pyrolysis in an advanced conversion technology, rather than being directly combusted, producing oil, gas and carbon black. The oil and gas produced were intended to be combusted in generators for power generation. The originally consented development includes two 8.9 MWe engines and two 27 m high stacks, while the revised consent added four smaller generators with a total capacity of 6 MW. The 2010 and 2013 permissions were not mutually exclusive and were not restricted so as to be phased.
- 4.9 In 2019, the Appellant (**PPL**) applied for a Certificate of Lawful Use or Development in relation to the demolition of building 214 within the site of planning permissions 09/00646/FULES - for the construction of an energy plant and WP/13/00262/VOC - for the variation of condition 2 of planning approval ref 09/00646/FULES to allow for the use of rubber crumb (recycled rubber from tyres) in addition to vegetable oil in its power oil production and power generation plant.

- 4.10 In October 2019, Dorset Council issued a Certificate of Lawful Use or Development confirming that the 2010 planning permission granted for the construction of an energy plant had been lawfully implemented and that the consent remained extant (09/00646/FULES).
- 4.11 The existing consents have been lawfully implemented and remain extant such that it would be possible to fully implement either consent.

5.0 The Development Plan, Emerging Policy, Guidance and Material Considerations

Introduction

5.1 This section summarises the main planning context relevant to the Appeal Proposal, both in terms of the statutory Development Plan and other material planning considerations.

5.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications “*[i]f regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise*”. In the case of this proposal, it is agreed that the Development Plan for these purposes comprises:

- Bournemouth, Christchurch, Poole and Dorset Waste Plan (adopted December 2019)
- West Dorset, Weymouth and Portland Local Plan 2011-2031 (adopted October 2015)
- Bournemouth, Dorset and Poole Minerals Strategy 2014 (adopted in 2014)
- Portland Neighbourhood Plan (adopted June 2021)

Development Plan Policy

5.3 The following policies of the adopted Development Plans are relevant, though the weight and relevance of each to the determination of this Appeal is not agreed:

Bournemouth, Christchurch, Poole and Dorset Waste Plan (2019)

- Policy 1 Sustainable waste management¹
- Policy 2 Integrated waste management facilities
- Policy 4 Applications for waste management facilities not allocated in the Waste Plan¹
- Policy 6 Recovery facilities¹
- Policy 12 Transport and access
- Policy 13 Amenity and quality of life
- Policy 14 Landscape and design quality¹
- Policy 15 Sustainable construction and operation of facilities
- Policy 16 Natural resources

¹ It is considered that these policies of the Bournemouth, Christchurch, Poole and Dorset Waste Plan (2019) are considered to be the most relevant policies to the determination of this application.

- Policy 17 Flood risk
- Policy 18 Biodiversity and geological interest
- Policy 19 Historic environment²
- Policy 22 Waste from new developments
- The Appellant believes Policy 21 South East Dorset Green Belt to be material by virtue of its interface with Policy 4 and applicability to certain of the allocated sites, the Council does not.

West Dorset, Weymouth and Portland Local Plan 2011-2031 (2015)

- INT1 – Presumption in favour of sustainable development
- ENV 1 Landscape, seascape and sites of geological interest
- ENV 2 Wildlife and habitats
- ENV 3 Green infrastructure network
- ENV 4 Heritage assets
- ENV 5 Flood risk
- ENV 9 Pollution and contaminated land
- ENV 10 The landscape and townscape setting
- ENV 12 The design and positioning of buildings
- ENV 13 Achieving high levels of environmental performance
- ENV 16 Amenity
- ECON 2 Protection of key employment sites
- COM 7 Creating a safe and efficient transport network
- COM 9 Parking standards for new development
- COM 11 Renewable energy development

Minerals Strategy (2014)

- SS1 Presumption in favour of sustainable development
- SG1 Mineral safeguarding area
- SG2 Mineral consultation area

Portland Neighbourhood Plan (2020)

- Policy Port/EN0 Protection of European sites
- Policy Port/EN1 Prevention of flooding and erosion
- Policy Port/EN2 Renewable energy development

² It is considered that this policy of the Bournemouth, Christchurch, Poole and Dorset Waste Plan (2019) is considered to be a key policy in determining applications.

- Policy Port/EN4 Local heritage assets
- Policy Port/EN6 Defined development boundaries
- Policy Port/EN7 Design and character
- Policy Port/BE1 Protecting existing employment sites and premises
- Policy Port/BE2 Up- grading of existing employment sites and premises
- Policy Port/BE3 New employment premises
- Policy Port/BE6 The northern arc
- Policy Port/ST1 Sustainable tourism development – The Appellant believes this relevant, the Council does not.
- Policy Port/ST3 Tourist trails

Other Material Planning Considerations

- 5.4 With regard to emerging Development Plan policy, the Council is preparing a new Dorset Council Local Plan, following local reorganisation in 2019. The Dorset Council Local Plan will cover the whole of the Dorset Council area and it is being produced by the Dorset Council unitary authority (which was formed in 2019).
- 5.5 Once adopted, the Dorset Council Local Plan will form part of the Development Plan alongside the adopted minerals and waste policy documents and any neighbourhood plans that have also been made part of the development plan. The local plan will contain both strategic and non-strategic policies to manage development alongside the strategic and non-strategic policies in the Minerals and Waste Plan and the non-strategic policies in adopted neighbourhood plans.
- 5.6 The Dorset Council Local Plan will eventually replace the current adopted local plans that cover the former district and borough council areas that now make up the Dorset Council area. In the context of this Appeal, the Dorset Council Local Plan will eventually replace the 2015 adopted West Dorset, Weymouth and Portland Local Plan (2011-2031).
- 5.7 Preparation of the Dorset Council Local Plan is at an early stage and therefore no weight can be applied to it as a material consideration. The Dorset Council Local Plan Options Consultation took place between 18 January and 15 March 2021.
- 5.8 Other relevant material planning considerations are agreed, as so far as these are referred to and listed within the Council's Committee Report to include:
- National Planning Policy Framework (Sept 2023) – specifically:
 - Chapter 2: Achieving sustainable development
 - Chapter 4: Decision making
 - Chapter 6: Building a strong, competitive economy
 - Chapter 8: Promoting health and safe communities
 - Chapter 9: Promoting sustainable transport
 - Chapter 11: Making effective use of land
 - Chapter 14: Meeting the challenge of climate change, flooding and coastal change

- Chapter 15: Conserving and enhancing the natural environment
- Chapter 16: Conserving and enhancing the historic environment
- Chapter 17: Facilitating the sustainable use of minerals
- National Planning Policy for Waste (October 2014).
- National Planning Practice Guidance Series (relevant documents).
- Environmental Improvement Plan 2023
- 'Energy from Waste – a Guide to the Debate' (2014).
- Dorset Council's Waste Detailed Technical Paper 15 July 2021

5.9 It is also agreed that the following are material planning considerations:

- 'Our Waste, Our Resources: A Strategy for England' (December 2018), including the most recent third edition of "Resources and waste strategy: monitoring progress", dated November 2022
- The National Policy Statements for Renewable Energy Infrastructure (EN-1 and EN-3) and consultation versions
- Environment Act 2021 and The Environmental Targets (Residual Waste) (England) Regulations 2023
- Net Zero Strategy Build Back Greener (2021 as amended) (updated in April 2022)
- A Green Future Our 25 Year Plan to Improve the Environment (2018), including the first revision ("The Environmental Improvement Plan (EIP) 2023 for England") published 31 January 2023 and the fourth annual progress report published in July 2022
- Maritime 2050: Navigating the Future (2019) and progress report published in June 2021
- Clean Maritime Plan (2019)

6.0 List of Possible Planning Conditions

- 6.1 The list of draft planning conditions for the Appeal Proposal will be agreed via separate process.

7.0 Matters of Agreement / Disagreement

Relevant Issues and Topics

- 7.1 Matters that are agreed between the Appellant and the Council as being relevant to consideration of the proposal are set out below under the following headings:

- Waste need
- Principle of the appeal proposal
- Waste Plan Policy 4 – unallocated sites
- Landscape and visual effects
- Effects on heritage assets
- Carbon intensity and greenhouse gases
- Traffic and highways
- Ecology
- Flood risk
- Air quality and public health
- Amenity
- Noise
- Land contamination and stability
- Socio-economic
- Energy
- The weighting of benefits and harms

Waste Need

- 7.2 The National Planning Policy for Waste (October 2014) states that when determining waste planning applications, waste planning authorities should only expect: “...*applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date Local Plan. In such cases, waste planning authorities should consider the extent to which the capacity of existing operational facilities would satisfy any identified need*”. However, the preamble text to Policy 4 of the 2019 Bournemouth, Christchurch, Poole and Dorset Waste Plan (paragraphs 6.13-6.14) states that the following information will be required to support an application for a waste management facility on an unallocated site:

- the nature and origin of the waste to be managed
- the levels of waste arising

- the existing or permitted operating capacity
 - the potential shortfall in capacity or market need that the proposal seeks to address.
- 7.3 The Committee Report stated that, as at the time of the 2019 Waste Plan being adopted, a shortfall in residual waste management capacity in Dorset to meet its future needs was identified as follows: *“The 2019 Waste Plan identifies projected arisings in Dorset of 359,000 tonnes per annum by the end of the plan period (2033), with existing capacity of about 125,000 tonnes. This leaves a shortfall of, or need for, 234,000 tonnes per annum”*. The Council has since undertaken a revised assessment of need. The Appellant’s position is that the Committee Report gave no indication whatsoever that the Waste Plan figures were out of date.
- 7.4 It is also agreed that the Waste Plan makes provision for the need projected at the time the Plan was formulated by allocating four sites which afford flexibility in the event that some of the allocated sites do not come forward. The Committee Report states: *“...In order to meet this need, the plan allocates four sites which have the potential to provide an estimated capacity of 385,000 tonnes per annum in the event that all the sites were to come forward. The ‘surplus’ capacity of 181,000 tonnes provides a degree of flexibility in the event of changing circumstances and allows for the possibility that all sites may not come forward.”*
- 7.5 The parties are not in agreement as to the up to date forecast of waste need to 2033.

Principle of the Appeal Proposal

- 7.6 It is agreed in the Committee Report that: *“The site is located within the commercial port of Portland, which is identified as a key employment site under the provisions of Policy ECON2 of the West Dorset, Weymouth and Portland Local Plan 2015. It is considered that a waste management facility involving energy recovery that is able to provide shore power to the port would be acceptable in principle in this location, subject to meeting the other provisions of the development plan.”*
- 7.7 It is agreed that the Appeal Site is an acceptable location in principle, but there is disagreement between the parties as to whether it can meet other provisions of the development plan.

Waste Plan Policy 4 – Unallocated Sites

- 7.8 Whilst Waste Plan Policy 4 is central to the Council’s 1st reason for refusal, there are a number of facets of the policy which are not in dispute.
- 7.9 It is agreed that looking specifically at Policy 4 of the Waste Plan (sites not allocated in the Waste Plan) it states that *“Proposals for waste management facilities on unallocated sites will only be permitted where it is demonstrated that they meet all of the following criteria: (a) there is no available site allocated for serving the waste management need that the proposal is designed to address or the non-allocated site provides advantages over the allocated site; (b) the proposal would not sterilize, or prejudice the delivery of, an allocated site that would otherwise be capable of meeting waste needs, by reason of cumulative or other adverse impacts; (c) the proposal supports the delivery of the Spatial Strategy, in particular contributing to meeting the needs identified in this Plan,*

moving waste up the waste hierarchy and adhering to the proximity principle; and (d) the proposal complies with the relevant policies of this Plan”.

- 7.10 It is, therefore, agreed that non-allocated sites can come forward where they provide “advantages over the allocated site(s)”, and all of the other criteria (including criterion (d) which requires the proposal to comply with all relevant policies in the Plan) can be met.
- 7.11 With regard to criterion a. of Policy 4: it is also agreed that the Appeal Proposal may have some potential advantages over allocated sites, with the Committee Report stating that: *“It is the case that the site’s port location offers a distinct difference to the other allocated sites in the Waste Plan and, to this end, the opportunities to import RDF [this is subject to RDF being a waste fuel source] and export IBA via ship would not present themselves at the other sites. Perhaps of greater significance (given that it is not possible to guarantee import/export by ship or that RDF coming via this route is going to be locally derived) is that shore power can be delivered directly to shipping, including the economically important cruise liner market. This facilitates the port in attracting cruise ships where shore power can assist in reducing emissions from the ships while berthed. This can be a factor in influencing cruise ship destination choices by the industry, with the result that Weymouth and Portland’s economy would benefit directly from visitors, with local tour companies and the local supply chain in particular benefitting. Portland Port supports the application on the grounds that additional sources of electrical power would support growth (both for ships and tenants). The Port has been in discussions with its cruise line customers who it expects to be planning itineraries around ports which can provide shore-based power”.*
- Furthermore: *“In this regard, it is reasonable to conclude that the site offers some locational advantages when compared to the allocated sites. The facility has also been designed with the capability to export heat and so would be classified as a ‘CHP-ready facility’ by the Environment Agency. The opportunity to export heat/power is not unique to this site alone, but nevertheless, the applicant has demonstrated that opportunities for co- location with potential heat customers have been sought, in compliance with the Waste Plan”.*
- 7.12 The Council and Appellant disagree as to the conclusion to be drawn on the balance of the advantages of the Appeal site relative to the allocated sites in context of Policy 4 (criterion a). The Council’s position, with which the Appellant disagrees, is that neither the delivery of either Shore Power nor the delivery of CHP can be guaranteed through this application which will affect the weight to be given to these potential locational advantages. The Council and Appellant also disagree as to the advantages of the allocated sites relative to the Appeal site.
- 7.13 It is agreed that Policy 4 (criterion b) can be met with the Committee Report stating: *“There are other allocated sites in the Waste Plan, which could come forward and there is no evidence that this proposal would prejudice the other allocated sites”.*
- 7.14 The Appeal Proposal’s ability to meet other provisions of the development plan in respect to waste strategy (Policy 4 criteria c), and other Development Plan policies relating to landscape and heritage (encapsulated by Policy 4 criterion d) are not agreed and this is covered in the ‘Areas of Dispute’ section below.

Waste Plan Policy 6 – Recovery Facilities

- 7.15 The Appellant's position is that the Appeal Proposal conforms with Policy 6 (criterion b) in that it will not lead to the displacement of management of waste already managed by a process further up the waste hierarchy and that page 115 of the Committee Report states: "*It is therefore considered that, in principle, the proposal would not displace the management of waste that is already managed by a process further up the waste hierarchy.*" The Council does not agree that criterion b is met.
- 7.16 It is agreed that the Appeal Proposal conforms with Policy 6 (criterion c) in respect to operations taking place within an enclosed building. The Committee Report states that: "*Overall, it is therefore considered that the proposal would be compliant with this policy requirement*". It must also be shown that the proposed operations will be compatible with existing or proposed neighbouring uses. The Committee Report concludes that in context of the operations of the port and traffic movements: "*...it is considered that such impacts could be mitigated to an acceptable degree through a condition to control delivery hours.*" The Council notes that there has not yet been any assessment of any impacts of the Development on the residents of the Bibby Stockholm barge. The Appellant agrees with this for the purposes of planning, as the Bibby Stockholm being agreed to be berthed at port occurred after the ERF application was refused. However, the Appellant has assessed various effects on the barge as part of the Environmental Permit process.
- 7.17 Policy 6 (criterion d) requires, where energy is produced, for combined heat and power to be provided, or if this is impracticable, facilities should recover energy through electricity production and be designed to have the capability to deliver heat in the future. The Council does not agree that this criterion is met. The Appellant disagrees and cites page 116 of the Committee Report. It is agreed that Policy 6 criterion c is complied with.
- 7.18 It is agreed that Policy 6 (criterion e), relating to gas production is not relevant.
- 7.19 Policy 6 (criterion f) requires consideration to be given to possible effects (including those related to proximity, species and displacement of recreation) that might arise from the development would not adversely affect the integrity of European and Ramsar sites either alone or in combination with other plans or projects.
- 7.20 It is agreed that the Council's Appropriate Assessment concludes that there would not be any Likely Significant Effects arising from traffic emissions related to the Appeal Proposal and this is accepted by Natural England. The Environment Agency's Appropriate Assessment has now been published and reaches the same conclusion on process emissions. As such, it is agreed that no likely significant effects have been identified in relation to the Appeal Proposal.
- 7.21 Policy 6 requires processing facilities for IBA to be located at or close to the source of the waste arising. The Appellant's position is that this requirement is not relevant to the Appeal Proposal. The Council's position is that the Appeal Proposal does not meet this specific requirement.
- 7.22 The parties do not agree in respect to the conclusion on the treatment of residues, including IBA, in respect to the application of the Proximity Principle.

Landscape and Visual Effects

7.23 The following matters are not in dispute:

- i. The planning application was supported by a landscape and visual impact assessment (**LVIA**). The parties agree that the landscape and visual impact assessment methodology is in general accordance with the Guidelines for Landscape and Visual Impact Assessment (**GLVIA**) 3rd Edition 2013. In the Council's landscape officer's response, dated 21st November 2022, it is agreed that the methodology was in general accordance with the guidelines and that it was appropriate. The Council, however, considers that there are omissions in the LVIA and that the application of the methodology has shortcomings.
- ii. It is agreed that this is a brownfield site with the precedent of previous development.
- iii. At the national level scale, the Appeal Site lies within National Character Area 137. Isle of Portland. The Appeal Site is located within the Limestone Peninsula Landscape Character Type (**LCT**) of the Dorset wide, Dorset Landscape Character Assessment of 2009. It is within the Portland Peninsula Landscape Character area of the Weymouth and Portland Landscape Borough Council Character Assessment of 2013. The Appeal Site lies within LCA1: Fortuneswell, Chesil Beach and Osprey Quay within the Isle of Portland Heritage and Character Assessment 2017. The Chesil Beach, The Fleet and the Causeway LCA and the Portland Peninsula LCA are also relevant.
- iv. The Appellant's position is that no landscape consultees (Landscape officers at or engaged by the Council, the AONB Officer, or officers at Natural England) ultimately concluded that there would be significant adverse effects on the Dorset AONB, including having had regard to the visible plume. The Council's position is that the last Council landscape officer did not state his final position on these specific adverse impacts from the development.
- v. The ERF building has some positive design attributes and it is agreed (as per the views of the Council's senior landscape architect in the Committee Report): *"The roof lines of the buildings, their relative positions, overlap and detailing have been carefully designed to help the building sit as sympathetically as possible within its sensitive location. These are an imaginative solution which help address some of the issues faced by the citing of such a large industrial building in this very exposed location"*.
- vi. It is agreed the design solution is improved by the removal of the printed PVC mesh finish.
- vii. The development would be visible from and within: the setting of the Jurassic Coast World Heritage Site; the West Dorset Heritage Coast; and the Dorset AONB. The Appellant's position is that this would only relate to parts of the setting of these sites.

Effects on Heritage Assets

7.24 The following matters are not in dispute:

- i. That the heritage assets to which reference will be made are:
 - a. The Grade II Listed Inner and Outer Breakwater, including the Coaling Shed, Storehouse Jetty, Coaling Jetty, Inner Breakwater Fort and Outer Breakwater fort (Ref1 1205991);
 - b. The Grade II Listed Dockyard Offices (Ref.1203099);
 - c. Underhill Conservation Area, and within it the Grade II Listed 1 Castletown (Ref.1203074);
 - d. The East Weare Batteries, comprising the Scheduled Monument Battery 200yds (180m) E of the Naval Cemetery (Ref. 1002412) which is also a Grade II Listed Building (Ref. 1281863, East Weare Batteries at SY 694 741), Grade II Listed East Weare Camp (Ref. 1205814), Grade II Listed Battery approximately 160m NE of East Weare Camp (Ref. 1447946) and Grade II Listed Battery approximately 80m SE of East Weare Camp (Ref. 1444030);
 - e. The Grade II listed Mulberry Harbour Phoenix Caissons at Portland Harbour (Ref. 1203075);
 - f. Portland Castle Scheduled Monument (Ref. 1015326), also a Grade I Listed Building (Ref. 1205262) and associated Grade II* Listed Captain's House (Ref. 1280817) and Gateway and Curtain Wall to the south east of Captain's House (Ref. 1205280); and
 - g. The Verne Citadel Scheduled Monument (Ref. 1002411) and Grade II* Listed The Citadel North Entrance (Ref. 1206120).
- ii. With the exception of the mitigation works to E Battery, which are agreed to be beneficial, that the Appeal Proposal would not result in any direct physical impacts on designated heritage assets and thus any harm that might be considered to arise relates to the setting of the assets.
- iii. There would be no substantial harm to any heritage assets.
- iv. There would be less than substantial harm to a number of designated heritage assets. There is disagreement as to the affected assets and the degree of harm within the less than substantial category and on the extent to which the identified harm is or is not balanced or outweighed by the heritage benefits.

Carbon Intensity and Greenhouse Gases

7.25 No agreement has been reached in this topic area. Whilst the Committee Report states that: "*It is accepted that there would be carbon benefits from electricity production from the ERF, and these benefits would be extended to the use of that electricity as shore power for ships*" the Council does not accept the extent of carbon benefits claimed.

Traffic and Highways

- 7.26 Dorset Council, as highway authority, has assessed the Appeal Proposal. The Committee Report states: *“Dorset Council Highways considers that the proposal would not result in an unacceptable impact on highway safety and that the local road network has sufficient capacity to cater for up to 80 extra HGV movements in connection with the proposed use.”* It adds; *“The highway authority considers that the submitted transport documents are satisfactory and the residual cumulative impacts of the development cannot be thought to be severe in highway terms. Consequently, Dorset Highways has no objection subject to conditions.”* The Appellant and Council agree that the Appeal Proposal would not result in any significant effects in respect to highway safety or capacity and is compliant with Waste Plan Policy 12.

Ecology / Biodiversity

Habitats Regulations Assessment

- 7.27 The Council has assessed the Appeal Proposal under the (Conservation of Habitats and Species Regulations 2017 ('Habitats Regulations'), and as the competent authority has undertaken an Appropriate Assessment as required by the Habitats Regulations.
- 7.28 It is agreed that: *“An Appropriate Assessment has been undertaken by Dorset Council as competent authority under the habitats Regulations and Natural England has commented that they are now satisfied that there will be no likely Significant Effects from transport emissions associated with the development.”*
- 7.29 The Council has been liaising with the Environment Agency (**EA**), which is the competent authority, in respect to the Appellant's Environmental Permit application and has been undertaking its own Appropriate Assessment to consider potential impact from process emissions. The Appellant understands that the EA's Appropriate Assessment concludes that there would not be Likely Significant Effects on the surrounding and nearby European or internationally designated sites, due to impacts from process emissions arising from the ERF.
- 7.30 It is expected that Natural England (**NE**) will review the Appropriate Assessments undertaken by the EA and the Council and conclude that when considered together the Appeal Proposal will not give rise to Likely Significant Effects on the surrounding and nearby European or internationally designated sites, from traffic or process related emissions, either in isolation or in- combination with other plans or projects. The Appellant expects to submit a Written Statement to PINS in due course to confirm the agreed position between the Appellant, the Council, NE and the EA in respect to Habitats Regulation matters.

Biodiversity

- 7.31 The Appellant has agreed a suitable package of ecological mitigation for on-site habitat impacts with the Dorset Council Natural Environment Team (**DNET**). It is agreed that: *“Dorset Council DNET have approved a Biodiversity Plan which has been forwarded as a S106 obligation. This would include a payment of £82,000 to off-set on-site habitat losses.”*

Flood Risk

- 7.32 It is agreed that the site is of low flood risk. The Committee Report states: *“In terms of flood risk, the EA has no objection subject to the development being undertaken in accordance with the submitted Flood Risk Assessment (FRA). The drawings demonstrate that the proposed site is within Flood Zone 1 and, due to the proposed finished site and floor levels would not be at risk from flooding during design tidal flood events.”*
- 7.33 The Local Lead Flood Authority (LLFA) had initially submitted a holding objection, requiring more information on the capacity and condition of existing surface water outfalls to determine whether any additional attenuation was required. The Committee Report states that: *“The LLFA considers that the updated drainage layout demonstrates that there is adequate space on site for the previously proposed swales and additional surface water attenuation within underground geo-cellular tanks. This would be sufficient to prevent flooding on site for up to the one-in-100-year plus 40% climate change rainfall event, and the LLFA has no objection to the application subject to the imposition of conditions.”*
- 7.34 As such, it is agreed that there are no objections to the proposed scheme in relation to increased risk of flooding, subject to conditions recommended by the EA and the LLFA.

Air Quality and Public Health

- 7.35 The Committee Report states in respect to the response from the UK Health Security Agency (‘UKSHA’ - formerly Public Health England): *“The applicant has modelled likely emissions from the site and considered the impact on local air quality against national air quality emission limit values. There are residential areas within 1km of the site, together with potentially vulnerable populations such as HMP The Verne and HMP Portland. The submitted assessments do not specify specific human sensitive receptors but identify the maximum predicted process contribution for residential areas. No significant impacts have been identified and PHE is satisfied that the applicant is using model assessment and criteria that are in line with UK guidance and good practice.”*
- 7.36 It is agreed that the air quality modelling has been undertaken in accordance with appropriate guidance and practice and that no significant impacts were identified.
- 7.37 In respect of transport emissions, the Committee Report refers to the UKHSA’s stated view that: *“It is therefore expected that any increased vehicle movements will not have a significant impact on local air quality.”* In respect of dust and odour it adds: *“It is noted that the operation of the ERF would be subject to an environmental permit, the conditions of which would ensure that fugitive emissions beyond the site boundary are kept to a minimum.”*
- 7.38 It is agreed that emissions to air by means of dust and odour can be satisfactorily addressed by means of Environmental Permitting and associated planning conditions.
- 7.39 The Committee Report also reports the UKHSA’s view that: *“The public health position statement on the impacts on health of emissions to air from municipal waste incinerators concluded that modern well managed incinerators make only a small contribution to local concentrations of air pollutants. Public Health England is satisfied that the applicant has approached the EIA in a manner consistent with the UK requirements to predict likely emissions. The proposed*

facility would be regulated through the pollution prevention and control regime which would operate to best available techniques (BAT).” It adds that: “Based on the information supplied, the UKHSA has no significant concerns regarding the risk to health of the local population from the proposed development.

- 7.40 It is also agreed as per the Committee Report that: *“The Environment Agency has confirmed that it has no objection to the proposed development subject to conditions and informatives. The areas the EA will be assessing under its Permitting regime include emissions to air from regulated activities, pollution to surface and groundwater, noise pollution from permitted activities, dust control from permitted activities, pest control from permitted activities, fire risk from permitted activities and odour control from permitted activities.”*
- 7.41 Furthermore, it is agreed that: *“The Environment Agency is still working on the Environmental Permit application submitted by the applicant in parallel to this planning application. Paragraph 188 of the NPPF says: “The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (and these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.” Therefore, issues in relation to human health due to emissions from the proposed development will be controlled through the Permitting regime of the Environment Agency”.*
- 7.42 This position is confirmed by Dorset Council Environmental Health stating: *“...that any consideration of issues relating the stack height, potential emissions and control measures for gas and particulate emissions are dealt with by the Environment Agency which has legislative responsibility for these matters, and they will be addressed separately under the Environmental Permitting application process”.*
- 7.43 It is agreed that air quality, pollution control of the plant itself and public health are matters for the Environment Agency to determine under its separate Environmental Permitting regime and that the Council raises no objection to the Appeal Proposal in relation to these matters.

Amenity

- 7.44 Dorset Council Environmental Health considered potential impacts on amenity and states: *“Quality of life can also be affected in other ways as a result of the operation of waste management facilities, and in this case, noise, odour, vibration and litter have all been assessed by Dorset Council’s Environmental Health Officer as being acceptable.”*
- 7.45 The Committee Report considers the potential impact of HGV arrivals at the port on the amenity of adjacent uses. The report states: *“The amenity of these uses could be affected by the additional traffic, it is considered that such impacts could be mitigated to an acceptable degree through a condition to control delivery hours.”*
- 7.46 As such, it is agreed there are no objections to the proposed scheme in relation to amenity, subject to the application of suitably worded planning conditions.

Noise

- 7.47 Potential noise effects of the Appeal Proposal were considered by Dorset Council Environmental Health and suitable planning conditions were suggested in respect to design and operation. The report states: *“It is therefore considered that it has not been demonstrated that there would be any particular potential adverse impacts on amenity arising from noise and vibration, and therefore the proposal is considered to be in accordance with Policy 13 - Amenity and Quality of Life of the Waste Local Plan”*. Subject to conditions it is agreed that the Appeal Proposal would not give rise to any no unacceptable noise impacts.

Land contamination and stability

- 7.48 The Committee Report states that; *“...there could be significant contamination exposure scenarios, which would need to be managed during site preparation and construction, and further investigation will need to take place.”* However, it is also agreed that there is no objection to the Appeal Proposal on the grounds of land contamination, or stability, subject to the imposition of suitable planning conditions.

Socio-economic

- 7.49 It is agreed through the Committee Report that: *“...during the construction of the ERF there would be a need to employ up to 300 people and around 30 full time employees once the facility is operational. Construction could take around 30 months in total and the increase in employment opportunities on Portland would be welcomed as a boost to the local economy. This aspect of the proposal is in line with local plan policy, as well as NPPF paragraph 81, which says that planning decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity taking into account both local business needs and wider opportunities for development.”*
- 7.50 It is also agreed that: *“The proposal would provide economic benefits if the proposed ERF was constructed, and the NPPF states under an ‘economic objective’, that it would like proposals to help build a strong responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation and improve productivity.”*
- 7.51 The Committee Report highlights concerns expressed by local companies that the presence of the ERF could have a negative impact upon business and tourism. It is agreed that: *“There has not been any evidence submitted to support this view and, on balance, it is considered that the economic benefits arising from the proposal would outweigh any negative economic impacts”*.

Energy

- 7.52 Whilst the Committee Report states that: *“This ERF proposal would be designed to send 15MWe to the National Grid. There is no doubt that the contribution to the baseload on the network that could be dispatched would be beneficial. This electricity would also be continual, apart from periods of shutdown, unlike electricity from solar and wind power which can be affected by the intermittency of the weather”*; the Council no longer believes this to be the case.

- 7.53 It is agreed that: *“Portland Port would like to be able to provide shore power to the ships mooring there but is unable currently to do so, due to limited size of cabling currently provided from the Chickerell substation. It is clear that the provision of electric shore power to the ships would be a benefit of the proposal which should attract weight in the planning balance.”* The Appellant’s position is that this is a part of the scheme and would be delivered via the proposed Grampian condition. The Council’s position is that the provision of shore power cannot be guaranteed through this application and there are other potential means by which shore power could be provided and so any weight given to this potential benefit will be limited to reflect that uncertainty.
- 7.54 Furthermore, it is agreed that: *“In addition, the ERF would be CHP ready, and the applicant has commenced negotiations with the Ministry of Justice, regarding the potential for piping heat to HMP The Verne. If this were to happen, the proposal would be in compliance with policy 6 of the Waste Plan which aims to ensure that combined heat and power is provided from the facility which is designed to have the capability to deliver heat in the future.”* As previously, it is the Council’s position that the delivery of future CHP cannot be guaranteed through this application and so any weight given to this potential benefit will be limited to reflect that uncertainty.

The Weighting of Benefits

Areas of Dispute

- 7.55 The main areas of dispute between the Appellant and the Council are summarised in the table below.

The Appellant’s Position	Dorset Council’s Position
Matters Not Agreed	
Waste Need	
<p>There is a demonstrable need for new additional residual waste management capacity in Dorset both now and in the longer term. The Appeal Proposal is well placed to meet Dorset’s need, and also contribute towards meeting a wider regional and national need.</p>	<p>The Council accepts that its adopted Waste Plan identified (at the time of adoption) that there was a need for additional residual waste management capacity, and that it allocated sufficient sites to deliver the entirety of that need. Moreover, the best available and up-to-date data now demonstrates that the claimed need based on driving waste out of landfill does not exist. In the absence of such a demonstrable need, the proposal puts the local strategies of a number of Waste Planning Authorities at risk, as it will lock in waste to incineration that would otherwise be recycled for the lifetime of the ERF (minimum 25 yrs). It would, therefore, be contrary to the application of the Waste Hierarchy and the Objectives of the adopted plan.</p>

Principle of the appeal proposal	
The Appeal Site is within a commercial port and comprises previously developed land safeguarded for employment use. The site also has an extant consent for an energy plant (fuelled in part by waste) and has been accepted as a suitable location for an industrial facility to utilise waste to create energy. It is an entirely acceptable location, and it can meet all other development plan provisions.	The Council accepts that a waste management facility involving energy recovery, that is able to provide shore power to the port would be acceptable in principle in this location, subject to meeting other development plan provisions. The Council considers that the Appeal Proposal does not meet other plan provisions on waste policy and adverse landscape and heritage impact.
Unallocated waste sites (Waste Plan Policy 4)	
The Appeal Proposal accords with Waste Plan Policy 4 (criterion a) in demonstrating that the unallocated site has advantages in respect to waste management, energy and socio-economics benefits, which together justify that the Appeal Proposal should be permitted over other Waste Plan allocated sites.	The Council accepts that the Appeal Site has some locational advantages associated with its port location but considers that the benefits of these (the provision of shore power and/or the transportation of IBA by sea) cannot be guaranteed through this application and so are uncertain. These are also largely related to energy and less so to waste. As such allocated sites have specific advantages and are better placed than the Appeal Site in respect to proximity to residual waste arisings (Proximity Principle) and the potential for co-location with other waste uses.
Sustainable waste management	
The Appeal Proposal meets Waste Plan Policy 1 and is a sustainable development. The Appeal Proposal would minimise residual waste sent to landfill (outside of Dorset) and ensure that residual waste exported to other UK ERFs is managed in Dorset. This would free up capacity at those facilities to manage residual wastes that currently has no other option other than landfill disposal or export to Europe. The Appeal Proposal would divert residual waste from landfill both directly and indirectly.	The Council considers that, based on up-to-date and best available data, the claimed need based on driving waste out of landfill does not exist and that the Appeal Proposal will provide additional and alternative thermal treatment capacity to that which is already managing Dorset's residual waste, or that might be built on other allocated sites. The Appeal Proposal would not move waste managed up the waste hierarchy, would lock in waste low down the hierarchy for at least 25 years, and might even draw down waste currently being recycled if it undercuts recycling operations.

<p>The Appeal Proposal accords with Waste Plan Policy 4 (criterion c) and Policy 6 (criterion a) in complying with the Proximity Principle, Self-Sufficiency and the Spatial Strategy. The Council has over-interpreted compliance with the Proximity Principle to mean that all waste has to be managed as close to its source as possible to the exclusion of other considerations.</p>	<p>The Council considers that its allocated sites, principally located in and around the South East Dorset conurbation (the location of the majority of residual waste arisings) and near to the Canford MBT plant are preferable for meeting Dorset's residual waste management needs, accord with the Plan's Spatial Strategy and would minimise waste miles.</p>
<p>The Appeal Site has opportunities for the future co-location of waste management uses related to recovered materials. It also offers opportunities for co-location with complementary uses (heat and power). It complies with the Waste Plan in these respects and the Council's conclusion that its potential for co-location is limited is challenged.</p>	<p>The Council's position is that its allocated sites are better placed to provide co-location with other waste management facilities and therefore are more sustainable. It notes that the proposal is to move residues via long distance transport rather than provide for its management onsite.</p>
<p>The Appeal Site complies with key waste management policies and objectives. It also has significant locational advantages. The Council has placed too much weight on Proximity Principle and co-location in respect to allocated sites and conversely applied too little weight to the advantages of the Appeal Site such that the overall balance towards allocated sites is skewed and flawed.</p>	<p>The Council considers that the Appeal Proposal represents an unsustainable form of waste management in its proposed context. The benefits of the location are not deemed to be sufficient to outweigh the harms of the Appeal proposal, nor the advantages of allocated sites and these allocated sites are better placed than the Appeal Proposal to meet Dorset's residual waste management needs.</p>
<p>Climate change</p>	
<p>The carbon assessment considered existing and alternative scenarios for managing Dorset's residual waste, at Portland, allocated sites or other ERFs outside of Dorset. This confirmed that the carbon impact of transporting waste to Portland from Canford MBT was modest and more than outweighed by the locational benefits in terms of both shore power and district heating, such that the site performed better than the allocated sites.</p>	<p>The Council considers that the allocated sites provide carbon benefit by facilitating the co-location of new thermal treatment capacity at allocated sites, closer to the Canford MBT plant and reduction in transport related carbon emissions as compared with the Appeal Proposal is a benefit of the allocated sites. The Council disputes the Appellant's claimed carbon benefits and efficiency savings.</p>

Allocated site constraints	
<p>The allocated Waste Plan sites are subject to significant planning and environmental constraints such that their ability to deliver expected capacity, or any capacity must be doubtful. Unlike some allocated sites (Canford), the Appeal Site is not subject to Green Belt. The use of Green Belt sites must be justified on the basis that no other suitable non-Green Belt sites exist. The Appeal Site is suitable and as such the very special circumstances test required for development of an allocated site in Green Belt cannot be met. These significant constraints are not reflected in the Council's considerations.</p>	<p>The Council considers that the allocated waste sites are deemed to be capable of coming forward and providing sufficient capacity to meet Dorset's residual waste needs. There is currently a live planning application being considered by BCP Council on one of the allocated sites identified in the Bournemouth, Christchurch, Poole and Dorset Waste Plan (2019), at Canford Magna, which if approved would be as close to the source of waste arisings as it is possible to be, offering very substantial advantages over the Appeal Proposal. In addition permission was granted in 2021 for a 60ktpa ERF at Parley, another allocated site. This offers synergies with its existing lawful waste uses, and already benefits from an Environmental Permit</p>
Landscape and visual	
<p>The Appeal Site lies within the Port of Portland and outside of any protective landscape designations and the World Heritage Site. The Appeal Proposal has been carefully designed to enable the building to sit sympathetically within its context. Whilst there would be visual impact on some localised views, the visual impact on wider views including the AONB and WHS are slight or negligible and not sufficient to justify a refusal of planning permission.</p>	<p>The Council considers that the Appeal Proposal despite some helpful design features, would as a result of its scale, massing and height, in the proposed location, 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. This level of harm is considered to be so significant that it justifies a refusal.</p>

Heritage assets	
<p>Any harm to the designated heritage assets within the Port and the north-east coast of Portland could, at most, be considered to be at the lowest end of less than substantial harm; and in some instances, the effect of the Appeal Proposal on historic significance would be neutral or an enhancement. Further, when the substantive heritage benefits of the Appeal Proposal, provided as mitigation to offset any identified harm, have been adequately weighed in the balance, there would be, in most cases, an enhancement of the significance of most heritage assets. Further, residual harm, if indeed any, would be offset by wider public benefits of the Appeal Proposal. There is insufficient harm to heritage assets to justify a refusal.</p>	<p>The Council considers the harm caused to the heritage assets to be less than substantial, and to range from the lower to upper end of the scale. It considers that the harm caused is of a magnitude that the measures proposed under the 'Framework Heritage Mitigation Strategy' and wider public benefits of the Appeal Scheme are insufficient to off-set the harm caused to heritage assets such that a refusal is justified.</p>
Weighting of benefits	
<p>The weight applied to some of the Appeal Proposal's benefits in respect to meeting Dorset's waste management needs, reductions in waste management costs, contribution towards tackling climate change and heritage mitigation is insufficient and should be increased. Conversely, the weight applied to proximity principle and co-location with other waste uses is too great, such that the balance between the Appeal Proposal and allocated has been judged unfairly, such that this falls in favour of the allocated sites.</p>	<p>The Council considers that it has allocated weight correctly to all aspects and that its consideration of the Appeal Proposal's benefits against those of the Waste Plan's allocated sites is fair and appropriate, such that the allocated sites remain better placed to meet Dorset's reduced needs.</p>

Overall planning balance	
<p>The Appeal Proposal is compliant with the Development Plan when read as a whole. It accords with waste policy and the Appeal Proposal has demonstrated that it has significant advantages over allocated sites, such that an unallocated site can justifiably come forward to meet need. Any residual harm caused relating to landscape and heritage is not considered sufficient to justify a refusal and is more than outweighed by the significant positive benefits of the Appeal scheme.</p> <p>Within the overall planning balance, the positive weight attributed to the benefits outweigh the negative weight attributed to adverse environmental effects, such that the balance should fall in favour of the Appeal Proposal.</p>	<p>The Council contends that the Appeal Proposal does not accord with the Development Plan, being contrary to Waste, landscape and heritage policies and that significant negative weight should be placed upon these aspects. It does not consider that the advantages of the Appeal Proposal outweigh the harm caused in these respects and it considers that the allocated sites are better placed to meet the reduced local need.</p> <p>Within the overall planning balance, the positive weight attributed to the benefits do not outweigh the negative weight attributed to adverse environmental effects, such that the balance falls against the Appeal Proposal.</p>

8.0 Declaration of Agreement


- 8.1 This Statement of Common Ground relates to the planning appeal into the refusal of planning permission, by Dorset Council of a full/detailed planning application (ref: WP/20/00692/DCC) submitted by Powerfuel Portland Ltd for the proposed Portland Energy Recovery Facility (**ERF**), on land located within Portland Port, off Castletown, Portland, Dorset (ref: WP/20/00692/DCC).
- 8.2 It has been prepared in accordance with the requirements of The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (SI 2000 No. 1624) and has been produced jointly by Powerfuel Portland Ltd (the Appellant) and Dorset Council (the Planning Authority).
- 8.3 Unless otherwise explicitly identified, the matters set out within the document are agreed by both parties.

Signed: ...*Felicity Hart* **Date:** 30th Nov 2023

Name: Felicity Hart.....

Position: Minerals & Waste Planning Manager.

On behalf of Dorset Council

Signed:  **Date:** 23 Nov 2023

Name: Paul Rogers

Position: Technical Director of Tor&co Ltd

On behalf of Powerfuel Portland Limited

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