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

Planning Policy & Need / Benefits
PPF1: Proof of Evidence of Nick Roberts

Prepared for

Powerfuel Portland Limited

7th November 2023
3460-01-Proof-01

Document Control

Revision	Date	Prepared By	Reviewed / Approved By
3460-01-Proof-01	07/11/23	NDR	N/A

Well House Barns, Chester Road, Bretton, Chester, CH4 0DH

Camelia House, 76 Water Lane, Wilmslow, Cheshire, SK9 5BB

T: 0344 8700 007
enquiries@axis.co.uk
www.axis.co.uk

CONTENTS

1.0 INTRODUCTION AND SCOPE OF EVIDENCE 1

1.1 Qualifications and Relevant Experience 1
1.2 Scope of Evidence 3

2.0 THE APPEAL PROPOSAL AND RELEVANT PLANNING / POLICY CONTEXT ... 5

2.1 Introduction 5
2.2 The Appeal Site 5
2.3 The Appeal Proposal (including Updates to the Scheme Description) 5
2.4 Relevant Planning Context 10
2.5 National Policy and Strategy Context in Relation to ERFs 14

3.0 THE NEED FOR THE APPEAL PROPOSAL AND ITS BENEFITS 16

3.1 Introduction 16
3.2 Waste Management Need - Introduction 19
3.3 DWP Approach 20
3.4 Detailed Market Assessment 21
3.5 Other Benefits of the Appeal Proposal 37

4.0 DORSET COUNCIL'S FIRST REASON FOR REFUSAL 41

4.1 Introduction 41
4.2 Advantages Over Allocated Sites 41
4.3 Co-locational Benefits and Location in Relation to Waste Arisings 51
4.4 Compliance with DWP Policies 1 and 4 and Paragraph 158 of the Framework 58

5.0 DORSET COUNCIL'S SECOND REASON FOR REFUSAL 62

5.1 Introduction 62
5.2 Evidence of Jon Mason 62
5.3 Evaluation 64

6.0 DORSET COUNCIL'S THIRD REASON FOR REFUSAL 70

6.1 Introduction 70
6.2 The Evidence of William Filmer-Sankey 70
6.3 Evaluation 71

7.0 THE CASE FOR STOP PORTLAND WASTE INCINERATOR (SPWI) AND THE PORTLAND ASSOCIATION (PA) 75

7.1 Introduction 75
7.2 Traffic, Amenity and Quality of Life (including Socio-Economics) 76
7.3 Sustainability and Climate Change 80

8.0 OTHER MATTERS RAISED BY INTERESTED PERSONS 81

8.1 Introduction 81
8.2 Shore Power Alternatives 81

8.3 Noise 84
8.4 UKWIN Objection 84
8.5 MVV Objection 88

9.0 APPRAISAL OF THE APPEAL PROPOSAL AGAINST THE DEVELOPMENT PLAN AND MATERIAL PLANNING CONSIDERATIONS 92

9.1 Introduction 92
9.2 Planning Assessment 92
9.3 Conclusion on the Development Plan 104
9.4 Material Planning Considerations 104
9.5 Conclusions 106

APPENDICES (bound separately)

NR1 Key Considerations and Complexities Around Supplying Shore Power

NR2 Letter of Support from Portland Port 2023

NR3 SSE Grid Upgrade Offer Letter Sept 23

NR4 Letter of Support from Day Group Regarding IBA Management

NR5 Portland Port Factual Planning / Consenting Context

NR6 Volumetric Calculation of the Appeal Proposal Buildings

NR7 National Policy, Strategy & Guidance Extracts Supporting ERF

NR8 Response to the Council's Outline Statement on Waste Need

NR9 Scenario A - Future Residual Waste Management Model

NR10 Tolvik Approach on Modelling Future Residual Waste Reduction

NR11 Scenario B - Future Residual Waste Management Model Sensitivity Test

NR12 Parley Allocation and Aerial Photograph

NR13 Appellant Objection to MVV ERF Application at Canford Magna

NR14 Portland ERF – BS4142 Noise Assessment

NR15 Noise Contour Maps (Day & Night) and CPRE Tranquillity Map

NR16 OCO Letter of Support for APCR Recovery

1.0 INTRODUCTION AND SCOPE OF EVIDENCE

1.1 Qualifications and Relevant Experience

1.1.1 I am Nick Roberts, a founding Director of AXIS, a multi-disciplinary planning led, environmental and landscape / urban design consultancy. The practice has operated throughout the UK for the past 23 years and specialises in the planning of major infrastructure developments, with a particular focus in the waste management and low carbon energy planning sectors.

1.1.2 I hold a BA Honours degree in Landscape Architecture and am a member of the Landscape Institute. I have over 35 years professional experience and have specialised in Town and Country Planning for the past 31 years, particularly in the aforementioned waste management and associated low carbon energy sectors.

1.1.3 My experience in the field of waste management and waste planning is extensive and ranges from the preparation of planning applications to research projects. I have been responsible for the planning of well in excess of 120 waste facilities and have undertaken projects involving: energy-from-waste (EfW) facilities / Energy Recovery Facilities (ERF) (combustion, anaerobic digestion and advanced thermal treatment technologies); landfill (hazardous, non-hazardous and inert schemes); materials recycling facilities (MRFs); other specialist recycling facilities; mechanical and biological treatment (MBT) plants; mechanical heat treatment (MHT) plants (e.g. autoclaves); waste transfer stations (WTSs); household waste sites and composting facilities (open windrow and in-vessel). I have undertaken a number of research projects into waste planning including studies focussing upon the requirements for, and location of, future waste facilities within various parts of the UK.

1.1.4 I have advised on numerous waste management contracts (e.g. PFI or similar long term contracts) including the successful or preferred bidders on contracts in: Gloucestershire; Worcestershire & Herefordshire; Cornwall; Surrey; Shropshire; Northumberland; Wrexham; Buckinghamshire; North Yorkshire; Lincolnshire; North Lincolnshire; Derbyshire and Nottinghamshire. I have had a role in providing planning advice in respect of a large number of other similar waste management contracts, including the UK's two largest waste contact procurements Greater Manchester and North London; plus those for Derbyshire (residual waste treatment); Merseyside; North Wales; and South East Wales. In addition, I have provided waste planning services to local authorities (as part of their long term contracts) including:

Peterborough City; Cheshire; Derbyshire; Lancashire and Shropshire County Councils.

1.1.5 I have undertaken waste planning projects for local authorities, regulatory bodies and industry. Clients include: Lancashire, Derbyshire, Cheshire and Shropshire County Councils; the Environment Agency; and: Macquarie / GIG; Urbaser, Balfour Beatty, Mercia Waste Management, FCC Environment, Suez (formerly SITA UK), Veolia, Peel Environmental, Uniper, Hargreaves, Brockwell Energy, Iona Capital, Bioenergy Infrastructure Group, the Banks Group, New Earth Solutions and Amey / Cespa, amongst others. I have also worked directly for ERF technology suppliers / EPC contractors including: HZI, CNIM, Paprec, Abengoa, Acciona, Vital Energi and Volund.

1.1.6 I have extensive experience in the field of ERF development having secured major consents (generally as the lead project planner) for ERFs throughout the UK. In total, I have secured in the region of 30-35 significant ERF planning permissions, plus several further consents for dedicated biomass combustion plants. I continue to work on several other ERF schemes which are at various stages of the planning process.

1.1.7 I been involved with EIA since 1990, and co-ordinated / led EIA projects, and the production of Environmental Statements, since 1993. To date I have been directly responsible for the production of more than 150 EIAs. I have been a Professional Examiner on behalf of the Landscape Institute, specialising in Environmental Planning, and have given lectures in the same subject at Liverpool and Manchester Universities.

1.1.8 I have been involved in numerous planning inquiries (>30), including for major ERF projects, and planning appeals, providing evidence on planning matters. My evidence has been given both in support of and against proposed development for both the private and public sectors. I have also appeared at a variety of other examinations / hearings.

1.1.9 Of direct relevance to this Inquiry, whilst I have been aware of the Portland ERF project for a number of years, I have had no role in the application preparation or determination processes resulting in this appeal.

1.1.10 I was approached by Powerfuel Portland Limited (PPL / the Appellant) in April 2023, circa 3 weeks after the application was refused, and requested to provide analysis

of the decision, by way of an independent[1] expert opinion as to the planning merits of the Portland ERF scheme and its prospects at appeal. As part of that process:

i. I visited the Appeal Site and the surrounding area on the 26th and 27th April 2023, including most if not all of the relevant designated heritage assets, and viewpoints from within the World Heritage Site, Heritage Coast and AONB.

ii. I undertook an extensive review of: the key parts of application documentation; technical consultee responses; and the officer report to Committee and its update.

iii. I was provided with new (post determination) independent expert opinion reports in relation to the landscape & visual and heritage cases.

1.1.11 Based on the foregoing, as is evident from this proof of evidence, I concluded that the Council should have granted planning permission and thus there would be a strong prospect of success at appeal. I was subsequently asked and agreed to provide evidence in support of the proposal at this appeal. Accordingly, I have remained heavily involved in the project since April 2023.

1.2 Scope of Evidence

1.2.1 I have prepared this proof of evidence for the planning appeal, to be heard by way of an inquiry, into the decision by Dorset Council (DC) to refuse planning permission for the development of the Portland ERF ,and associated infrastructure, on land at the Port of Portland, Castletown in Dorset.

1.2.2 My evidence is divided into a number of sections, which cover the following matters:

i. A brief description of the Appeal Proposal and summary of the planning history associated with the Appeal Site;

ii. An assessment of the need for the Appeal Proposal and its benefits;

iii. Detailed consideration of the three reasons for refusal cited by DC;

[1] Independent from the team which was responsible for the planning application.

iv. Consideration of matters raised by Rule 6 parties and interested persons;

v. An assessment of the Appeal Proposal in the context of development plan policy and material planning considerations.

1.2.3 In considering these matters I believe that, in conjunction with the other evidence presented for the Appellant, I cover all of the 'main issues' on which the Inspector wishes to be informed as described in his CMC note (CD11.7).

1.2.4 I note that subsequent to the CMC, on 30th October 2023, the Secretary of State exercised his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, and recovered the appeal for his own determination. The reason given was that the Appeal Proposal would have an adverse impact on the outstanding universal value, integrity, authenticity and significance of a World Heritage Site (subsequently clarified that this was standard wording and there were no prior assumptions on the issue i.e. adverse effects). My evidence covers this matter.

1.2.5 It should be noted that in some instances my proof cross-refers to information set out in the Statement of Common Ground (SoCG). Unfortunately at the time of completing this proof the SoCG between the Appellant and Council had not materially progressed despite the Appellant's pressing. Further, this meant that no progress could be on an SoCG with the Rule 6 party, the starting point for that being the SoCG with the Council. As such any SoCG references, which I have sought to limit, relate to the Draft SoCG submitted by the Appellant with the appeal documentation. Should any amendments or alterations be required to reflect progress on the SoCGs, I will deal with them by rebuttal.

1.2.6 The evidence which I have prepared and provide for this appeal / inquiry (reference: APP/D1265/W/23/3327692) is true and has been prepared and is given in accordance with the requirements of my professional body. I can confirm that the opinions expressed are my true and professional opinions.

2.0 THE APPEAL PROPOSAL AND RELEVANT PLANNING / POLICY CONTEXT

2.1 Introduction

2.1.1 In this section of my proof I briefly describe the Appeal Site and the Appeal Proposal, including some updates to the scheme. I then consider the consenting context within the Port, with particular reference to permitted development rights, as this is relevant to the planning baseline. Finally, I identify the Government's position on energy from waste development (i.e. ERFs), through reference to a number of policy / strategy documents.

2.2 The Appeal Site

2.2.1 The Appeal Site including its surrounding context is described in Section 2.0 of the SoCG. In brief, it covers an area of 6.29 hectares (ha), comprising the main triangular part of the site at 2.14ha, where the ERF would be located, and extending over a further 4.15ha with the land associated with the cable routes to the sub-stations and berthing piers. The main triangular part of the site has been previously developed, but is now hardstanding with footprints and foundations of buildings / structures evident. The entire site, excluding part of the cable route to the electricity grid point of connection, lies within with the operational Portland Port.

2.2.2 The main triangular part of the site sits close to the sea, at circa 7m AOD, at a point relatively central in in the Port estate, where the harbour's Inner Breakwater meets the land at Portland. To the north, the Appeal Site faces into the busy working port / harbour, whilst to the east it faces the more open sea of Balaclava Bay. The Appeal Site is dominated, overshadowed and backdropped by Portland's northern slope / cliff face, which rises from just above sea level to around 125m AOD.

2.3 The Appeal Proposal (including Updates to the Scheme Description)

2.3.1 A factual description of the Appeal Proposal is set out in Section 3.0 of the SoCG. In summary and further detail, the Appeal Proposal is a conventional, grate combustion ERF. Such a technology is deployed across 66 of the 76 ERFs operational or under construction in the UK, as of December 2022. It is also deployed across >95% of the further circa 450 operation ERFs (EfW facilities) across Europe. It is completely proven and does not suffer from the operational deficiencies associated with other waste thermal treatment technologies, particularly advanced conversion technologies (ACTs).

2.3.2 The primary purpose of the Appeal Proposal is to manage residual waste and in doing so generate low carbon energy. The energy generated from the biogenic fraction of the waste fuel is classed as renewable and is typically 50% of the energy generated.

2.3.3 The Appeal Proposal would have a nominal waste throughput of 183,000 tonnes per annum (tpa). However, as actual ERF capacity is determined by the thermal capacity of the boiler, based on the lowest realistic net waste calorific value (NCV), the maximum tonnage throughput could be 202,000 tpa.

2.3.4 The Appeal Proposal would generate electricity via a steam turbine. In the application documentation the maximum generating capacity is described as circa 18.1 Megawatts (MW) of which 15.2 MW would be available for export after taking account of the plant's parasitic load (i.e. the power required to run the Appeal Proposal itself).[2] As described below, since submission of the application, and in the lead-up to this appeal, these power figures have been increased to 20.1 MW gross generation and 17.1 MW net export, respectively.

2.3.5 In addition, to power generation and export, the Appeal Proposal can export energy in the form of heat, as hot water (it could also export steam if required). The submitted Heat Plan reports (CDs 1.7 and 2.7), describes a potential district heating network (DHN), centred on the provision of heat to HMP the Verne and the nearby Young Offenders Institute (YOI).

2.3.6 The DHN would require between circa 2.6 Megawatts thermal (MWth) to 11 MWth to be extracted from the turbine, dependent on average or peak heat demand. This would result in a reduction in power generation of circa 0.4 MW to 1.6 MW respectively. It is envisage the DHN would operate with a water outflow temperature from the Appeal Proposal of around 80^{o}C and a return temperature of circa 55^{o}C.

2.3.7 Like almost all UK ERFs, the Appeal Proposal can and would export power to the grid. However, unlike any other plant in the UK, the Appeal Proposal is specifically designed to deliver 'Shore Power' to the port.

[2] The roof of the ERF building would also be fitted with 3,389 m^2 of photovoltaic panels, which would generate a further circa 764 MW/hrs of electricity per annum

2.3.8 At present, all ships berthed at the Port operate diesel engines to generate electricity and run non-propulsion electrical systems. Shore Power would allow the ships to use electricity generated connect direct to electricity transmission infrastructure, fed by the Appeal Proposal, and thus they would not need to keep their diesel engines running. In the longer term Shore Power could be utilised for charging fully or partially battery powered shipping.

2.3.9 Shore Power requires significant new electrical infrastructure at any port and, in most cases, significant additional electricity capacity. Both these are the case with Portland Port. Accordingly, Shore Power is a key element of the Appeal Proposal and its various facets are addressed as follows:

i. I provide a brief summary of the key considerations and complexities around supplying Shore Power at my Appendix NR1.

ii. Portland Port has re-affirmed its support for the provision of Shore Power in its letter of November 2023, contained as my Appendix NR2.

iii. The Shore Power Strategy Report (August 2021 version) was submitted in support of the planning application for the Appeal Proposal and forms CD2.8. It includes background and technical information around the proposal.

iv. The international and national policy context around Shore Power, its future demand and economic implications are set out in the submitted ES Technical Appendix F2 on pages 21-27 (CD1.37i).

v. The economic case and benefits are updated and encapsulated in the proof of evidence of Simon Elliot for the Appellant.

vi. The air quality effects / benefits of delivering Shore Power are assessed in 2nd ES Addendum Appendix 3.4 Air Quality Additional Dispersion Modelling Erratum (CD2.31).

vii. These air quality effects / benefits are updated and encapsulated in the proof of evidence of Stephen Othen for the Appellant.

viii. The provision of Shore Power forms an element of the Carbon Assessment for the Appeal Proposal, the most recent iteration of which is appended to Stephen Othen's evidence.

2.3.10 In brief, the Appeal Proposal would provide Shore Power to visiting cruise liners, the Royal Navy RFA and other equipped vessels. Cruise and RFA vessels typically have electricity demands of 8 MW (with a maximum of 12 MW) and 2.75 MW respectively. This power cannot be delivered practicably or viably by means of a local grid connection. As the evidence of Simon Elliot identifies, and as per my Appendix NR3, grid upgrade works to deliver more power to the Isle of Portland cannot take place before 2037.

2.3.11 Shore Power has two major benefits. As the evidence of Stephen Othen describes it would help reduce the use of fossil fuel and related carbon emissions and reduce unabated emissions to the air from ship exhausts, leading to an improvement in local air quality, net of any limited emissions from the Appeal Proposal. The carbon benefit has real significance. The air quality benefit, whilst modest, is a unique locational benefit of developing the Appeal Proposal at the Appeal Site.

2.3.12 As the evidence of Simon Elliot describes, without the ability to provide Shore Power to its customers, the Port seriously risks becoming uncompetitive with other ports that are increasingly able to offer this facility, leading to a significant decline in business and associated socio-economic impacts on the local and wider economies. Shore Power is increasingly requested by the cruise operators as is evidenced by the letter of support provided at application stage by Carnival, the world's largest cruise operator (Appendix E to the Appellant's SoC – CD11.1). I am instructed that a number of other leading cruise operators have expressed clear interest in taking up Shore Power, as has the Royal Navy /Royal Fleet Auxiliary and other bulk shippers that use the port.

2.3.13 For the avoidance of any doubt, the Appeal Proposal includes development for the actual provision of Shore Power (i.e. it formed part of the planning application), and it would be physically delivered as part of the construction of the ERF itself. To this end, a planning condition is proposed (condition 42 in the Appellant's Draft SoCG) which provides for pre-commencement approval of the full details of the Shore Power scheme and thereafter its implementation, operation and retention for the life of the Appeal Proposal, in accordance with an approved programme.

2.3.14 The district heating network (DHN) did not and does not form part of the Appeal Proposal planning application. However, the Appellant's Environmental Impact Assessment (EIA) consultant team reviewed two proposed DHN routes from the ERF

to the prisons and confirmed in an EIA Addendum submitted to Dorset Council in August 2021 (CD2.17c) that installation of the pipe network along either proposed route would not result in any significant adverse environmental effects, on the basis that the infrastructure would be installed within existing roads.

2.3.15 The district heating network would need to be approved under a separate planning application should the ERF be consented. However, given that installation would be in existing hard surfaced roads, the advice from technical and environmental advisers and the undoubted benefits of a district heating network; I believe that it is highly unlikely planning permission would not be granted. As such, there is no identified reason that it could not delivered, assuming commercial terms could be agreed between the parties which is anticipated.

2.3.16 Finally, I note the Appellant has proposed a planning condition that the Appeal Proposal must be full CHP ready and an undertaking in the planning obligation to connect to a DHN if technically and commercially viable to do so.

2.3.17 The Appeal Proposal would give rise to up to 80 HGV movements per day (40 in + 40 out) on the worse-case scenario basis that all waste inputs, consumables and residue exports take place by road. However, given the port location, the facility could accept both waste inputs and export incinerator bottom ash (IBA) by ship.

2.3.18 To put the feasibility of waste import by ship in context, in the first 6 months of 2023, based on Environment Agency statistical data, 774,964 tonnes of RDF was exported from the UK across the English Channel or North Sea. Thus overall, circa 1.55 million tonnes of RDF is anticipated to be exported from the UK via ship in 2023.

2.3.19 IBA is similarly transferred around the UK and overseas by ship. With specific regard to the Appeal Proposal, the Day Group, an established IBA reprocessor and producer of IBA Aggregate (IBAA), has confirmed it can take IBA from Portland by ship and has capacity in either of its dockside reprocessing facilities at Avonmouth or Greenwich to accept the IBA produced by the Appeal Proposal – refer to my Appendix NR4. This is the route the Appellant intends to take for IBA management.

Updates to the Appeal Proposal

2.3.20 There are four updates to the Appeal Proposal. Firstly, as described in paragraphs 1.20 – 1.26 of the Appellant's SoC (CD11.1), the footpath extension has been reinstated as part of the heritage mitigation and to provide the missing link in the

around the Isle of Portland footpath network. Drawings relating to the footpath works are contained at Appendix A to the SoC.

2.3.21 Secondly, as set out in paragraphs 1.28 – 1.33, the proposed use of a printed PVC mesh that would be stretched across some parts of the external façade of the ERF has been omitted and a more conventional cladding finish adopted, with precise detail of the external materials to be dealt with by means of a planning condition, as the Council believed appropriate in its Officer Report to Committee. Drawings relating to the revised cladding are contained at Appendix B to the SoC.

2.3.22 The third update is described in the Appellant's Supplementary SoC (CD11.2); namely that the Appeal Proposal would treat RDF and pre-treated residual waste (from the same sources), not in the form of RDF.

2.3.23 As set out in Stephen Othen's Appendix SO8, were the Appeal Proposal to treat residual waste in the form of RDF and residual waste not in the form of RDF, there are no planning, environmental or technical / operational consequences; and all of the assessment work carried out in support of the Appeal Proposal planning application remains robust and applicable whichever of the two fuel sources is used.

2.3.24 Fourthly and finally, as referenced earlier in this sub-section, the final update relates to an increase in the overall efficiency of the Appeal Proposal. As the evidence of Stephen Othen explains, at the time the Appeal Proposal application was determined, the gross and net power generation figures were 18.1 MW and 15.2 MW. In addition it had an R1 'efficiency' value of 0.68. The gross and net power generation figures have now changed to 20.1 MW and 17.1 MW respectively, and the R1 value increased to 0.76.

2.4 Relevant Planning Context

2.4.1 A table of planning history relevant to the Appeal Site is contained in Section 4.0 of the SoCG. However, in Appendix NR5 to my proof I set out a factual description of the wider planning and consenting context across the port since around the time it changed from it being a Naval base to a commercial port on 1st January 1998 the date on which Portland Port Group became the statutory harbour authority.

2.4.2 By reference to my Appendix NR5, and the evidence of William Filmer-Sankey, I draw the following conclusions:

i. Shipping and berthing activities have been present on and around Portland for over 500 years and the current harbour was under construction over 150 years ago. The port has constantly changed and evolved through history and represents a dynamic environment with an ever-changing visual context. No one has sought to preserve it at some fixed point in time.

ii. Today, as in the past, the port constitutes to be a major focal point for development and represents a dynamic environment in which change, over a large area, has occurred and is planned to occur in the future.

iii. Development, including very large scale development, can take place at the port by virtue of the Harbour Revision Orders, permitted development rights and extant planning permissions, without any further formal approvals being required via the planning system.

iv. Whilst the submitted Environmental Statement (ES) supporting the Appeal Proposal planning application conservatively (and correctly in my view), adopted a 'current' baseline (circa 2020 for the Appeal Site itself, largely unchanged today); the reality is, that this is a case where the planning context already permits huge changes to the baseline, as identified below in relation to three examples (details of all being contained in my Appendix NR5).

v. First and foremost are the Port's permitted development rights under Schedule 2, Part 8, Class B of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). In my Appendix NR5, I cite two examples for permissible development.

   a. Two Glencore animal feed storage and handling warehouses were constructed during 2021/22 and together comprise circa 14,500m^2 (158,050ft^2) of new building floorspace / footprint. They have a ridge height of 20m and a combined building volume of circa 235,043m^3. Other than being subject to EIA Screening, where they were negatively Screened, they were built without any formal recourse to the planning system. To put this in perspective:
      - The entire built volume of the Appeal Proposal ERF building, plus the separate office block, equates to 224,400m^3 (refer to my Appendix NR6), thus notably smaller that the Glencore warehouses. Even if other Appeal Proposal structures such as silos and the air cooled

condenser (ACC) were equated to building volume, the two schemes would be similar volumetrically.

- As illustrated on Figure NR1-2 (in Appendix NR5), the entirety of the Appeal Site, plus adjoining land wrapping around the coast to the south and the west have the benefit of the GPDO Part 8, Class B permitted development rights and thus the Glencore warehouses, or conceivably even something larger / taller, could have been built in these locations without a further formal planning approval process.

b. The Dragon Portland cement silo which is proposed to be developed during 2024. The silo is prominently located on the waterfront in clear view of numerous nearby designated heritage assets, including the exceptionally important Grade I Listed Portland Caste (also a Scheduled Monument). Whilst there were permissible scheme options up to 43m high, the current proposal is for a silo 14.5m in diameter and up to 38m high. On consultation, Dorset Council raised no objection (it would have been irrelevant for planning purposes if they had) and their Senior Conservation Officer concluded no significant impact on heritage assets: "….*partly down to the nature of the contribution of their setting to their significance, the current working context of the Port, and the spatial and visual expanse of the local environment".* Based upon my preceding evaluation of the port's evolving, working context, I agree with this finding.

vi. The second example relates to the berthing of ships, on which there is no restriction at the port, beyond physical space. The Officer Report to Committee (CD5.1) effectively dismissed their effects (page 40 of the report), stating: *"Portland Port is a busy working harbour, but the existing buildings and ships are of a substantially smaller scale than the proposed development, and they appear as relatively low-lying waterfront development, whereas the height and scale of the proposal starts to compete with the larger dramatic and dominating landform of the Isle of Portland. Large ships that sometimes dock there can also create a prominent, man-made feature, but these are transient impacts, as the ships come and go"*. Conveniently, the smaller ships are not really relevant because they are subsidiary in scale to the Appeal Proposal and the bigger ships do not really count because they are transient. The scale of the larger

cruise ships really needs to be understood. MSC Virtuosa has made several visits to the port. She exceeds 180,000 tonnes, is over 330m long and 65m high, is over 330m long, with a visible 'air draft' height of 65m (above the surface of water). Her scale eclipses the Appeal Proposal. On Saturday 30th September 2023, both the MSC Virtuosa and her near identical sister ship, MSC Grandiosa, were berthed at the same time in the port, as illustrated in Jon Mason's Appendix JM5 View Points 21-23. These vessels and their visual effects simply cannot be dismissed as 'transient'. Their arrivals, departures and berthing, are a visually prominent reminder of the dynamic visual context of the port, its shifting baseline, and the large-scale of port related development and activities.

vii. The third and final example relates to the extant 2010 and 2013 Permissions for the W4BRE energy plant proposal. The Council acknowledges these legally constitute a fall-back position, although I afford such a position very limited weight as I am not aware there is any realistic prospect of the energy plant coming forward. However, in terms of consistency of decision making, on review of the W4BRE proposal, I believe, the LPA granted planning permission for a development which has a greater lateral visual extent than the Appeal Proposal and is demonstrably more 'industrialised' in appearance. Whilst I acknowledge that the Appeal Proposal is both taller and has a greater 'centralised mass', I believe it is more visually coherent and of far greater architectural merit that the W4BRE energy plant.

2.4.3 This context, particularly points v, vi and vii above, are relevant material considerations in the determination of this appeal. Weight must be given to the fact that the port is a rapidly developing and dynamic environment and that the likelihood is that large scale, industrial port related development will come forward across the Appeal Site, and elsewhere in the port, without any formal planning applications being required. Further, that notwithstanding the port's numerous designated heritage assets, industrial port related development has been able to grow around them without significant restraint.

2.5 National Policy and Strategy Context in Relation to ERFs

2.5.1 Finally in this section of my proof, I believe it is worth understanding that extant government policy supporting energy from waste (i.e. ERFs) is quite clear, has been for some time, and remains so. Examples are:

i. *"The government supports energy from waste as a waste recovery method through a range of technologies, and believes there is potential for the sector to grow further"*. (paragraph 207 of the 'Government Waste Policy Review 2011' - DEFRA 2011) – see Appendix NR7.

ii. *"Energy recovery is an excellent use of many wastes that cannot be recycled and could otherwise go to landfill. It can contribute secure, renewable energy…"* (paragraph 214 of the 'Government Waste Policy Review 2011' - DEFRA 2011) – see Appendix NR7.

iii. *"The Government sees a long term role for energy from waste both as a waste management tool and as a source of energy. Energy from waste is in a unique position to fulfil a range of objectives across a number of Government departments. For Defra it helps divert waste out of landfill, for DECC it is a potential source of low carbon energy, for DCLG it can be a contributor to waste planning objectives and for DfT it is a potential source for a variety of transport fuels"*. (paragraph 214 of 'Energy from Waste: a guide to the debate' – DEFRA 2014) (CD9.8).

iv. On the matter of UK exports of residual waste typically in the form of RDF: *"While such exports are permissible*[3]*, the energy recovered from the waste does not contribute to UK renewable energy targets and is effectively a lost resource to the UK. The Government is keen to support domestic RDF and SRF markets, where they can provide better environmental outcomes, to ensure that the UK benefits from the energy generated from UK waste"*. (paragraph 57 of 'Energy from Waste: a guide to the debate' – DEFRA 2014) (CD9.8).

[3] However, subsequent to the publication of the guide and following Brexit, such exports do not accord with the UK's definition of self-sufficiency which I discuss subsequently.

v. *"The proportion of local authority collected waste going to Energy from Waste (EfW) plants increased from 9% in 2000/01 to 41% in 2017/18. In 2017 incineration of biodegradable waste produced about 3.4% of the UK's renewable energy, offsetting the use of virgin resources. Thanks to improvements in recycling and sending more waste to EfW, we are less reliant on landfill –with a 72% reduction by weight of local authority collected waste sent to landfill since 2010/11. But more progress can be made"*. (pages 76/77 of 'Our Waste, Our Resources: A Strategy for England' – DEFRA 2018) (CD9.9).

vi. *"Incineration currently plays a significant role in waste management in the UK, and the Government expects this to continue"*. (page 79 of 'Our Waste, Our Resources: A Strategy for England' – DEFRA 2018) (CD9.9).

vii. *"The government supports efficient energy recovery from residual waste – energy from waste is generally the best management option for waste that cannot be reused or recycled in terms of environmental impact and getting value from the waste as a resource. It plays an important role in diverting waste from landfill"*. (page 17 of 'Waste Management Plan for England'– DEFRA 2021) – see Appendix NR7.

viii. *"The Resources and Waste Strategy recognises that energy from waste is generally the best management option for waste that cannot be reused or recycled in terms of environmental impact and getting value from the waste as a resource"*. (page 45 of 'Waste Management Plan for England'– DEFRA 2021) – see Appendix NR7.

ix. *"Incineration with energy recovery is preferable to disposal of waste via landfill or incineration without energy recovery"*. (page 29 of the 'Consultation on Environmental Targets' – DEFRA May 2022 - see Appendix NR7.

3.0 THE NEED FOR THE APPEAL PROPOSAL AND ITS BENEFITS

3.1 Introduction

3.1.1 This section of my evidence identifies the need for the Appeal Proposal from a waste management perspective and the benefits that would accrue from meeting that need. It then identifies the other material benefits of the Appeal Proposal.

3.1.2 It should be noted that, by their nature, ERF schemes such as the Appeal Proposal bridge two industrial sectors. They have their roots in waste management, but are also equally important in terms of the energy sector, securing indigenous energy generation, renewable and low carbon energy generation and associated climate change benefits.

3.1.3 It should also be noted that there is no Government policy that requires, as a matter of general principle, applicants or appellants to demonstrate that there is a need for their development. However, it is widely recognised that the need for a scheme may be a material planning consideration, that weighs in its favour.

3.1.4 With specific regard to waste management need, National Planning Policy for Waste (NPPW – CD9.2) states (paragraph 7), 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…."*

3.1.5 There are two important factors arising from this policy:

i. The Appellant's position, and specifically my own (as set out in Section 10.0 of this proof), is that the Appeal Proposal accords with an up-to-date Local Plan. I discuss the Council's position on this matter below.

ii. Secondly, in so far as matters of need might be considered, when determining planning applications, regard should only be had to the extent **existing operational** facilities would be capable of meeting the need. The Council strayed from that policy principle in determining the application for the Appeal Proposal and continue to do so in its SoC (CD11.3). For example at paragraph 5.18 where they state: *"The Council will also demonstrate that*

the reducing amount [of waste] *is capable of being dealt with at the allocated sites…"*. Such an approach is fundamentally incorrect and at odds with relevant national policy.

3.1.6 As a further contextual point on need, I note (and quote more fully in my sub-section 8.4) the Government position as stated by Rebecca Pow MP speaking in debate on 1st December 2022 (underlining added)[4]:

"That issue was also raised by the shadow Minister, the hon. Member for Leeds North West (Alex Sobel). DEFRA has no plans to introduce a moratorium on new energy-from-waste capacity in England, because we expect the market itself to assess the risks and determine the economic viability and deliverability of developing the new infrastructure. There is no financial advantage for the public sector or the market in delivering overcapacity in the energy-from-waste provision in England. Through the resources and waste strategy, we have committed to monitoring residual waste treatment capacity and we intend to publish a fresh analysis of that in due course".

3.1.7 In short, it is for the market to determine need and to deliver the infrastructure required to meet that need.

3.1.8 The Council's position on 'need' at the determination stage, whilst not overly clear, appeared to be that they accepted the need for a facility of the type and scale of the Appeal Proposal, but did not support it being located on the Appeal Site. Further, they explicitly supported and relied upon the data in the DWP, albeit tempered with a bizarre notion that at some point beyond the Plan period, all residual waste would disappear. However, at no point anywhere in the 182 pages of Officer Report (CDs5.1 & 5.2) do they suggest the DWP is out-of-date.

3.1.9 The Council's position is encapsulated in paragraph 14.9 of the Officer Report: *"It is worth noting that, as we move further towards the 2050 zero waste ambition, over the next couple of decades, by phasing out residual waste through actions on waste prevention, recycling and sustainable consumption and production, it is hoped that the only waste produced will be either reused or recycled. It follows that over time the availability of feedstock for ERFs would progressively reduce, which could*

[4] Hansard 414WH-417WH

translate into a need to import RDF from further afield. Nevertheless, it is the case that the Waste Plan's strategy is predicated upon a need to manage around 234,000 tonnes of residual waste by 2033, and therefore the proposal would be capable of meeting some of this need up to this date and beyond until such times as zero waste can be delivered".

3.1.10 The final sentence accepts the need for the Appeal Proposal over the Plan period and beyond, until a point undefined in time. I have no idea what 'the 2050 zero waste ambition' is, nor the basis by which residual waste will be eliminated over the next two decades. It is not part of the DWP, nor any part of national waste policy. It is completely at odds with the government's extraordinarily ambitious (and self-confessed 'stretching') target to half residual waste by 2042, which I discuss subsequently. Thus, setting aside the '2050 ambition' for which I can find no basis, at the determination stage, the Council supported its Waste Plan, accepted the Appeal Proposal was capable of meeting some of the need the Plan identified; and hence accepted the need for the Appeal Proposal itself and that it accorded with an up-to-date Plan.

3.1.11 The Council has now fundamentally changed its case as part of this appeal. In paragraphs 5.18 to 5.21 of its SoC, their position is now:

i. That they: *"….will show that the requirement* [i.e. the need] *has diminished since the adoption of the Bournemouth, Christchurch, Poole and Dorset Waste Plan in 2019 (being based on 2017 data) and will continue to do so over the Plan period."*

ii. *"…. that the Appeal Proposal does not comply with the Criteria in Policies 1, 4 and 6a and 6b of the Bournemouth, Christchurch, Poole and Dorset Waste Plan (2019) in terms of need…"*.

3.1.12 In the unnumbered paragraph on page 16 of the SoC, the Council goes further stating that it: *"considers the evidence presented to be out of date, and misrepresents the need for additional residual waste treatment capacity. It will present its case based on the best available data that demonstrates 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. It would therefore be contrary to the application of the Waste Hierarchy, and hence contrary to the Objectives of the adopted Plan".

3.1.13 Thus, in the Council's opinion, the need identified in the DWP, on which the Council was happy to rely in March this year, is now in direct conflict with the Plan's objectives. I trust the Council will now advise its neighbouring authority and joint DWP authors (Bournemouth Christchurch & Poole – BCP – Council), that they consider the Plan is out-of-date to the extent it conflicts with its own objectives. And further, that there is no need for the ERF proposal currently being promote at Canford, which has a nominal capacity some 77,000 tpa greater than the Appeal Proposal.

3.1.14 Subsequent to receipt of the Council's SoC, and effectively 9 working days before exchange of evidence, the Appellant received, following the Inspector's direction at the CMC, the Council's 'Outline Statement on Waste Need' (CD11.9). I deal with this subsequently.

3.2 Waste Management Need - Introduction

3.2.1 Assessing waste management 'need' for a specific facility or purpose is inherently complex, particularly over the design life of an ERF which is typically circa 25 years. There are multiple variables to consider and multiple factors influencing those variables. For this reason NPPW advises (paragraph 2) that when looking at new capacity and its spatial provision: *"Spurious precision should be avoided"*.

3.2.2 In this section of my evidence I consider 'need' from two perspectives. The first relates to the DWP and its assessment of need and more specifically, the requirements for new residual waste treatment capacity in the Plan area i.e. the capacity gap.

3.2.3 The second approach is my own need analysis based upon / with consideration of:

i. The most contemporary waste / waste management data.

ii. The direction of travel of national waste policy and future waste management targets.

iii. Setting Dorset within its regional / sub-regional catchment (market area) and evaluating long-term, future waste arisings in the context of existing operational residual waste treatment capacity.

3.2.4 Finally, and for the avoidance of any doubt, the Appeal Proposal would be a merchant residual waste management facility, focussed primarily of the management of residual waste generated with Dorset and the BCP area, but in line with all such merchant plants, it would also be capable of serving a wider sub-regional commercial and industrial waste market. 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.

3.3 DWP Approach

3.3.1 The DWP approach is relatively straight forward. It projects non-hazardous residual waste arisings to 2033, then projects existing waste management capacity over the same period to determine whether there is a shortfall in capacity i.e. the 'capacity gap'. The output is then presented in Table 7 reproduced below.

Table 7 Capacity & Need - Non-hazardous residual waste (tpa)

	2015	2018	2023	2028	2033
Projected arisings / Need	300,000	304,000	320,000	339,000	359,000
Capacity (recovery and landfill) all facilities	214,000	167,000	142,000	125,000	125,000
Identified shortfall	-86,000	-137,000	-178,000	-214,000	-234,000
Potential MRF capacity [16]	c.150,000	c.150,000	c.150,000	c.150,000	c.150,000

3.3.2 I make two comments on this table. Firstly the final row 'Potential MRF Capacity' is irrelevant to residual waste management. I have no idea of its purpose. Secondly, I understand that the 125,000 tpa of existing capacity shown beyond 2023 relates to the Canford MBT plant. This is actually only intermediate treatment, not true (final) residual waste management capacity. In short, whilst 125,000 tpa of residual waste might go in the front end of the MBT plant, circa 95,000 tpa of residual waste comes out of the back end. This still requires management in a true residual waste treatment facility i.e. an ERF, or needs to be disposed of in landfill.

3.3.3 Further, the vast majority of the reduction in mass arising from the MBT process is simply moisture loss i.e. the waste has not disappeared or gone anywhere, its simply lighter because its drier and therefore has a higher CV. Further still, as a general matter of fact, 125,000 tpa of wetter waste, with (hypothetically) say a CV of 9.5

MJ/kg, will require broadly the same amount of ERF capacity to achieve final disposal as 95,000 tpa of drier waste with, say, a CV of 12.5 MJ/kg.

3.3.4 Thus, if Table 7 is presented correctly, and if assuming a 30,000 tpa mass loss at the MBT plant, the shortfalls (capacity gaps) in 2028 and 2023 for all non-hazardous residual waste are circa 309,000 tpa and 329,000 tpa respectively.[5]

3.3.5 Accordingly, the data presented in the DWP in relation to need, shows there is a significant and long-term requirement for new residual waste management capacity. Further, even if the projected residual waste arisings were to fall by 33% over time to circa 200,000 tpa, which would represent an 80% recycling rate across the combined LACW and C&I waste streams, based on the forecast arisings in Table 2 of the DWP, there would remain a demonstrable need for the Appeal Proposal.

3.4 Detailed Market Assessment

3.4.1 There are a number of contextual matters relevant to understanding the detailed waste need assessment. These are considered under the following sub-headings:

- Waste Terminology.
- Recycling Rates.
- Waste Data.

Waste Terminology

3.4.2 The Appeal Proposal would be, what is termed, a municipal ERF, in that it would treat residual municipal waste. DEFRA's position (as of 2011 when they aligned with the EU definition) is that: *"… the definition of municipal waste as described in the Landfill Directive includes both household waste and that from other sources which is similar in nature and composition, which will include a significant proportion of waste generated by businesses and not collected by Local Authorities"*.

3.4.3 Thus, the Appeal Proposal would treat non-hazardous residual municipal waste comprising Local Authority Collected Waste (LACW) and commercial and industrial (C&I) waste.

[5] E.g. for 2028, the identified 214,000 tonne shortfall plus the 95,000 tonne MBT plant output.

3.4.4 Residual waste has many definitions, which include:

i. DEFRA's 'Energy from waste: a guide to the debate' (CD9.8) states: *"Residual waste is mixed waste that cannot be usefully reused or recycled. It may contain materials that could theoretically be recycled, if they were perfectly separated and clean, but these materials are currently too contaminated for recycling to be economically or practically feasible. It may also be that there is currently no market for the material or it is uneconomic to take to market. An alternative way of describing residual waste is 'mixed waste which at that point in time would otherwise go to landfill"*.

ii. DEFRA's more recent Environmental Improvement Plan 2023 (CD9.24) describes: *"…'residual' waste as waste that is sent to landfill, put through incineration or used in energy recovery in the UK, or that is sent overseas to be used in energy recovery".*

iii. For the purposes of this appeal, I adopt the following description of residual waste (this being Tolvik's definition, to whom I refer subsequently): *"Solid, non-hazardous, combustible waste which remains after recycling either 'treated' (in the form of a RDF or SRF) or 'untreated' (as "black bag" waste)".* This is consistent with the DEFRA descriptions and only differs in that it excludes any separated non-combustible[6] wastes. That is because, relative to the Appeal Proposal, we are only interested in mixed combustible wastes.

3.4.5 The Landfill Directive (1999/31/EC) was transposed into UK law by the Landfill (England & Wales) Regulations 2002, as amended. It established the requirement for all biodegradable waste to be pre-treated prior to disposal at landfill. The most common option for pre-treatment is physical separation, with the most effective (best) method being source segregation. The Waste (England and Wales) (Amendment) Regulations 2012 places a legal duty on waste collectors to undertake segregated waste collections from all commercial (trade), industrial and household sources.

[6] By non-combustible, I mean a separated waste fraction whose CV falls below the minimum CV in the ERF firing diagram i.e. is lower than the plant is designed to take.

Hence, all mixed residual waste that would be received at the Appeal Proposal would be pre-treated.

3.4.6 As referenced previously and described in the Appellant's Supplementary SoC (CD11.2), the documents submitted in support of the Appeal Proposal planning application indicated that the scheme would treat Refuse Derived Fuel (RDF). RDF is simply non-hazardous residual municipal waste that is subject to a contract with an end-user for use as a fuel in an ERF, with the contract including a basic specification for the material. In theory, the specification can match the incoming residual waste, hence residual waste could become RDF and be entirely identical.

3.4.7 In practice, and as I have seen firsthand on multiple occasions, most RDFs are formed in a large shed or yard where they are subject to picking out some metals / bulky items, coarse shredding and potentially baling. Regardless, the overall waste composition is not materially changed. Hence, my (and Tolvik's) definition of residual waste does not distinguish between whether the residual waste is classed RDF or not, as it is simply the same waste that may or may not have been subject to basic further treatment.

Recycling Rates

3.4.8 As the overall quantities of waste that are generated typically do not significantly alter year on year, the quantum of residual waste produced is largely a product of how much of the total waste is recycled i.e. the recycling rate.

3.4.9 Much is made by opponents to residual waste management projects, as the Council do in the Officer Report (CD5.1), e.g. at its paragraph 14.9 which I have reproduced above, that recycling rates will magically increase and the project in question will not be needed. Further, that the provision of a residual waste treatment facility will somehow stifle recycling rates and (the Council's SoC at page 16): *"… lock in waste to incineration"*.

3.4.10 Dealing with the latter, simpler, point first:

i. The presence or otherwise of ERF capacity has no material bearing on recycling rates which are a result of the separation / segregation of waste material primarily at source / the point of collection and / or agglomeration, prior to transfer for residual treatment. I do not accept that any individual or organisation would actively choose to put their recyclable waste in the

'residual waste bin', as opposed to the 'recycling container', just because their county has developed an ERF. Further, from a commercial perspective, the cost of managing the waste in the 'residual waste bin' is greater than that in the 'recycling container'.

ii. The Appeal Proposal would be a merchant facility that will be open to suppliers / aggregators of waste who are presently sending their residual waste elsewhere, whether that be landfill or more distant or overseas ERF. If the quantities of residual waste they generate decrease, because of increased front-end recycling, they will simply send less residual waste to the Appeal Proposal. There are no long-term 'lock-ins'.

3.4.11 Turning to the more complex question of recycling rates. On 5th January 2022, DEFRA published their online 'Progress report on recycling and recovery targets for England 2020'. I understand this remains their most recent position statement. The Executive summary reads (extract):

"This report provides an update on progress towards several recycling and recovery targets in England. Although progress has been made on recycling, England has not met the target to recycle 50% of 'waste from households' by 2020. In 2020, the 'waste from households' recycling rate was 44.0%, down from 45.5% in 2019 …..

…Total 'waste from households' increased to 22.6 million tonnes in 2020 from 22.1 million tonnes in 2019, as people spent more time at home due to lockdowns…

… Regarding future targets on municipal waste recycling rates, the municipal waste indicator is under development. Local authority collected waste is used as a proxy. In 2020 to 2021, 41.4% of local authority collected waste was recycled".

3.4.12 The 2020 data is not a blip. The reality is that in spite of a clear target, multiple defined interventions and massive investment, the recycling of waste from households has flatlined for over a decade as shown in Table 2 below (based on DEFRA data).

Table 3.1: English Recycling Rate of Waste from Households for the Past 11 Years

Year	% Recycling Rate
2011	43.3
2012	44.1
2013	44.2
2014	44.7
2015	44.3
2016	44.9
2017	45.2
2018	44.7
2019	45.5
2020	44.0
2021	44.1

3.4.13 Thus, as a matter of fact, the existence of a recycling target in itself offers no certainty it will be met.

3.4.14 England's more recent future municipal waste recycling targets have flowed from a move towards a more circular economy and were first launched in DEFRA's 'Our Waste, Our Resources; A Strategy for England' (December 2018) (CD9.9). This includes a goal to achieve a municipal waste recycling targets of 55% by 2025, 60% by 2030 and 65% by 2035.[7] However, importantly, as set out above (my paragraph 3.4.11), DEFRA has yet to define the municipal waste indicator, relative to the municipal recycling rate. This is due to a number of factors. As I identify previously, given that since 2011 the UK has adopted the definition of municipal waste (i.e. both household waste and similar C&I wastes), the indicator will undoubtedly be some sort of blend of municipal waste from LACW sources, and from C&I sources, but is not yet defined. By way of understanding, given C&I waste recycling rates are higher than from households, if the 65% municipal rate were achieved, it does not mean that household waste recycling rates need to be that high. For example, Tolvik

[7] The Waste (Circular Economy) (Amendment) Regulations 2020 set the requirement that any National Waste Management Plan must include a preparing for use and recycling target for municipal waste of 65% by 2035.

(referenced further below) has previously modelled (for 2035 and based on known policy interventions) a recycling rate of 52.6% for household waste and 67% for C&I waste leading to an overall blended recycling rate for municipal waste of circa 60%.

3.4.15 Notwithstanding the extraordinary challenges facing the 'circular economy' in trying to 'unstick' and materially increase a household recycling rate that has been static for over a decade, the Environment Act 2021 has gone further. In March to June 2022 the Government undertook public consultation on the setting of environmental targets across a range of sectors including: 'Resource efficiency and waste reduction targets'. This has ultimately resulted in the publication of the 'Environmental Improvement Plan' (DEFRA January 2023) (CD9.24).

3.4.16 The big headline figure from the Environmental Improvement Plan (EIP), relevant to this appeal, is a binding target to half the residual waste produced per capita in 2019 by 2042. There are other interim non-binding targets. The EIP states (extracted from pages 144-147):

a. *"We will explore options for the near elimination of biodegradable municipal waste to landfill from 2028.*

b. *We will halve 'residual' waste (excluding major mineral waste) produced per person by 2042* [from 2019 levels]*. For the purposes of the target, we define 'residual' waste as waste that is sent to landfill, put through incineration or used in energy recovery in the UK, or that is sent overseas to be used in energy recovery.*

c. *The residual waste target is underpinned by the following interim targets, by 31 January 2028:*

- *Reduce residual waste (excluding major mineral waste) produced per person by 24%.*
- *Reduce residual waste (excluding major mineral waste) in total tonnes by 21%. • Reduce municipal residual waste produced per person by 29%.*

d. *Long term target: By 31 December 2042, the total mass of residual waste excluding major mineral wastes in a calendar year does not exceed 287 kg per capita.*

e. *Interim target 2: By 31 January 2028, the total mass of residual waste excluding major mineral waste in the most recent full calendar year does not exceed 25.5 million tonnes* [Mt]*"*.

3.4.17 I comment on the above as follows:

i. There is an absence of any hard data in or supporting the final EIP and where actual tonnages are quoted (e.g. for the 2028) interim target, they cannot be reconciled with other data I have seen.

ii. Back calculating the above figures (25.5Mt in 2028 being 24% less than that in 2019) , DEFRA must have a 2019 residual waste baseline of 33.6 Mt. This compares to a Tolvik figure (their definition of residual waste) of circa 23.6Mt in the same year.

iii. Given projections (see CDs12.3 & 12.4) put the populations of Dorset and BCP as circa 800,000 in 2042, based on residual waste generation at 287 kg per capita, this would generate up to 230,000 tonnes of waste in 2042 (using DEFRA's residual waste definition). As will be seen below, this is relatively close to current residual waste levels (albeit using the Tolvik residual waste definition).

iv. To achieve a reduction in residual waste in 2042 that equates to half of that produced in 2019,[8] would require a combination of waste reduction and extraordinarily high recycling levels. Recent evidence suggests that Government policy ambition, particularly in relation to 'environmental improvement actions', exceeds the achievable. In short, this sort of level of recycling has no comparable precedent of which I am aware. This is no doubt why the EIP describes the long-term target as 'stretching'.

v. The ambition of eliminating biodegradable waste from landfill by 2028 would significantly increase ERF demand, noting that in 2021 the UK incinerated 14.85 million tonnes (Mt) of residual waste (my and Tolvik definition) which

[8] The halving of residual waste would not occur equally across all residual waste types, some of the more inert (less combustible) wastes would probably achieve a higher than 50% reduction, and the more 'difficult' mixed wastes less than 50%. I discuss how Tolvik model this in my Appendix NR10, referenced subsequently.

was estimated to comprise 56% of the UK's residual waste market.[9] Thus, the balance of the country's residual waste, some 11.65Mt, was either landfilled or exported to overseas ERFs, with a tiny fraction being subject to 'alternative' forms of residual waste treatment (in the order of a couple of hundred thousand tonnes). The RDF export figure was circa 1.6Mt in 2021. Hence circa 10 million tonnes of residual waste went to landfill.

3.4.18 In this context, it is informative to understand what DEFRA believed its planned waste management policies and intervention measures could deliver in terms of a future recycling rate. As part of the Environment Act consultation, an Impact Assessment report (CD9.25) was produced to support the resource efficiency and waste reduction matter. This considered the effect of future known policies on the then draft target of halving of residual waste by 2042. It defined future known policies as being those which have been consulted on, but will not be in force when the proposed target is set in legislation (as it now is). It then identifies (in 4.1), three 'known policies' being: consistent collections by local authorities; a deposit return scheme; and extended packing producer responsibility (the same measures are listed in the EIP at pages 151-156). The assessment then identifies that in combination these measures are expected to increase the recycling rate for household waste to 52% by 2035 and for what was termed non-household municipal waste (i.e. C&I waste) to 59% by 2035. The Tolvik modelling referenced in my paragraph 3.4.14 above, is their mirror modelling of the effects of the same policy interventions (and give a slightly higher level of recycling).

3.4.19 Based on the foregoing, I conclude that all the evidence points to it being very challenging to materially increase waste recycling levels over the levels we are currently seeing. I believe they will increase broadly in line with DEFRA and Tolvik modelling (see my preceding paragraph), but it remains to be seen whether the far-reaching and unprecedented long-term ambitions are based in reality.

Waste Data

3.4.20 Waste data is extremely complex and is undoubtedly not 100% accurate. Even the most important data set, 'Waste Data Interrogator' (WDI), is subject to multiple errors as it relies on millions of operator entries of waste codes and addresses and is

[9] Tolvik UK Energy from Waste Statistics 2021 (May 2022) at page 4 (CD12.1).

subject to extensive miscoding through human error, lack of knowledge, or for other reasons. As an example, the WDI data waste tonnage for the sum of the UK regions falls short of that for the country as a whole i.e. there are errors (a short fall) in the waste data reported at regional level, which only gets captured when you interrogate total national waste. Further, the smaller the geographical area one gathers data for, the less reliable it comes as errors etc. are magnified. Similarly, the further waste travels from origin passing through more than one waste facility, the greater the likelihood of recording errors.

3.4.21 For this, and many other reasons, I have used data and modelling provided by Tolvik Consulting (Tolvik) in relation to this section of my proof. Tolvik also provided data to the Appellant early in the planning application stage (to which I make no further reference). At the outset it is important to understand that the Appellant has not commissioned Tolvik to support a specific need case. They are an independent consultancy with no agenda and are simply reporting factual waste data based on their records and, for the purposes of my proof, undertaking their own independent modelling for future scenarios based upon parameters and variables which I have provided them. The interpretation of the outcome of such modelling is also all mine.

3.4.22 Tolvik is widely regarded as a (if not the) leading provider of independent market analysis in the European waste and bioenergy sectors. They produce the annual report 'UK Energy from Waste Statistics' (now in its eighth edition), versions of which form CDs at this appeal, and their data is used, adopted and relied upon by Government organisations, local authorities, the waste industry, investors and by organisations such as UKWIN, when it suits them.

3.4.23 The quality of Tolvik's data arises from their using a number of information sources from which they can reconcile figures. Their information sources include:

- Waste Data Interrogator (WDI) and associated data files – relating to waste site information.
- WasteDataFlow – relating to local authority data.
- Environment Agency (EA) permitting data, including specific landfill and material recycling facility data.
- A Planning database provided by a specialist third party.
- Annual performance reports for all Energy from Waste facilities.
- Ofgem data – to cross refer power information with waste information.

- Companies House data.
- Local Authority contract registers, FindaTender service etc.
- Their own daily review of a range of trade press, and alerts from government, EA etc.
- Significant general information gathered under confidentiality across a multiple of transactions in the waste and bioenergy spaces together with ongoing daily discussions across the industry.

3.4.24 In this context, it is further notable that in August last year, the Competitions and Markets Authority (a non-ministerial government department), when looking into the Veolia acquisition of Suez, two of the top four largest waste management companies in the UK, stated in their report: *"We consider Tolvik data is reliable as it provides an independent view based on multiple sources of information"*. The report extract is reproduced below.

Market share estimates

10.159 We calculated market shares using an external dataset prepared by Tolvik.[916] This dataset contains information on each of the ERFs that were operational in the UK in 2020 (local-authority-owned and merchant owned), including on the owner of the ERF, the operator of the facility and the

[913] See Tolvik's 'UK Energy from Waste Statistics – 2020' report.
[914] See Tolvik's 'UK Energy from Waste Statistics – 2021' report.
[915] Table 5.6 for shares of ERF capacity.
[916] We consider Tolvik data is reliable as it provides an independent view based on multiple sources of information. We discuss Tolvik in more detail below.

275

3.4.25 I have used Tolvik data and modelling on numerous previous occasions including in relation to an ERF appeal in Wiltshire (ref: APP/Y3940/W/22/3302008) for which the decision was issued on 21st February this year (see CD10.1). In this case, Mr Alan Potter, a late appointed witness for Wiltshire Council (as he now is for Dorset Council at this inquiry), decided, contrary to the Council's long established position and that which it had adopted at planning committee for the proposal, to instigate an argument that the waste plan documents were out of date and his assemble of figures should

be preferred. The Inspector decisively rejected Mr Potter's argument on this precise issue.

3.4.26 The Inspector's findings in relation to the Tolvik data and their modelling is summarised in the following extracts from his decision (paragraph numbers provided):

"56. In considering the alleged over-estimation of residual C&I Waste identified in the Tolvik Report, paragraphs 4.16 to 4.28 of Mr Potter's Proof sets out the basis for this. Tolvik's response to the contentions made are set out in Appendix NRE3 of Mr Roberts Rebuttal.

57. A large part of the dispute between Mr Potter and Tolvik relates to European Waste Code 19 12 12 and the extent to which this waste from the residues of mechanical processing of waste may be combustible. The evidence suggests, amongst other things, that Mr Potter had assumed that all waste landfilled under EWC 19 12 12 is combustible but in effect, Tolvik assumed only 70% was. Other areas of disagreement relate to the calculation of the total tonnage of residual C&I waste and how the figures were extrapolated from the Waste Data Interrogator and how recently commissioned EfW plant capacity was taken into account.

58. The rebuttal response provided by Tolvik was not disputed in the Inquiry. On this basis, I have no further reason to question the methodology and findings of the Tolvik report.

63. The DEFRA Consultation on Environmental Targets was in draft form at the time of the Inquiry. This signified an opportunity to intensify recycling and in doing so decrease the total amount of residual waste requiring management. Nonetheless, the Tolvik modelling has factored in increased recycling rates and the Median scenario forecasts a better our come [sic] *from known policy interventions. It predicts, for 2035, a recycling rate of 52.6% for household waste and 67% for C&I waste (compared to the 52% and 59% respectively by DEFRA). Even if the quantities of residual waste were to dramatically decrease in the period leading up to 2042, the capacity gap that the Tolvik analysis provides suggests that the appeal facility would still fulfil a need.*

78. ……. However, the evidence suggests that even if the quantities of residual waste were to dramatically decrease in the period leading up to 2042, the capacity

gap that the Tolvik analysis provides suggests that the appeal facility would still fulfil a need.

83. To conclude on the issue of need, I am satisfied that the evidence presented in the Inquiry demonstrates a local and sub-regional need for more recovery capacity to divert the management of residual LACW and C&I waste up the hierarchy. I consider the Tolvik analysis of the residual waste treatment capacity gap represents a well-considered and reasonable forecast of the position in the market area and reflects future Government policy interventions.

84. …… The proposal itself would not resolve the current capacity gap predicted under any of the Tolvik scenarios in any of the assessed years."

3.4.27 Based on the forgoing, the Inspector the Wiltshire inquiry was clearly satisfied by, and prepared to adopt, Tolvik's data and modelling work. I am entirely comfortable that, based on over 30 years working in the waste sector, Tolvik currently provide the best quality waste data available. I use their data, and modelling of it, in the next sub-section of my evidence.

Assessment

3.4.28 Tolvik has reviewed the WDI data for residual waste in 2022 generated within Dorset and BCP and made certain adjustments (as described). Table 3.2 below shows residual waste quantities generated and its fate i.e. form of management.

Table 3.2: Dorset & BCP Residual Waste and its Fate in 2022

	Incineration	Landfill	Mass Loss	Total
Treated in England as per WDI	82,429	67,193		149,621
Estimated share of tonnage from SW region but not WPA coded	3,182	3,040		6,222
RDF export (adjusted for WDI under reporting)	70,768			70,768
Canford MBT plant			34,444	
Total	**156,379**	**70,233**	**34,444**	**261,055**

3.4.29 This figure is for a single year for the Dorset / BCP WPA area only. As referenced previously in my paragraph 3.4.20 above, there should be an element of caution with this figure. Tolvik has advised me*: "WDI data at a WPA level generally falls short of our estimates at a WPA level – largely because as waste passes through the supply chain e.g. via waste transfer stations its origin gets confused – but it of course reconciles at a national level. With next to no landfill in Dorset / BCP this is a particular issue – as experience shows the further the ultimate destination from source the less specific weighbridge operators are in inputting the correct location of waste origin"*.

3.4.30 For this reason they generally rely on analysing national and regional data over the last 5 years and estimating allocations to WPAs. This is explained further in my Appendix NR8, which also provides further details for the figures in Table 3.2 and compares them to the Council's figures.

3.4.31 For this reasoning, the 261,055 tonnes for 2022 in Table 3.2 above, differs from the figure of ~294,000 tonnes for 2022 in the Tolvik modelling I introduce subsequently. For the purposes of this inquiry, I believe the baseline 2022 residual waste figure for Dorset / BCP is in the region of 261,000 – 294,000 tonnes.

3.4.32 I note that in the Council's 'Outline Statement on Waste Need' (CD11.9) it arrives (Table 1) at a different 2022 'baseline' figure of 184,100 tonnes. I provide explanation for the differing figures in my Appendix NR8 'Response to the Council's Outline Statement on Waste Need' and show why I believe the Tolvik figures are preferred.

3.4.33 As an example of variability, it is worth considering the mass loss figure in Table 3.2 further. WDI shows the Canford MBT plant receiving 128,223 tonnes in 2022 and tonnes removed from the plant are 95,779. The difference is the 34,444 tonnes described as mass loss. The loss has nothing to do with any recyclables extracted as Tolvik has accounted for those. Thus, the mass loss ordinarily reflects a reduction in moisture content in the waste arising from the MBT process (exactly as explained in my paragraph 3.3.3 previously). The mass loss at Canford over 2022 is in excess of 25%. This figure seems high and a possible explanation is that the figure also includes an inventory difference between the WDI period start and end dates e.g. that there could have been 10,000 tonnes of waste resident in the facility at the start of the period and 20,000 tonnes resident at the end of the period. Thus the difference between receipts and exports is greater than just mass loss due to drying. I reference

this point not because it makes any great difference to the overall need case, just that the numbers are complex and almost certainly not precise.

3.4.34 Given that Dorset / BCP has no ERF capacity and no operational non-hazardous landfill capacity whatsoever, Table 3.2 shows that not one single ounce of physical residual waste generated in Dorset / BCP was subject to final fate management in the authorities' area. This is a key consideration to which I return in considering the importance the Council attaches to its interpretation of the proximity principle.

3.4.35 Based upon the data in Table 3.2, and the above commentary, I conclude:

i. The residual waste capacity gap requirement set out in the DWP i.e. 309,000 tonnes in 2028, is broadly aligned with the 2022 residual waste baseline figures for Dorset / BCP of 261,000 – 294,000 tonnes. I do not believe the figures support the Council's new assertion that the DWP is out of date.

ii. There is a demonstrable need to deliver residual waste management capacity with the Dorset / BCP area in order that the communities therein can at least take some responsibility for the management of their own residual waste (in line with NPPW paragraph 1).

iii. That the prospective 800,000 population of Dorset / BCP in 2042, appear to have a reachable prospect of achieving the Government's stretching target of residual waste generation at 287 kg per capita in that year – this equating to 230,000 tonnes, although caution must be applied in that DEFRA's definition of residual waste is wider than Tolvik's.

3.4.36 I thus conclude, that, from a waste management perspective, the need for the Appeal Proposal (with a capacity of between 183,000 and 202,000 tpa) is proven. Further that need aligns with the need requirements set out in an up-to-date development plan.

3.4.37 The final facet of 'need' which I consider, is how the Appeal Proposal might fit in a long-term sub-regional market scenario. In short, in the distant future, based up upon achievement of the Government's most aspirational stretching targets, potential future residual waste arisings and operational ERF capacity; how would the Appeal Proposal sit in terms of meeting a need.

3.4.38 I have asked Tolvik to model a scenario[10] (my Scenario A – see Appendix NR9) with the following parameters:

a. A sub-regional area (the Study Area) which is determined by a combination of drive time from the Appeal Site (broadly equating to 3 hours), ERF competition and fixed to Waste Planning Authority (WPA) boundaries; the WPAs being: Dorset, BCP, Devon CC, Hampshire CC, Sommerset CC, Southampton City C; and Wiltshire.
b. Within the Study Area, the following operational ERFs with (based on Tolvik's records) the identified total and 'Merchant Capacity', the latter being that capacity not subject to a long-term local authority contract.

ERF	Total Capacity (k/tpa)	Merchant Capacity (k/tpa)
Chineham	95	6
Marchwood	200	21
Exeter	59	0
Devonport	256	41
Bridgewater	109	109
Capacity	**962**	**176**

c. The potential for the Appeal Proposal to capture LACW from Dorset and BCP (only) and to capture C&I waste from anywhere in the Study Area (albeit only 50% of Hampshire C&I waste).
d. That the recycling rate for LACW is 55% by 2035 and 70% for C&I waste in the same year.
e. That the mixed LACW and C&I residual waste quantities are consistent with an overall halving of total residual waste by 2042 from 2019 levels subject to a maximum recycling rate of 75% (in the case of both waste streams). The approach adopted by Tolvik in its modelling of this scenario is complex and explained in my Appendix NR10. With regard to the 75% rate, I note by reference to the Council's 'Outline Statement on Waste Need' (CD11.9), that at paragraph 1.14 they helpfully quote from the Second National

[10] As referenced and explained previously, the model has modelled data for 2022 which is slightly higher than the WDI derived actual data for 2022 (I have reported previously). Tolvik is satisfied the extent of difference falls well within the limits or error and adjustment that should apply to the small WPA data set and thus the model is robust in this regard.

Infrastructure Assessment produced by the National Infrastructure Commission released in October 2023. This states (Council's emphasis): *"These targets mean recycling rates will need to continue to improve beyond 2035.* ***Meeting the 2042 target would represent a municipal recycling rate of around 75 per cent****"*.

3.4.39 The Scenario A Model shows (see Appendix NR9) that there is a capacity gap for residual waste throughout the period 2025 to 2045 and that gap never falls below 263,000 tpa (which occurs in 2042). As a consequence, I conclude that the development of the Appeal Proposal is compatible with meeting future long-term residual waste management requirements, within a sub-regional context, having taken account of the very ambitious Government future waste management targets. This is, in my opinion, an extremely conservative assessment (in terms of whether ERF over-capacity would occur) and that in reality, all evidence to date, shows that far more residual waste will require management in the Study Area over the model period.

3.4.40 As a sensitivity test, I have asked Tolvik to run a Scenario B Model. This adopts all of the same parameters as Scenario A with the exception of the following (refer to my Appendix NR11):

a. That the consented Northacre EfW facility located at Westbury in Wiltshire is developed with a total operational capacity of 243,000 tpa of which 85,000 tpa is Merchant Capacity. It should be noted that no construction work has commenced on Northacre and am not aware of anything in the public domain relating to its physical development.
b. That in 2042, the Marchwood ERF in Southampton closes, being 40 years old.
c. When Marchwood closes, 100% of Southampton City Council's LACW is available to the market in the Study Area as is 13% of Hampshire CC's LACW, this relating to the New Forest District Council proportion of the County, which is the District abutting Dorset.

3.4.41 Reference to the Scenario B Model (see Appendix NR11) shows that there is a capacity gap for residual waste throughout the period 2025 to 2045 and that gap only just dips under 200,000 tpa for a three year period (2041-43 inclusive) with a lowest figure of 179,000 tonnes. By 2044 the capacity gap figure is back up at 243,000

tonnes. Thus, with the changes in these parameters, I find that the provision of the Appeal Proposal continues to be compatible with meeting future long-term residual waste management requirements, within the sub-regional context.

3.5 Other Benefits of the Appeal Proposal

3.5.1 The other benefits of the Appeal Proposal can be summarised as follows, acknowledging some of the benefits are interrelated[11]:

Energy Related Benefits

i. Delivering new renewable and low carbon energy generation infrastructure which would directly contribute towards addressing the Dorset climate emergency declaration and the UK's overarching net zero commitment.

ii. Providing a source of baseload, dispatchable power generation, using new generation infrastructure and utilising an indigenous fuel source; and thus contributing towards national energy security in accordance with the British Energy Security Strategy (BEIS April 2022) in light of post pandemic demand and the Russian invasion of Ukraine.

iii. Providing 'Shore Power'. As described above (my sub-section 2.3), Shore Power would allow the ships to connect direct to electricity transmission infrastructure, fed by the Appeal Proposal, and thus they would not need to keep their diesel engines running to power their non-propulsion electrical systems. Further, in the longer term Shore Power could be utilised for charging fully or partially battery powered shipping. The implementation of Shore Power would lead to an improvement in local air quality, net of any limited emissions from the Appeal Proposal and deliver a material carbon benefit.

iv. Mitigating / resolving distribution network / transmission network (Grid) issues at Portland Port and elsewhere on Portland. The Isle of Portland electricity supply is served by cables running from the Chickerell Grid Supply Point (GSP) on the Dorset mainland, some 10km away from the Portland Port.

[11] In describing these benefits I do not demonstrate the clear and overriding need for new renewable and low carbon energy generation as paragraph 158 a) of the Framework makes it clear there is no reason to do so.

Chickerell is the substation where the national electricity transmission system (operated by National Grid) and the regional electricity distribution system (operated by the distribution network operator, SSE) interact. In mid-2023, Portland Port applied to SSE for an increase in supply of 20MVA to allow it to deliver Shore Power and wider future power requirements in the event the appeal is not allowed. SSE has confirmed it would expect to be able to deliver the regional infrastructure on its network to provide this within two years but that works on the National Grid transmission network are required such that the connection cannot be provided until June 2037 (see my Appendix NR3). This means that no meaningful increase in capacity can be provided to any future demand user on the Isle of Portland until 2037, negatively impacting economic growth prospects both for existing and new businesses. The Appeal Proposal would resolve this network capacity issue, give the Port and its tenants the power they need and potentially additional power to be offered to other local users on Portland via private wire.

v. Offering real potential for delivering a DHN, centred on the provision of heat to HMP the Verne and the YOI. Positive progress has been made with the Ministry of Justice over progressing the scheme, as described in Stephen Othen's evidence at his Appendix SO2. Once established with the prisons, it is entirely rational that the DHN would extend because once the DHN has locked-in these cornerstone off takers, the marginal cost to extend the network to serve other off takers will reduce.

Socio-Economic Benefits *(as detailed in Simon Elliot's Proof of Evidence)*

vi. Proving a range of socio-economic benefits in a location where the most recent statistical evidence for the local study area (Portland and Weymouth area) clearly indicates that it suffers considerable deprivation compared to the Dorset local authority area as a whole and national averages. While there other factors, such as health, it is clear that economic deprivation including the availability of employment and the income this derives is particularly acute.

vii. The benefits include, removing a barrier for Port investment and underpinning and supporting the future continued growth of the cruise business by way of Shore Power. In terms of the local tourism effect:

a. In the no Shore Power scenario, by 2034, the combined visitor and crew expenditure will have declined to £3.45m, which would only be sufficient to support 41 net direct and indirect employee jobs, a reduction of 69 employee jobs from 2025. By 2050, all 110 net direct and indirect employee jobs would be lost.

b. In the with Shore Power scenario, by 2034, the combined visitor and crew expenditure will have increased to £10.07m, which would be sufficient to support 119 net direct and indirect jobs, an increase of nine jobs from 2025. By 2050, the combined visitor and crew expenditure will have increased to £10.79m, which would be sufficient to support 127 net direct and indirect jobs, an increase of 17 jobs from 2025.

viii. Creating permanent operational employment as follows:

a. 30 FTEs / 32 employees directly employed;

b. 29 likely to live in Weymouth and Portland ("the local study area"); 3 likely to live nearby elsewhere in Dorset LA; and indirectly support 7 more employees in the local study area;

c. The Net additional effect for the local study area is therefore 36 employees (29 + 7);

d. Equating to £1.4m in gross annual earnings and £7.6m in annual output (GVA).

ix. Creating construction phase employment as follows:

a. 295 full-time equivalents (FTEs);

b. 73.8 FTEs likely to live in the local study area; 221.3 FTEs likely to live in Dorset LA; 73.8 FTEs elsewhere in the UK; and indirectly support 11.1 FTEs in the local study area;

c. Giving a net additional effect for the local study area of 84.9 FTEs (73.8 + 11.1).

Other Benefits

x. Resulting a reduction in greenhouse gas emissions by displacing landfill and the use of fossil fuels to generate electricity, and that this conclusion is robust to a wide range of sensitivities. Stephen Othen has also demonstrated that the Appeal Proposal would lead to a reduction in greenhouse gas emissions compared to the current management of residual waste in Dorset. The benefit of the Appeal Proposal will increase further by exporting power to ships moored in the port, as this would displace the use of diesel fuel. Concise conclusions of the greenhouse gas / carbon benefits of the Appeal Proposal, including in relation to sensitivity testing, are set out in the Updated Carbon Assessment contained as Appendix SO3 to Stephen Othen's evidence (see section 2, page 5).

xi. Providing a Heritage Mitigation Strategy which would include removing a Scheduled Monument from the 'At Risk' Register and providing an important footpath link (with associated heritage interpretation boards) which would complete the 'round the island' footpath and permit greater understanding and appreciation of the Isle's heritage assets, as well as completing an important recreational route.

4.0 DORSET COUNCIL'S FIRST REASON FOR REFUSAL

4.1 Introduction

4.1.1 The 1st reason for refusal is ostensibly focused on DWP Policy 4 and effectively raises three matters:

i. Whether the Appeal Proposal would provide sufficient advantages as a waste management facility over the allocated sites in the DWP.

ii. The extent to which the Appeal Proposal would deliver co-locational benefits with other waste facilities when compared to the allocated sites and it being more distant from the main sources of waste arisings; and thus in tension with the proximity principle.

iii. Whether the Appeal Proposal would be contrary to DWP Policies 1 and 4 and paragraph 158 of the Framework.

4.1.2 I also note the 1st reason for refusal draws in the alleged heritage and landscape impacts of the Appeal Proposal. I deal with overall environmental harm in point i. above, and these matters are comprehensively addressed in relation to the 2nd and 3rd reasons for refusal. Accordingly, I do not repeat the Appellant's case on heritage and landscape in relation to the 1st reason for refusal, but adopt the Appellant's conclusions on these matters.

4.2 Advantages Over Allocated Sites

4.2.1 I note that the reason for refusal cites advantages 'as a waste management facility'. I am not exactly sure what this means and the actual test in Policy 4 criterion a. and paragraph 6.11 of the DWP is simply whether a waste management proposal at a non-allocated site provides advantages over the allocated site.

4.2.2 Paragraph 6.11 is informative. It states: *"….. Alternatively, applicants would need to demonstrate that the non-allocated site provides advantages over Allocated Sites. This might include co-location with complementary facilities or the provision of a site that can be demonstrated to be in a better strategic and sustainable location and/or that has less impacts than an Allocated Site. The provision of sustainable localised heat and energy sources could also be a positive consideration in appropriate locations".*

4.2.3 Hence, in terms of the policy context, 'advantages' are not limited in their scope and certainly not restricted to the management of waste. All advantages are relevant, including absence of harm.

The Allocated Sites

4.2.4 It is common ground between the Appellant and Council, that the only allocated sites which could theoretically, physically deliver a residual waste treatment facility of the scale of the Appeal Proposal, and whose allocation encompasses large scale thermal treatment, are:

i. Inset 7: Eco Sustainable Solutions, Parley.

ii. Inset 8: Land at Canford Magna, Poole.

iii. Inset 10: Binnegar Environmental Park, East Stoke.

4.2.5 These allocated sites, which are located in South East Dorset, have not delivered any operational residual waste management facilities since their inclusion in the DWP adopted in 2019, although the draft allocations were identified at least 2 years prior to that. Further, 90% of the current Canford Magna allocation, and all of the Binnegar allocation, featured in the Bournemouth, Dorset and Poole Waste Local Plan (adopted June 2006). Hence, those two allocations have failed to deliver operational residual waste management capacity for well over 17 years.

4.2.6 The fundamental issue is that whilst the Canford Magna and Parley sites are close to the BCP conurbation, the planning and environmental constraints on the landward side of the conurbation are very significant and constrain realistic development opportunities for a facility of the scale of the Appeal Proposal. Binnegar simply has most of the constraints, very poor accessibility and virtually no merits as a location.

4.2.7 I now turn to the specific advantages of the Appeal Site / Proposal. The planning application for the Appeal Proposal was supported by a Comparative Assessment Against Waste Plan Allocated Sites – September 2020 (CD1.23). I believe this document to contain much sound work. In terms of my evidence:

i. I adopt its overall conclusions from paragraph 5.6 onwards.

ii. I adopt the Detailed Site Consideration of Binnegar Environmental Park, East Stoke comprising paragraphs 4.112 to 4.151 of the Assessment. As such, I

find that the Appeal Site offers significant advantages over the Binnegar allocation. Thus, I do not refer to it again, except to say the Council made no mention of the Binnegar site whatsoever in the officer report (CD5.1) for the Appeal Proposal when formulating the 1st reason for refusal.

iii. I believe some important aspects of the Assessment have now been overtaken by time, being over 3 years old. Further, there are certain aspects of the evaluation work where my approach / thinking differs from that adopted by the Assessment's authors.

4.2.8 Accordingly, I undertake my own assessment of the advantages of the Appeal Site / Appeal Proposal over the use of the allocated Parley and Canford sites.

4.2.9 The first and most significant point of note is that both the Parley and Canford sites are in the Green Belt. As a general point of principle, such Green Belt waste site allocations require considerable caution. Whilst they are an allocation, the allocation itself i.e. the 'Development Considerations' in DWP Insets 7 and 8 (and in this case DWP Policy 21 as well) necessitates that applications still have to prove that very special circumstances (VSCs) exist in order for permission to be granted. Further, that a key consideration in establishing VSCs is the absence of being able to meet the need for the development on an alternative suitable non-Green Belt site. In this case Policy 21 specifically requires absence of non-Green Belt alternatives to be proven.

4.2.10 Such Green Belt waste site allocations are by no means unique within England (e.g. the Surrey Waste Plan and the Hertfordshire Waste Site Allocations Local Plan), however, they have resulted in a number of high profile planning cases / failures.[12]

4.2.11 The fact that these allocations are in the Green Belt puts the DWP's spatial strategy (which I address subsequently) in real tension with a planning policy of national importance.

[12] Such as the Capel ERF and the Trumps Farm ERF in Surrey where, despite planning applications, planning permissions were not achieved on allocated sites in the Green Belt; and in Hertfordshire where the Secretary of State called-in and refused the New Barnfield EfW proposal on an allocated site in the Green Belt.

4.2.12 In the context of the preceding paragraphs, I note, and find it surprising, that nowhere in the 182 pages of Officer Report (CDs 5.1 & 5.2), which supports the DWP allocation sites, particularly at Canford Magna, is there a single reference to the Parley and Canford allocations falling within the Green Belt and being subject to the pre-requisite of VSCs and proving the absence of any non-Green Belt site.

4.2.13 With the advent of the Appeal Proposal, the position has now changed and a potential large scale waste site has come forward on allocated employment land free from such an underlying national policy constraint.

4.2.14 In this context, and Dorset Council now claiming the DWP waste needs assessment is out of date, I await to see what the Council's position is over the allocated sites.

Inset 7: Eco Sustainable Solutions, Parley

4.2.15 I make the following comments on the Parley site:

i. Any large scale built development on this allocation would be inappropriate development in the Green Belt and would, by definition, be harmful to the Green Belt. Paragraph 148 of the Framework mandates that the starting point for any harm to the Green Belt is that it be given **substantial** weight.

ii. By reference to my Appendix NR12, it can be seen that the allocated site is near fully occupied with existing waste management activities, primarily involving the composting of organic wastes and run by Eco Sustainable Solutions Limited. The site has planning permission for an Anaerobic Digestion facility (dating back to 2014), but this has never been developed / built out. At present, there is no space available for the delivery of a residual waste treatment facility of the scale of the Appeal Proposal.

iii. As Appendix NR12 shows, the allocation abuts, and is constrained by, Natura 2000 designations. Consequently, their ES paragraph 10.10.2 describes that the proposed ERF includes a number of embedded mitigation measures in relation to process emissions and that these include an increase in flue gas exit velocity from 15 m/s to 25 m/s, and abatement of stack emissions beyond what is required by legislation to reduce the risk of harm to sensitive habitats in the vicinity of the proposed ERF. ES Appendix 10.3 (page 19) states: *"The applicant has chosen to apply for lower emission limits for these pollutants to protect the sensitive habitats that lie in close proximity to the Proposed ERF. These are to be achieved using a combination of sodium bicarbonate dosing*

to reduce emissions of sulphur dioxide and hydrogen chloride, and selective catalytic reduction (SCR) to reduce emissions of oxides of nitrogen and prevent ammonia slip". I comment below on the implications of these measures from a viability and efficiency standpoint.

iv. On 8th December 2022, BCP Council granted planning permission (ref: 8/21/0207/FUL), for a 50,000 tpa ERF facility in the north west corner of the site. I make a number of comments in relation to this proposal and what I now refer to as the 2022 Permission.

v. The 2022 Permission (condition 13) provides for a time limited development which only allows operations for 25 years and thereafter the facility must be demolished and the site restored in accordance with a decommissioning plan. I am not aware of any existing operational ERF which has been developed with such a planning requirement. Such a constraint will be a negative factor in financing considerations.

vi. The 2022 Permission Officer Report to Committee states (paragraph 89) that the applicant has confirmed it will be applying to the Environmental Agency for R1 recovery status at the same time as the Environmental Permit. Planning condition 6 on the 2022 Permission is a prior to first operation suspensive condition, requiring that R1 status has been achieved. This indicates that, to date, it has not been demonstrated that the facility would be capable of achieving R1 status and hence being classified as a 'recovery' rather than a 'disposal' facility. Based upon my experience, there is a significant doubt / challenge as to whether a plant this small (50,000 tpa and 3.4MW gross generating capacity) is capable of achieving the required efficiency to get R1 certification. This challenge is made even harder by the fact the Parley ERF would need selective catalytic reduction (SCR - as discussed above), the operation of which further reduces overall efficiency.

vii. The proposed technology is for moving grate combustion (their ES paragraph 3.5.3), the same as the Appeal Proposal and the Canford ERF proposal (discussed below). The Appeal Proposal and Canford have a maximum (boiler house) roof height of 47m and 50m respectively. By contrast, the 2022 Permission approves a building which is 13.5m to eaves and 16m to ridge level. This is probably >25m lower than any grate combustion plant in the UK.

viii. The scheme consented under the 2022 Permission has an unusually short stack of 38m due to proximity to (the adjacent) Bournemouth Airport and its safeguarding zones. This stack height cannot be increased. Further, in

dispersion modelling terms the stack height has to be set relative to the building height, and hence the building height may also not be able to materially change.

ix. The current smallest grate combustion plant in the UK (fuelled by mixed residual waste) is 85,000 tpa (Peterborough), which is a non-merchant facility supported by a PFI contract. It was conceptualised in 2008 and became operational in 2015. Any ERF as small as that consented under the 2022 Permission, is simply going to be economically uncompetitive in an open market scenario, compared to, say, a 200,000 tpa facility, which will have a far better capex cost to capacity ratio and thus be able to offer a lower gate fee. The economics of the Parley ERF proposal are further materially harmed by the need for the aforementioned additional abatement and SCR, the latter not only decreasing plant efficiency, but adding a material financial burden. The economics are even further harmed by the 25 year life of the consent.

x. The proposal consented under the 2022 Permission has no Environmental Permit and I can see no evidence of a Permit having been applied for. Based on all of the foregoing factors there must be a real prospect that the proposal would not be considered BAT. Hence a Permit may not be achievable.

xi. I believe the scheme consented under the 2022 Permission: has a building height too low for grate combustion; is too small to be economic and carries other abnormal financial burdens; will be inefficient and may well not achieve R1 status and thus be classed as ‘recovery’; cannot get taller because of the airport constraint; and has no Environmental Permit.

4.2.16 Based on the foregoing, I suggest there is no practical prospect of delivering an ERF on the Parley site in its currently consented form. Further, the site constraints are such that it will be a further considerable challenge (may be even an impossibility) to secure a consent for a materially larger ERF.

4.2.17 Notwithstanding, setting all of the above aside (which I do not), my Section 3.0 relating to ‘need’ shows that the capacity requirements would accommodate both the Appeal Proposal with a nominal capacity of 183,000 tpa and a further 50,000 tpa ERF facility.

4.2.18 I conclude, from a deliverability perspective, and in relation to absence or reduction of harm, locating an ERF (sized to meet the identified need) on the Appeal Site, has very significant advantages over locating one on the Parley allocation.

Inset 8: Land at Canford Magna, Poole

4.2.19 In July 2023, MVV submitted a planning application to BCP Council (ref: APP/23/00822/F) for a 260,000 tpa ERF on land at Canford Magna, which includes land forming part of the allocation. The proposal is described as (ironically as evidence will show) a: *Carbon Capture Retrofit Ready Energy from Waste Combined Heat and Power Facility.*

4.2.20 The Appellant has submitted a very comprehensive objection to this application. I was the principal author of that objection and undertook a full review of the MVV application documents in its preparation. The objection is attached as my Appendix NR13. It describes all of the reasons why there would be very significant advantages in the development of the Appeal Site / Appeal Proposal over the use of the allocated Canford site.

4.2.21 In summary, the Appeal Site / Proposal has very significant advantages over the development of a strategic scaled residual waste treatment facility (e.g. the Appeal Proposal or MVV's current application) at Canford Magna, for the following reasons:

i. The Canford ERF would be inappropriate development in the Green Belt and should not be approved except in VSCs. VSC's cannot exist unless the harm to the Green Belt (by virtue of inappropriateness), and any other harm it causes, are clearly outweighed by other considerations.

ii. It would necessitate a 110m high stack in order to mitigate impacts on the adjacent Natura 2000 designations.

iii. By reference to the Poole Green Belt Review (July 2017), the Green Belt Parcel within which the Canford Magna allocation is located, almost achieves the highest possible score (according to the methodology adopted). In overall terms, it scores 4th highest of all 18 of the Parcels in the Review, and is one of only 5 Parcels where there is no potential to change the Green Belt boundary without harming the overall role and purpose of the South East Dorset Green Belt.

iv. A very important characteristic of the area and Canford allocation is that whilst it contains the current waste facilities, they are limited in height (buildings below 13.5m) and very well screened by existing woodland and topography, to the extent that many people would not know of their presence.

Moving around the area there is a strong perception of a lack of development and sense of openness.

v. The Canford ERF (or any such scaled proposal on the allocation) would cause significant spatial harm to the Green Belt through the introduction of a building up to 50m high with an overall volume of circa 452,000m^3, a volume some 42 times greater than the 13.4m high building (volume circa 10,720m^3) that would be demolished as part of the proposal.

vi. However, the perceived, visual harm to openness arising from an ERF on the site would be far greater and would give rise to a significant incremental change in the perception of the openness of the sensitive Green Belt Parcel by extending prominently above the woodland and raised ground which encapsulate the current waste facilities. It would be visible across the majority of the entire stretch of Green Belt between Bearwood and Merley.

vii. Even by the applicant's own landscape and visual impact assessment, significant adverse, permanent effects would occur. I believe, and as show in my Appendix NR13, that the actual level of adverse impact which would occur has been materially understated.

viii. There would be material harm to the setting of 3 Scheduled Monuments, all barrows, which whilst constituting less than substantial harm, would represent a real change to their settings. Based upon the submitted material I do not accept this as being at the lower end of the scale.

ix. The ERF proposal is acknowledged to cause harm to the Dorset Heaths SAC / SPA / Ramsar site. Adopting the precautionary approach, which is applicable in such circumstances, the applicant has not demonstrated that the acknowledged harm would be fully mitigated and therefore doubt remains and the application fails the legal requirements of the Habitats Regulations and must be refused.

x. A degree of harm to the operation of Bournemouth Airport also weighs against the scheme.

xi. The Canford proposal is clearly at odds with the scale of development considered to be potentially acceptable in making the DWP allocation and, for the reasons stated previously, does not comply with the allocations

'Development Considerations'; and therefore fails to meet the required criteria in DWP Policy 3. Thus, any such comforts the scheme could glean from an allocation in the Green Belt, which we suggest are precious few, fall away. Further, parts of the proposal, including an essential 2,700m2 grid connection compound fall outside of the allocation.

xii. In terms of CHP off-take, this does not form part of the planning application and the local 'opportunities' appear to be retrofit to residential property and some mid-sized distribution sheds. All of the evidence nationally, points towards a very low likelihood that the applicant would ever secure an off-take in relation to such uses. To put this in its true perspective, there is no known, existing CHP scheme serving such a development mix anywhere in the UK. Accordingly, it is judged that the CHP potential of the allocated site is negligible and should be given very limited weight at best.

xiii. The land available for development in the allocation is very limited and its boundaries are constrained by existing buildings (the MBT plant) and existing vegetation which must be retained under the terms of the allocation (Development Consideration no. 2). In this context, the area set aside for potential delivery of a future carbon capture plant (which does not form part of the application), is already purposed for another use and less than half the space such a plant requires. Thus, a carbon capture 'ready' scheme (as suggested in the description of development applied for) cannot be delivered in the allocation.

xiv. I conclude that the delivery of an ERF of the scale of the Appeal Proposal or the proposed Canford ERF would cause very significant harm to the Green Belt coupled with multiple other harms which, in combination, weigh very heavily against any such scheme on the allocation. I cannot see how, when reviewed objectively, the positive considerations of delivering an ERF in this location clearly outweigh the harm to the Green Belt and the totality of the other harm.

4.2.22 I conclude, in relation to absence or reduction of harm, locating an ERF (sized to meet the identified need) on the Appeal Site, has very significant advantages over locating one on the Canford Magna allocation.

Other Advantages Over the Allocated Sites

4.2.23 Other advantages of the Appeal Site over the DWP allocated sites are set below. Many of these align with the Appeal Proposals' identified benefits set out in my sub-section 3.5 previously and as articulated more fully in the Appellant's SoC (CD11.1) at paragraph 2.15 points i-vi. The advantages are:

i. It comprises PDL and land allocated specifically for B1, B2, B8 and similar sui generis uses.

ii. The Appeal Site can deliver sustainable waste management at scale to effectively meet Dorset's and BCP's needs. This cannot physically be achieved at Parley and I have already explained the significant planning and environmental consequences of seeking to achieve it at Canford Magna.

iii. An ERF on the Appeal Site would provide Shore Power which would allow ships in Portland Port to use electricity generated by the Appeal Proposal and not be wholly reliant on keeping their diesel engines running for power. Further, in the longer term Shore Power could be utilised for charging fully or partially battery powered shipping. The implementation of Shore Power would lead to an improvement in local air quality, net of any limited emissions from the Appeal Proposal, and a reduction in carbon emissions.

iv. Aligned to the above, Shore Power would remove a barrier for Port investment and underpin and support the future continued growth of the cruise business.

v. An ERF on the Appeal Site would mitigate / resolve distribution network / transmission network (grid) issues at Portland Port and potentially elsewhere on Portland, in a context where the Isle has constrained import capacity, requires more power, but new grid capacity cannot be provided until 2037.

vi. The Appeal Site offers an opportunity for delivering a feasible and viable District Heating Network (DHN). In short, it is in close proximity to two existing HM Prisons, both of which have a significant heat demand that is currently met by the use of fossil fuels. The Appellant has engaged with the Ministry of Justice, a credit worthy and willing heat off-taker, and a local heat network connection to the prisons is technically, environmentally and

economically viable. The prospects of an effective DHN being delivered from the Appeal Site are far greater than from any of the allocated sites.

vii. The port location provides the opportunity to export IBA by ship, to which the Appellant is strongly committed, evidenced by the commitment in the planning obligation and the letter of support from the Day Group (see my Appendix NR4). There is also potential to import RDF by ship. None of the allocated sites offers a real opportunity to utilise no road transportation of waste.

viii. The Appeal Site has sufficient adjacent space / land on which to install a carbon capture facility. In addition the port location allows straightforward export of sequestered carbon to undersea CO_2 geological storage. I note (as set out in paragraph 1.15 of the Council's Outline Statement on Waste Need – CD11.9) the National Infrastructure Commission assessment published in October 2023 states that in order to achieve net zero the tonnage of waste treated at ERF plants without carbon capture and storage will need to reduce by around 80% by 2050. The Appeal Site is clearly well located to be an early-adopter of carbon capture technology, as it becomes commercially viable and as deployable technologies expand. For the avoidance of doubt, I confirm that a carbon capture plant did not and does not form part of the Appeal Proposal planning application.

ix. An ERF on the Appeal Site provides the opportunity of removing a Scheduled Monument from the 'At Risk' Register and reinstating an important footpath link (with associated heritage interpretation boards) which would complete the 'round the island' footpath and permit greater understanding and appreciation of the Isle's heritage assets, as well as completing an important recreational route.

4.3 Co-locational Benefits and Location in Relation to Waste Arisings

Co-location

4.3.1 Again, I note that the reason for refusal cites 'co-location with other waste facilities', whereas DWP paragraph 6.11 simply suggests the merits of a site: *"might include co-location with complementary facilities.."* with no requirement for the complementary facilities to be waste facilities.

4.3.2 DWP Policy 4 has three locational criteria for non-allocated waste management sites, of which only one must be met. These are, I suggest possibly in priority order:

- On allocated employment land allowing for B1[13], B2 and / or B8 uses.
- Within or adjacent to other waste management and / or complementary facilities where the proposed use is compatible with existing or planned local development.
- On previously developed land suitable for employment or industrial purposes.

4.3.3 Thus, in terms of the policy context, again, co-location can be with either other waste facilities or complementary facilities. Further, co-location is simply the second of three locational options, the first being on B1, B2, and / or B8 employment land.

4.3.4 This local policy is entirely consistent with National Planning Policy for Waste (NPPW) (CD9.2) paragraph 4, fourth bullet, which advises authorities, when Plan making, to: *"consider a broad range of locations including industrial sites, looking for opportunities to co-locate waste management facilities together and with complementary activities. Where a low carbon energy recovery facility is considered as an appropriate type of development, waste planning authorities should consider the suitable siting of such facilities to enable the utilisation of the heat produced as an energy source in close proximity to suitable potential heat customers"*.

4.3.5 It is clear that neither national or local policy provides any preference whatsoever for co-location with other waste facilities over being located on allocated industrial / employment land. In fact, in both cases the latter location is listed first. However, both national and local policy both emphasise where a scheme meets the locational criteria, the ability / potential to deliver local heat off-take is an important additional locational consideration.

4.3.6 In this context the locational and co-locational benefits of the Appeal Proposal are identified in my previous sub-section 4.2. There are points: iii; iv; v; vi; vii; viii and ix – all in my paragraph 4.2.21 above. In particular, I note point vi relating to a

[13] I note Class B1 now forms part of Class E, but for consistency with the development plan context continue to use the term B1.

prospective DHN; and that this is the only specific complementary activity identified in NPPW as a locational criteria for an ERF.

The Proximity Principle and Spatial Location

4.3.7 I now turn to the proximity principle and the Appeal Site's location in relation to waste arisings / the DWP spatial strategy. I deal firstly with the proximity principle, the claimed lack of adherence to which is a repeated theme in the Officer Report (CD5.1) and the Council's SoC (CD11.3).

4.3.8 The proximity principle is defined in law within The Waste (England and Wales) Regulations 2011. These have been subject to amendment including, of relevance, via The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019). Schedule 1, Part 1 paragraph 4 reads:

"Principles of self-sufficiency and proximity

4.—(1) To establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households, including, where such collection also covers such waste from other producers ...

(2) The network must be designed to enable the United Kingdom as a whole to move towards becoming self-sufficient in waste disposal and in the recovery of mixed municipal waste collected from private households, ... taking into account geographical circumstances or the need for specialised installations for certain types of waste.

(3) The network must enable waste to be disposed of and mixed municipal waste collected from private households to be recovered in one of the nearest appropriate installations, by means of the most appropriate technologies, in order to ensure a high level of protection for the environment and human health.

(4) This paragraph does not require that the full range of final recovery facilities be located in England or in Wales or in England and Wales together".

4.3.9 It is notable, that prior to Brexit clause (2) read: *"(2) The network must be designed to enable the European Union as a whole to become self-sufficient in waste disposal and …."*

4.3.10 Thus, when looking at proximity from a legislative viewpoint, it is very specific in terms of waste types i.e. it only relates to mixed municipal waste collected from private households, and it is very wide ranging in terms of geography (formerly the whole of the EU and now the whole of the UK).

4.3.11 The DWP provides its definition of self-sufficiency and the proximity principle on page 19 in paragraphs 3.14 to 3.16. It indicates that these principles are derived from the Waste Framework Directive. I confirm that this Directive is transposed to UK law by The Waste (England and Wales) Regulations 2011 (which I quote above). I note the DWP contains a Glossary, running to some 5 pages of definitions, but it does not include any further definition of self-sufficiency or the proximity principle.

4.3.12 In paragraph 3.15 of the DWP, it states that: "*This means that Bournemouth, Christchurch, Poole and Dorset should as far as practicable aim to ensure that there is sufficient capacity available within the Plan area to deal with its waste arisings".* In this context the word 'This' means the Waste Framework Directive (WFD). As a matter of fact the WFD does not require that, but nevertheless Dorset and BCP making their own contribution to the wider UK self-sufficiency, through some sort of net self-sufficiency, is fine.

4.3.13 Paragraph 3.16 deals with proximity. The first sentence states this means: *"… that waste should be recovered or disposed of, as close as possible to where it is produced .."*. [14] This is an incorrect interpretation of the law. The correct definition is contained in the second sentence of paragraph 3.16 of the DWP which states: *"The waste infrastructure network must enable waste to be managed in one of the nearest appropriate facilities, through the most appropriate methods and technologies, in order to ensure a high level of protection of the environment and public health"*. I believe the two sentences conflict and that conflict is easily resolved through adopting the second sentence which is clearly correct given it reflects, on a verbatim basis, the legislative position.

4.3.14 I have previously had to deal with the proximity principle and its proper application and definition at inquiry, most recently in an ERF appeal in Wiltshire decided in February this year. In his decision (CD10.1), the Inspector quoted from my proof

[14] The Council's SoC makes the same assertion at paragraph 5.4 indicating waste needs to be treated in a facility: *"located as close as practicable to the proposed origin of waste…".*

including in relation to extracts I reproduced from 'Energy from Waste: A guide to the debate' (CD9.8). His paragraphs 64 to 68 read:

"64. Turning to the concerns regarding the proximity principle, which is the third limb of the putative reason for refusal, the Council suggest, in simplistic terms, that as residual waste diminishes, waste would need to be drawn from even further afield with transport implications that may compromise the proximity principle. I interpret the implication of this to be that this would cause harm through conflict with the waste management principles of self-sufficiency and proximity.

65. In addition to the definition provided in The Waste (England and Wales) Regulations 2011[30] *[NRE12 – Rebuttal PoE Nicholas Roberts Section 1.6], paragraph 152 of the DEFRA publication 'Energy from waste A guide to the debate' provides guidance on the definition of the proximity principle which arises from Article 16, "Principles of self-sufficiency and proximity", of the revised Waste Framework Directive (2008/98/EC). This advises that the "principle is often over-interpreted to mean that all waste has to be managed as close to its source as possible to the exclusion of other considerations, and that local authorities individually need the infrastructure required to do so. This is not the case. Indeed, the final part of the Article itself states: "The principles of proximity and self-sufficiency shall not mean that each Member State has to possess the full range of final recovery facilities within that Member State". Clearly if not even the entire country needs to have the full range of facilities, a specific local authority does not have to. While there is an underlying principle of waste being managed close to its source, there is no implication of local authorities needing to be self-sufficient in handling waste from their own area."*

66. Paragraph 154 goes on to say: "…There is nothing in the legislation or the proximity principle that says accepting waste from another council, city, region or country is a bad thing and indeed in many cases it may be the best economic and environmental solution and/or be the outcome most consistent with the proximity principle…" Paragraph 155 continues: "…in some circumstances a larger plant may be the appropriate solution and there can be benefits from these also. For example: greater efficiencies; economies of scale … an overemphasis on restricting facilities to 'local waste', particularly defining it by administrative ownership of waste and the boundaries and quantities this implies, can lead to sub-optimal solutions in terms of cost, efficiency and environmental impact; and a significant loss of long-term flexibility.

67. Paragraph 156 states that "The ability to source waste from a range of locations/organisations helps ensure existing capacity is used effectively and efficiently and importantly helps maintain local flexibility to increase recycling without resulting in local overcapacity for residual waste. For an existing plant, taking waste from a range of locations should be seen as a positive by keeping the plant running at maximum efficiency. In many places waste from a number of authorities is processed at the same site very successfully."

68. Therefore, I concur with the views of the Appellant in this regard that, as a matter of fact, simply by virtue of managing residual waste which is likely to include waste from sources outside of Wiltshire's administrative area, the appeal proposal does not fall foul of the 'proximity principle'. In my view, the Council are mindful of a flexible application of the proximity principle as residual waste is currently transported to the Lakeside EfW in Slough and arisings from the MBT are sent to mainland Europe".

4.3.15 As set out in my Section 3.0 previously, and discussed further below, there are distinct parallels between Wiltshire and Dorset, in that neither has any residual waste treatment capacity whatsoever, they are reliant on 'out of county'[15] ERF and both send waste arising from within their areas to landfill and [out of the County and] overseas to Europe for recovery. Yet both immediately resort to running a proximity principle argument the minute an 'in-county' residual waste management solution comes along.

4.3.16 The DWP spatial strategy is distinct from the proper interpretation of the proximity principle. The relevant extract states: *"Appropriate facilities are needed to manage this* [residual waste] *waste, whilst ensuring that value is obtained through the recovery of energy wherever practicable. Provision will be made for residual waste treatment facility(s) to manage waste derived throughout the Plan area. The need for strategic residual waste treatment facilities will primarily be addressed through new capacity in south east Dorset. However, additional capacity may also be appropriate elsewhere to ensure the capacity gap is adequately addressed and when it will result in a good spatial distribution of facilities providing benefits such as a reduction in waste miles"*.

[15] For my purposes the 'county' being the Dorset and BCP Council's administrative area i.e. the DWP area.

4.3.17 I acknowledge the focus on delivering capacity in south east Dorset, but make the following comments:

i. The strategy does not preclude strategic capacity outside of south east Dorset.

ii. As per my paragraph 4.2.5 previously, the spatial strategy and the allocations in the extant and previous Waste Local Plans have failed to deliver operational residual waste treatment capacity on the south eastern allocations for over 17 years in the case of Canford Magna and Binnegar and circa 5 years for the Parley site. The Parley site cannot physically deliver a plant that could fulfil the identified need in any event. I have already commented in detail on the inability of the Canford site to deliver an ERF of a similar scale to the Appeal Proposal.

iii. Paragraph 5.4 of the DWP indicates that the Key Diagram (Appendix 1 to the DWP) illustrates the spatial strategy. Reference to that figure shows that the strategy includes sending waste recyclables to North Wales and Kent. The former is presumably to Deeside Industrial Estate, a round trip (from Bournemouth) of 526 miles (847 kms). There is a green arrow pointing out of north east Dorset in to Somerset. The key shows this to be 'Waste Movements' A second two-way green arrow, also indicating 'Waste Movements', points into and out of Hampshire. I am not sure what the green arrow into Somerset represents and can find no explanation.

iv. The Key Diagram also notates with a green star, what is almost certainly the Canford MBT Plant. The key states this is 'Existing strategic capacity for residual waste treatment'. Setting aside it is only actually intermediate treatment, waste is only contracted to go to the MBT plant until 2027 (see paragraphs 14.10 & 14.11 of the Officer Report – CD5.1). Further, for several reasons, including those in the Appellant's SSoC (CD11.2), MBT most probably has a limited shelf-life as a treatment technology. Thus, the current presence of the Canford MBT plant should not unduly influence the spatial strategy.

v. As of 2022, in relation to residual waste, the position with regard to the spatial strategy was that none of Dorset and BCP's waste was being subject to final fate treatment or disposal within the authorities' administrative areas (this

remains the same today), and 261,055 tonnes of residual waste went to either landfill, 'out of county ERF', or overseas ERF. The original focus of the strategy has and is failing. There needs to be a re-focus.

4.3.18 I conclude that delivery of the Appeal Proposal would give Dorset and BCP a true 'in county' residual waste treatment facility for the very first time. In doing so, it would be entirely consistent with the proximity principle. Further, whilst the focus of the spatial strategy will need to shift, the overarching objectives of that strategy would be immeasurably better delivered than is the case at present.

4.4 Compliance with DWP Policies 1 and 4 and Paragraph 158 of the Framework

4.4.1 Dealing firstly with paragraph 158 of the Framework; whilst this has changed in the 2023 version from the 2021 version of the Framework which was extant when the reason for refusal was drafted, the changed parts are not relevant to the Appeal Proposal. I simply cannot see how this paragraph is relevant to the 1st reason for refusal and give it no further consideration in this context.

4.4.2 I deal with DWP Policy 1 briefly:

i. The Appeal Proposal would be sustainable development and thus should benefit from a presumption in its favour.

ii. Based on my earlier 'need' evidence, the Appeal Proposal would be consistent with the waste management aspirations of the circular economy and would improve local economic and environmental conditions[16] and, in a wider sense, by virtue of assisting communities and businesses in Dorset / BCP to take greater responsibility for the management of their own waste, make a positive social contribution.[17]

iii. It would be capable of moving that portion of Dorset / BCP's residual waste which is being landfilled up the waste hierarchy and free up ERF capacity in

[16] In terms of economics benefits, I refer to and rely on the Written Statement of Mr Simon Elliot. With regard to environmental benefits, and specifically an improvement in local air quality, I refer to and rely on the proof of evidence of Mr Stephen Othen.
[17] In line with paragraph 1 of NPPW (CD9.2).

out of county facilities enabling them to divert more waste from landfill. Thus, it would support the delivery of the Waste Hierarchy.

iv. It would assist in the UK becoming self-sufficient in terms of waste management and the elimination of landfill disposal. It would also assist Dorset / BCP in becoming net self-sufficient.

v. I have demonstrated above it would accord with the proximity principle and immeasurably reduce the distance that Dorset and BCP's residual waste has to travel.

vi. The Appeal Proposal is clearly in full conformity with DWP Policy 1.

4.4.3 Thus, as stated in the introduction to this section of my evidence, I see the 1st reason for refusal ostensibly relates to DWP Policy 4. For the purposes of the Appeal Proposal this policy has 3 relevant parts. Firstly, all four of criteria a.- d. must be met. Secondly, it should be located within one of the land uses listed in criteria e. - g. Thirdly, the development proposed must not adversely affect the integrity of a Natura 2000 site, either alone or in combination with other plans or projects.

4.4.4 I find that all of the first four criteria (a.-d.) are demonstrably met.

a. For the reasons set out in my sub-sections 4.2 and 4.3 previously, the Appeal Proposal / Appeal Site provides a range of significant advantages over the allocated sites.[18]

b. As a matter of fact, the Appeal Proposal would not sterilise or be prejudicial to the delivery of an allocated site by reason of cumulative or other adverse impacts; nor has there been any suggestion from the Council that it ever would. Conversely, paragraph 14.16 of the Officer Report (CD5.1) confirms no concerns in this regard.

c. I have shown in my preceding sub-section how the Appeal supports the delivery of the spatial strategy and note that whilst the focus of the spatial strategy will need to shift, the overarching objectives of that strategy would be immeasurably better delivered than is the case at present. I have shown

[18] In terms of criterion a. there is no need to show lack of availability of allocated sites if advantages over the allocated sites are demonstrated.

compliance with the waste hierarchy and proximity principle in relation to DWP Policy 1 above.

d. Based on the planning appraisal I carry out in Section 9.0 of my proof; the Appeal Proposal would demonstrably comply with the other relevant policies within the DWP.

4.4.5 Dealing briefly with the remaining criteria e.- g. - only one of these needs to be met. Quite simply, the Appeal Site Portland site meets all three. In short:

e. It is on allocated employment land for B1, B2 and B8 uses.

f. It sits within a complementary facility (i.e. the Port) and is highly compatible with existing uses in the area (e.g. delivering shore power for existing boats and Port operations, and potentially delivering low carbon heat to the two prisons on Portland). It also has the potential for incinerator bottom ash (IBA) to be exported directly from the Appeal Site for recovery by ship and for UK waste fuel (RDF) to be imported by the same means. Finally, it has huge synergy and compatibility with planned future expansion of cruise ship activity at the port, for which delivering shore power will be a key factor.

g. It is on previously developed land[19] suitable for employment / industrial purposes.

4.4.6 Finally, as set out in the evidence of Mr Jeff Picksley on behalf of the Appellant, the Appropriate Assessment work undertaken by both Dorset Council and the Environment Agency has demonstrated that the Appeal Proposal would not adversely affect the integrity of European and Ramsar sites, either alone or in combination with other plans or projects. Further, Natural England has confirmed its agreement with this conclusion.

[19] Reference to ES Chapter 7 (CD1.36h), Figure 7: 1972 OS Map, shows the Appeal Site to have been occupied permanent structures and sit with the curtilage of developed land and the floor slabs of those structures remain clearly evident. Hence the site accords with the definition of previously developed land as set out in the Framework.

4.4.7 Based on the foregoing, I conclude that the Appeal Proposal would be in full conformity with DWP Policy 4. Accordingly, for the reasons identified above, the 1st reason for refusal cannot be sustained.

5.0 DORSET COUNCIL'S SECOND REASON FOR REFUSAL

5.1 Introduction

5.1.1 There are three main facets to the second reason for refusal:

i. Consideration of the design of the facility, in particular its scale, massing and height.

ii. Alleged significant effects on the quality of the landscape and of views of the 'iconic' shape of Portland.

iii. That the alleged significant effects occur within the setting of the Dorset and East Devon Coast World Heritage Site (WHS) – 'the Jurassic Coast', and particularly those parts of the WHS containing the South West Coast Path and views across Portland Harbour.

5.1.2 On this basis, the Council' alleges the Appeal 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.

5.2 Evidence of Jon Mason

5.2.1 Jon Mason finds that the design of the Appeal Proposal is the result of an extensive and considered process, and is an unusual example of an ERF which is of a scale that is subordinate to its landscape setting.

5.2.2 His assessment is that by reference to both landscape character and views, the quality of the landscape would not be significantly affected by the introduction of the Appeal Proposal, but rather it would be experienced as simply one more additional operational component within a working Port, and one that would not be out of scale within the port and indeed could at many times be dwarfed by cruise ships berthed nearby.

5.2.3 With respect to appreciation of the distinctive wedge-shaped landform of Portland, he is very clear that the relative scales of the Appeal Proposal and the Portland landform are such that in none of the available views does the ERF come close to diminishing the landform.

5.2.4 In terms of views from residential properties to the immediate north of the harbour, he identifies that there are a considerable number of properties that would experience a change in view as a result of the introduction of the Appeal Proposal, but that effects would not be significant due to the fact that the fundamental nature of the views will not change. There are currently clear, long-distance views across a harbour to a working port at the foot of Portland, and this will continue to be the case when the Appeal Proposal is included.

5.2.5 He also finds that concerns about aviation lighting are unfounded and that visible plumes of any length would be rare events, totalling just over 20 hours annually, and occur exclusively in the winter months.

5.2.6 With regard to the World Heritage Site (WHS), he confirms that it is inscribed for its natural heritage. Its Outstanding Universal Value (OUV) refers to an outstanding combination of globally significant geological and geomorphological features. It is not inscribed on account of its natural beauty, although it does coincide almost entirely with land designated as an AONB.

5.2.7 The Appeal Site is visible from a very small proportion of the WHS. The closest areas are an approximately 3km linear strip of the WHS on the north of Portland Harbour located 3.5 to 4.5km from the Appeal Site, and the very eastern end of Chesil beach which is approximately 3km away.

5.2.8 Much more distant views are possible from the coast to the east of Weymouth, from Bowleaze Cove (c.7km to the north) across to Durdle Door (c.12km north east) and beyond.

5.2.9 There is no buffer zone to the WHS on the considered and explicit basis that one is not required due to the presence of the other mechanisms that offer protection including AONB designation, a defined Heritage Coast and SSSI status.

5.2.10 No significant landscape or visual effects will occur within any of the areas of the WHS that experience intervisibility with the Appeal Proposal.

5.2.11 With respect to the AONB this is due to a combination of distance and the fact that any views of the Appeal Site are views of an established operational Port with industrial scale artefacts and a dynamic assemblage of Port infrastructure and shipping including very large cruise ships. The nature of these views will not change.

5.2.12 It is not part of the case of either Dorset Council or the Joint Rule 6 party that there would be significant visual effects experienced within the AONB as a result of the Appeal Proposal.

5.2.13 From the two areas of the WHS (North Portland Harbour and Chesil Beach) that are located out with the AONB but closer to the Appeal Site, he concludes that significant effects would not result due to the fact that the fundamental nature of the views available would not change.

5.2.14 Jon Mason's overall conclusions are that the OUV of the WHS and the ability of the general public to appreciate it would be unaffected by the Appeal Proposal.

5.3 Evaluation

5.3.1 Based upon my review of the Appeal Proposal and the relevant application documentation, and following site visits, I agree with the evidence of Jon Mason and the conclusions he draws. I also note, as he identifies, that the formal consultation responses received from the Council's three landscape consultees differed greatly in their findings, with the first landscape officer confirming in October 2020 he did not have any serious objections to the application, but suggested further information on the impact of the plume and night-time effects was required. Dorset Council appointed an external consultancy to complete a second landscape review, including consideration of additional information that was provided on the visible plume and night-time effects. This second review also confirmed that there are no serious landscape objections to this application in December 2021.

5.3.2 Nevertheless, the Officer Report to committee (CD5.1), in its section 8.8 starting on page 39, fails to report the findings from either of the first two landscape consultee responses, instead adopting only the views of a third landscape officer brought in to consider the Appeal Proposal in late 2022 circa 2 years after the planning application had been submitted and 11 months following the independent review.

5.3.3 Based upon and consistent with Jon Mason's conclusions, and the overall findings of the first two landscape consultees, I do not believe that the Appeal Proposal, located on allocated employment land within a busy and dynamic work port, would, in overall terms, have an unacceptable or significant adverse effect on the quality of the local and surrounding landscape, by virtue of its scale, massing and height. Further, any such lesser effects that might occur must be seen in a context (see my

Appendix NR5), where very significantly scaled port related industrial type development could come forward on the Appeal Site, and on many other prominent parts of the port, without any formal planning application process being required.

5.3.4 In addition, I do not believe that there would be significant adverse effects on views of the 'iconic' landform shape of the Isle of Portland, not least because I do not find the shape of Portland 'iconic', particularly in relatively close views from the north west, north west by west, which are the only ones where the Appeal Proposal would not be backdropped by the Portland cliff.

5.3.5 From the (relatively) closer views from the north west, north west by west (as Jon Mason's View Points 21-23 show – see his Appendix JM5), Portland is elongated, clearly topped by the Verne / prison structures, shaped by quarrying and the foreground clutter of the Osprey Quay area (and its retail and commercial development), the large derelict Prince Andrew House (colloquially referred to as 'Beirut Towers'), the rising settlement of Fortuneswell and port related development all dominate. When present, the large cruise ships further diminish any sense of shape which the Isle maybe considered to have.

5.3.6 To the extent that views of the shape of Portland are described as 'distinctive' (in the references Jon Mason provides), this would be more appropriately related to views of the Isle from greater distance to the north (e.g. from the AONB) where the Appeal Proposal would be fully backdropped and all of the other aforementioned urban clutter would be less evident.

5.3.7 I do not believe that there would be any significant or unacceptable effects on the AONB. I note that the Council does not positively assert any effects on, or material harm to, the AONB in its SoC (CD5.1) and they simply say that whether the designation would be affected is an important consideration (paragraph 5.8 of their SoC)[20] and that it should be demonstrated no harm would occur to character, special qualities or natural beauty of the AONB (paragraph 5.12).

[20] In this paragraph the Council states that whilst the Appeal Site is outside of the AONB, it is: *"… in such close proximity…"*. I simply do not agree that in relation to a building (of the scale of the Appeal Proposal), located on allocated B1, B2 and B8 land, and set in a highly developed context, that 7.5kms distance represents close proximity.

5.3.8 With regard to the WHS, I also agree with Jon Mason's findings and his conclusion that the OUV of the WHS and the ability of the general public to appreciate it would be unaffected by the Appeal Proposal.

5.3.9 Finally, I note two further points regarding the WHS. Firstly, Jon Mason's evaluation of the Jurassic Coast Trust's further consultation response of September 2021 (CD4.12) and specifically their adoption of what is effectively the UNESCO toolkit requirement to identify each attribute or value (contributing to the OUV) and to carry out an assessment as to whether the proposed development (in this case the Appeal Proposal) would significantly affect that attribute or value. I agree fully with his assessment of the four 'areas of concern' and that no material adverse impacts would occur.

5.3.10 Secondly, I also note Jon Mason's response to the content of the letter from IUCN, the UNESCO advisory body on natural heritage, of 7th April 2023, and agree that the consequent effects of traffic associated with the Appeal Proposal (in the context of the existing and potential future baselines), in terms of landscape character and visual impact, would also be negligible.

5.3.11 With regard to DWP Policy 14, this is a case where the Appeal Proposal, backdropped for the most by the cliffs and sitting within a busy and dynamic port environment, on land specifically allocated for employment / industrial development, is fully compatible with its setting and thus would conserve the character and quality of the landscape.

5.3.12 With regard to design quality, I believe the submitted Design and Access Statement, including its update (CD1.21 and 2.6), provide a detailed contextual analysis and a clear rationale for the design evolution; and, in my opinion, the overall form of the ensuing design sits very well within the Appeal Site. Further, I believe the 'fracturing' of the main building into irregular shaped blocks, and the associated detailing, serve to reduce the overall perceived scale of the building, create interest (in nearer views) and result in a well-considered overall design solution. I appreciate that the printed mesh finish was the subject of detailed dialogue with the Council and is liked by various people. Personally, I find it unconvincing and far prefer the cladding solution now proposed and appended to the Appellant's SoC (CD11.1 at Appendix B). In any event it was always the Council's intention that the final building finishes be controlled by condition (paragraph 5.7 of the Officer Report). In my opinion, the Appeal

Proposal elevates the design quality of buildings in the port and would be one of a very limited number of buildings with real architectural merit.

5.3.13 I believe my views broadly align with those of the Council's Senior Landscape Architect (the one that objected) and Conservation Officer in the Officer Report on pages 42 and 44 respectively. They say:

"The architect has designed the eastern elevations to take their inspiration from the shapes and geology of the Portland land mass that will be their backdrop. 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. However, the council's senior landscape architect has concerns over the printed PVC mesh finish".

And:

"In terms of scale and massing, the application explains how scale and layout of the building is dictated to some degree by the requirements of the ERF process. Final form of the design of the building has apparently taken its inspiration from the angular geometry of Portland, particularly when viewed from the north and NE. This approach has also been taken to the office building to try to visually amalgamate the two structures. The conservation officer accepts that the design process has resulted in an imaginative building which expresses itself in minimised volumes intended to reflect the immediate context as far as it is possible. The stack is clearly an element that affords fewer opportunities for discretion and the landform offers few vertical punctuations that could serve as a counterpoint. It is acknowledged that the stack has been placed so as to be read against the cliff backdrop in long views from the north and NE and standing at 80 metres high will not break the skyline in these views. However even after the design process the stack remains a prominent visual element in views from the West and NW where it would be seen against the skyline".

5.3.14 There would be no material adverse harm to the landscape and scenic beauty of the AONB, West Dorset Heritage Coast, or to the Outstanding Universal Value of the World Heritage Site; nor unacceptable adverse impacts upon the special qualities that underpin these designations.

5.3.15 Finally, I note that the 4th paragraph of Policy 14 and points i-iii relate to development within the designated areas and thus are not relevant in this case.

5.3.16 Based on the above, the Appeal Proposal would not conflict with DWP Policy 14.

5.3.17 For identical reasoning as above, the Appeal Proposal would comply with Policy ENV1 of the West Dorset, Weymouth & Portland Local Plan parts i) (protection of the landscape and seascape and the designated areas) and parts ii) and iii) (design quality).

5.3.18 With regard to Policies Port/EN7 and Port/BE2 of the Portland Neighbourhood Plan, I find as follows:

i. Port/EN7 'Design and Character': I acknowledge that the height of the Appeal Proposal is greater than other fixed buildings and structures in the port, albeit not appreciatively so in relation to the proposed Dragon Portland cement silo (see my Appendix NR5). It is large, but has less volume than the recently constructed Glencore warehouses (also see my Appendix NR5). I do not find it out of scale with its backdrop (the cliffs), nor, when viewed from the north west / north west by west, where not backdropped, other existing large scale development both on and off the port. Further, it is demonstrably smaller in scale and mass than the visiting cruise ships which berth almost alongside the Appeal Site. For the reasons described above, I believe it is a high quality design solution and most certainly its design qualities outstrip practically every other existing building within the port. I find it sits well within its setting. I further find it has far greater architectural merit than the W4BRE energy plant proposal, which has a far more utilitarian industrial appearance and for which there is an extant planning permission on the Appeal Site. I do not believe the conservation area appraisals are a relevant consideration in this part of the port for this type of development.

ii. Port/BE2 'Up-grading of Existing Employment Sites and Premises': this policy relates solely to the improvement, modernisation or upgrading of current employment sites and premises. The Appeal Proposal is new development within an existing employment site and hence I do not believe the policy is relevant. However, following the 'spirit' of the policy, and for reasons set out above and elsewhere in the Appellant's evidence, I conclude that:

a. There would be no significant adverse impacts on the amenity of neighbours, visitor attractions and facilities and the character of the area
b. There would be no unacceptable adverse impact on the transport network and parking conditions;
c. The design is appropriate for the character of the area.
d. It would not have any other unacceptable environmental impact.

5.3.19 Finally, with regard to paragraph 174 of the Framework, again for reasons set out above, I find that the Appeal Proposal would not conflict with the protection of valued landscapes and would maintain the character of the undeveloped coast.

5.3.20 Based on the foregoing, I conclude that there would be no breach of the policies cited in the 2nd reason for refusal and that the reason cannot be sustained.

6.0 DORSET COUNCIL'S THIRD REASON FOR REFUSAL

6.1 Introduction

6.1.1 The third reason for refusal is, at a high level, plain in its meaning i.e. there would be less than substantial harm to a range of heritage assets; and that the public benefits of the Appeal Proposal including the mitigation, would not outweigh the cumulative harm to individual or grouped heritage assets.

6.1.2 However, when read alone, or in combination with the technical consultee responses and Officer Report to Committee, there is no identification of:

i. Specifically, to which heritage assets harm would occur.

ii. What the impacts would be on the identified significance of each asset.

iii. How the substantive heritage benefits of the Appeal Proposal, provided as mitigation to offset any identified harm, have been weighed in the balance by the Council with regard to the overall impact of the Appeal Proposal on the setting of individual heritage assets.

6.2 The Evidence of William Filmer-Sankey

6.2.1 Firstly I note, but do not repeat, like the position with the landscape officer consultations, William Filmer-Sankey's evidence describes how the Council planners had multiple 'bites of the cherry' in relation to heritage consultees, resulting in a shift in position against the Appeal Proposal, notwithstanding that the scheme had not changed.

6.2.2 In evaluating the effects, I note he considers the proposed use of the Appeal Proposal, the visual impacts of the new building and stack on their setting, and the impact of increased traffic.

6.2.3 His analysis concludes that, if harm is acknowledged, it lies at the very bottom of the scale of 'less than substantial harm'. This applies both to the assets when viewed individually and also to their group value. It reflects the central role made by the ever-changing Port in the history of all the assets considered, and the way in which the activity within the Port is a fundamental aspect their individual and collective setting.

6.2.4 In carrying out the balancing act required by paragraph 202 of the NPPF, it is his clear professional conclusion that the very minor less than substantial harm to the designated heritage assets is clearly outweighed by the heritage benefits set out in the heritage mitigation strategy.

6.2.5 With specific regard to E Battery, A/B Battery and East Weare Camp, it is his professional conclusion that, when taken together with the clear heritage benefits to these individual structures (arising from the heritage mitigation strategy – the removal of E Battery from the buildings at Risk Register and the new path and interpretation boards); that the heritage public benefits clearly outweigh the very minor level of less than substantial harm to these assets. In fact he concludes there would be a net heritage gain, and thus that paragraph 202 of the Framework does not need to be applied. However, he finds that even if the Inspector did not agree with the application of an internal heritage balancing approach, the application of paragraph 202 of the Framework would in my view reach the same conclusion.

6.2.6 Finally, for the Non-designated heritage assets within the Port, he finds that since no harm has been identified, it is not necessary to apply paragraph 203 of the Framework.

6.2.7 He concludes that the significant heritage public benefits of the proposed heritage mitigation clearly outweigh the very minor degree of less than substantial harm caused by the Appeal Proposal to the very important collection of heritage assets that tell the history and continual development of Portland Roads and Port.

6.3 Evaluation

6.3.1 Based upon my review of the Appeal Proposal and the relevant application documentation, and following site visits, I agree with the evidence of William Filmer-Sankey and the conclusions he draws. I specifically agree that the nature of the heritage assets, the port context and the dynamics of that context, are such that the level of harm to the relevant heritage assets is minimal, to the point of being negligible to very minor, and thus falls at the lowest end of the scale in terms of less than substantial harm. Further, that this level of harm is easily outweighed by the benefits of removing E Battery from the Heritage at Risk Register and the completion of the footpath link and the associated heritage interpretation information that will be provided on that link.

6.3.2 As such, for the purposes of DWP Policy 19, I find it has been demonstrated that the heritage assets and their settings will be conserved and / or enhanced in a manner appropriate to their significance and the policy is complied with.

6.3.3 With regard to Policy ENV4 of the West Dorset, Weymouth & Portland Local Plan, I find that the full effects of the Appeal Proposal on all relevant heritage assets has been thoroughly assessed and their significance is conserved / enhanced. Further, that in reaching this conclusion a detailed understanding of the assets has been achieved and demonstrated within the application documents and Appellant's evidence. Accordingly, the Appeal Proposal is in compliance with the policy, specifically the relevant criteria i)-iii).

6.3.4 With regard to Policy Port/EN4 of the Portland Neighbourhood Plan, as above, the character and setting of assets would be maintained / enhanced and a clear understanding of the assets and potential effects upon them has been demonstrated. As such, the relevant provisions of the policy are fully complied with.

6.3.5 I do not see that the Appeal Proposal, or any development proposal, can be contrary to paragraph 197 of the Framework as it is simply a list of things which an LPA should take account of.

6.3.6 Based on the foregoing, I conclude that the Appeal Proposal would not breach any of the relevant policies cited in the 3rd reason for refusal; and that the reason cannot be substantiated as no residual harm would occur to required balancing.

6.3.7 Notwithstanding the Appellant's clear conclusions on the heritage effects of the Appeal Proposal, should the Inspector find, even having taken into account the heritage benefits / mitigation, that there would still be residual harm caused to one or more of the heritage assets, then clearly paragraph 202 of the Framework would apply. In short, the harm caused to the significance of the designated heritage asset should be weighed against the public benefits of the proposal.

6.3.8 In this regard, summarising the relevant points set out in section 3.0 of my proof, the public benefits of the Appeal Proposal are:

i. Delivering an 'in-county' sustainable residual waste management solution that would move the management of waste up the hierarchy and allow Dorset / BCP to take greater responsibility for the management of its own waste.

ii. Delivering new renewable and low carbon energy generation infrastructure.

iii. Providing a source of baseload, dispatchable power generation, using an indigenous fuel source and thus contributing towards national energy security.

iv. Providing 'Shore Power' and associated improvements to local air quality.

v. Mitigating / resolving the power constraint on the Isle of Portland.

vi. Having real potential to deliver a viable and feasible DHN on the Isle.

vii. Removing a barrier for Port investment and underpin and support the future continued growth of the cruise business.

viii. Delivering substantial economic benefits to the local economy and for local people, in a context where the statistical evidence for the local study area (Portland and Weymouth area) clearly indicates that it suffers considerable deprivation compared to the Dorset local authority area as a whole and national averages including the availability of employment and the income this derives.

ix. It resulting in a in a net reduction in CO_2 emissions over its design life.

6.3.9 I believe this is a case where the above combined public benefits clearly and demonstrably outweigh any residual harm that might be found in relation to the local heritage assets.

6.3.10 As such, if the balancing exercise is engaged, I conclude that the Appeal Proposal would be in conformity with: the 3rd paragraph of DWP Policy 19; criterion iv) of Policy ENV4 of the West Dorset, Weymouth & Portland Local Plan; and paragraph 202 of the Framework. Accordingly, the 3rd reason for refusal cannot be sustained.

6.3.11 Finally on the matter of heritage, I note the 'Mordue' judgement in the Court of Appeal[21] provides clarity on the on the correct approach for a decision maker dealing with the application of the duty under s.66(1) of the Planning (Listed Buildings and

[21] *Mordue v Secretary of State for Communities and Local Government and others* [2015] EWCA Civ 1243

Conservation Areas) Act 1990 and the associated paragraphs in the 2012 version of the Framework (being paragraphs 128 to 135, with particular emphasis on paragraph 134). In short, it established that a decision-maker who works through those paragraphs in accordance with their terms will have complied with the section 66(1) duty.

6.3.12 The relevant paragraph numbers in the current version of the Framework are 194 to 203, with the former paragraph 134 now being replaced by the near identical paragraph 202 to which I refer above.

6.3.13 Hence, if the Inspector finds that there would still be residual harm caused to one or more of the heritage assets, and follows through the relevant paragraphs of the Framework, including the application of the paragraph 202 test, the duty under s.66(1) is fulfilled.

7.0 THE CASE FOR STOP PORTLAND WASTE INCINERATOR (SPWI) AND THE PORTLAND ASSOCIATION (PA)

7.1 Introduction

7.1.1 The Appellant received a joint SoC from SPWI and PA on 10th October 2023 (hereafter called the Rule 6 party). This contained several topic areas of objection, albeit with relatively little detail in some areas.

7.1.2 On 17th October 2023 at the Inspector's CMC, and as subsequently recorded in the CMC note (CD11.7), the Rule 6 party's spokesperson solicitor confirmed they would only actually produce 2 proofs of evidence in relation to landscape and heritage matters, to which 2 witnesses would speak.

7.1.3 On 19th October the Appellant wrote to the Rule 6 party to get confirmation, as per the CMC, that their evidence would be limited to landscape and heritage. However, on 23rd October, the Appellant received a somewhat surprising response that contrary to the clearly stated position at the CMC, the Rule 6 party had:

"…. decided that individual members of Stop Portland Waste Incinerator and The Portland Association will provide proofs of evidence on planning policy, sustainability and climate change, traffic, amenity and quality of life (including socio-economics). These topics are all raised in the Rule 6 parties' statement of case.

The Rule 6 parties therefore intend to provide proofs of evidence covering:

1. *Landscape*
2. *Heritage*
3. *Planning (including the waste plan and alternative sites)*
4. *Traffic, amenity and quality of life (including socio-economics)*
5. *Sustainability and climate change*
6. *Acoustics (feeding into landscape)".*

7.1.4 I am entirely comfortable that my evidence and that produced by others for the Appellant comprehensively cover points 1, 2 and 3 and thus I say no more on these subjects. I consider points 4, 5 and 6 briefly below.

7.2 Traffic, Amenity and Quality of Life (including Socio-Economics)

Traffic

7.2.1 The Rule 6 party SoC (CD11.4) paragraph 4.12 claims that the Appeal Proposal would exacerbate existing traffic problems on the local highway network and create congestion. There are no claims of adverse traffic related environmental effects. Therefore this is a conventional traffic impact matter and is fully addressed by Ian Awcock of the Appellant team, whose evidence demonstrates that the residual cumulative impacts on the road network, arising from the Appeal Proposal, would not be severe; hence meeting the test in paragraph 111 of the Framework.

7.2.2 I also note that the issue of traffic effects was specifically raised by members at the planning committee for the Appeal Proposal determination. A representative of the Local Highway Authority provided a comprehensive response as follows (from the Appellant's full committee transcript). This is, I believe, entirely consistent with Ian Awcock's evidence:

"Steve Savage representing the Highway Authority here….. The primary concern we have, or the focus we have here is on HGV movements of course. We have all heard that there could be up to 80 in a day. 80 two way movements so 40 in and 40 out.

The application was supported by a very comprehensive transport assessment which looked at a plethora of items with regards to highways in the area and obviously the impact of the proposals traffic and the presumption that we have had to work to as a worst case scenario where all the IBA and the RBF are going to be transported by lorry by HGV in and out of the site. We know that the 80 HGV movements will be on the local highway network and they would be driving to the strategic highway network. They will be following the advisory HGV route through Weymouth that is currently in operation. So the important point as far as we are concerned is that there are already HGV's on this network. They are already on the route driving to and from the island. Already serving the port and the working quarries on the island. The transport assessment itself looked at a large number of links on the network. A large number of the links precisely for the reason you said because of the congestion and the predicted traffic movements I won't bore you with the procedure that went through the analysis basically confirmed that the actual

impact of that traffic would be no more than a 3% increase in traffic flows on the network.

Now this is comparatively low and well within the daily variation or fluctuation we would expect on the network so it should be imperceptible as far as we are concerned.

You mentioned construction traffic Councillor. The construction traffic numbers fall within the same numbers as the trips that will be generated by the actual use itself. They will fluctuate they will be of a different type. They will be of a larger type for example when the piling takes place. There will be larger numbers, larger vehicles then it will fluctuate with regards to what they need to bring in and out of the port. So I can assure you we have fully considered this.

The position of the Highway Authority is that we can't consider it to be severe when we are looking at the assessment criteria within the NPPF. Paragraphs 110 and 111. The residual cumulative impact is not severe and we couldn't recommend that there is any substantive reason to recommend a refusal as a consequence".

Amenity

7.2.3 Paragraph 4.16 of the Rule 6 party SoC confirms that the issue of amenity relates, 'in particular' to noise and traffic impacts. I have referenced traffic above and comment on noise as follows. The noise case (Rule 6 SoC paragraph 4.11) relates to noise impacts on receptors and a claimed harmful effect on the character and quality of the landscape.

7.2.4 I address noise impacts from the plant on receptors in my sub-section 8.3 subsequently and provide a full updated noise assessment (produced by Arup) in my Appendix NR 14. This demonstrates that for all noise sensitive receptors there would be no significant or unacceptable noise impacts.

7.2.5 Whilst no other amenity issues are specifically referenced, I note that Stephen Othen deals with the issue of odour (see his Appendix SO7) and Jon Mason's landscape evidence deals with visual effects. In both cases no unacceptable adverse effects are predicted.

7.2.6 Based on the foregoing, I do not believe the Appeal Proposal would have any material and unacceptable effects on local amenity.

Acoustics (feeding into landscape)

7.2.7 Paragraphs 5.10 and 5.11 of the Rule 6 party SoC states the Appeal Proposal would adversely affect the existing natural asset of soundscape in all its variety, implies that it would / could undermine the tranquillity of the area and queries the adequacy of assessment on areas that are relatively undisturbed by noise and that are prized for their recreational and amenity value for this reason.

7.2.8 I believe soundscape to be the acoustic environment as perceived by humans. I am not aware of any formal definition of tranquillity, but note that CPRE (Council for the Protection of Rural England) has produced a tranquillity map for England.

7.2.9 In my Appendix NR15 I provide daytime and night-time noise contour maps (produced by Arup) and a copy of CPRE's tranquilly map. The contour maps provide a clear indication of areas where noise levels are above 30dB LAeq occur and much higher noise levels only occur at distances much closer to the ERF, which supports and affirms the low impact predicted on the local acoustic environment and residential amenity. They also show the measured ambient noise levels recorded during the baseline study in terms of LAeq, which are significantly higher than the predicted LAeq levels from the Appeal Proposal.

7.2.10 The results of the noise assessment (Appendix NR14) show that baseline sound levels in the area surrounding the development are such that the variability and level of ambient noise strongly indicates that this is not a tranquil area due to the acoustic environment being generally formed by local and distant road traffic, the movement and activities from and associated with ships in the port, including the movement of goods, birdsong and human activities.

7.2.11 In short, Appeal Site sits within a large working port with 24 hour operations. It is allocated employment / industrial land (for B1, B2, B8 and similar uses) where the acceptability in principle of locating development like the Appeal Proposal has been established through the development plan process. Further, the Appeal Site sits close to the urban edge, beneath a cliff with very limited public access, topped by a prominent prison.

7.2.12 The CPRE tranquillity map for England, whilst slightly difficult to see, appears to colour Portland as mainly orange with the odd pixel of red and yellow (say orange on average). This indicates that the area of the Isle of Portland falls into the category

just above the 'least tranquil' areas of land in England which supports the assumption that tranquillity is not an appropriate descriptor.

7.2.13 The design of the ERF has taken into account the lowest measured background sound levels at nearest sensitive receptor areas, resulting in noise levels that are below the lowest background levels and well below ambient noise. The design also considers the control of noise character. This means protection of amenity and avoidance of sleep disturbance is achieved and maintained and accords with a low impact defined by relevant and appropriate noise standards and guidance.

7.2.14 I conclude that the current soundscape is far from natural and is perceived as one dominated by human activity. Further, it is incorrect to describe the Appeal Site and its environs as being tranquil.

Quality of life / Socio-Economics

7.2.15 The Rule 6 SoC only raises quality of life in relation to visual impacts which I have referenced above.

7.2.16 In terms of socio-economic effects, the Rule 6 SoC (paragraph 4.13) claims the Appeal Proposal would damage Portland's economy. The evidence of Simon Elliot on this matter concludes that:

i. There would be no socio-economic harm a view echoed by the Council in its Officer Report to committee; the LEP; Portland Port Ltd; and Carnival, the world's largest cruise ship operator.

ii. Conversely, tangible socio-economic benefits would accrue which would include:

a. That with Shore Power, a forecast that by 2034, the combined cruise ship visitor and crew expenditure will have increased to £10.07m, which would be sufficient to support 119 net direct and indirect jobs, an increase of nine jobs from 2025. By 2050, the combined visitor and crew expenditure will have increased to £10.79m, which would be sufficient to support 127 net direct and indirect jobs, an increase of 17 jobs from 2025.

b. Creating permanent operational employment with a net additional effect for the local study area of 36 employees, equating to £1.4m in gross annual earnings and £7.6m in annual output (GVA).

c. Creating construction phase employment with a net additional effect for the local study area of 84.9 FTEs.

7.2.17 I conclude that far from having adverse effects on local economic conditions, the Appeal Proposal would make a substantial positive contribution to improving the long-term economic prospects of the area.

7.3 Sustainability and Climate Change

7.3.1 Based on the Rule 6 SoC, I believe this topic area is limited to need in the context of future recycling rates and climate change including carbon benefits. I have already covered the former point in my section 3.4 and the evidence of Stephen Othen addresses climate change and the positive carbon credentials of the Appeal Proposal, the conclusions on which I have referenced previously.

8.0 OTHER MATTERS RAISED BY INTERESTED PERSONS

8.1 Introduction

8.1.1 A significant number of objections have been submitted in relation to the Appeal Proposal at the application and appeal stages. Many of the objections raised relate to matters which I have covered in my proof of evidence, or is covered in the other evidence prepared on behalf of the Appellant.

8.1.2 The Appellant's SoC also contains, as Appendix C, a 'Summary of Matters Raised by Interested Parties and the Appellant's Summary Response (Excluding matters already dealt with in respect to Reasons for Refusal)'. The Appellant (and I) stand by these summarised responses.

8.1.3 Based on the above, I believe, in good faith, that the Appellant has provided its position / response on all material matters / subject areas raised in objection by interested persons. I fully concede there is a prospect a point may have been missed, but as things stand, there is nothing of any significance I am aware of.

8.1.4 In this section of my proof I cover a limited number of matters raised by selected interested persons under the following headings:

- Shore Power Alternatives;
- Noise;
- UKWIN objection; and
- MVV objection.

8.2 Shore Power Alternatives

8.2.1 Firstly, the Appeal Proposal would deliver the Shore Power infrastructure itself, which (as described in my Appendix NR1) is a significant and complex undertaking in its own right. There is no other alternative proposal for its delivery.

8.2.2 Secondly, a number of objectors have claimed that there are alternatives to the provision of powering Shore Power other than via the Appeal Proposal. As per my Appendix NR3, Scottish and Southern Electricity Networks' offer for the grid upgrade and power supply to the port has an identified completion date of June 2037. Whilst a commercial matter, I can also confirm it is very expensive. This is not an option that the port is currently contemplating. Thus, the only actual proposal for additional

power supply to the port, for Shore Power or otherwise, is the Appeal Proposal. No one is proposing any other alternative option. I believe the extent of consideration and weight that can be given to 'alternatives' not being proposed is very limited.

8.2.3 However, to aid understanding, in terms of other 'theoretical' options, I comment as follows:

i. Solar power: Solar power is an intermittent renewable form of energy and only generates during daylight. Efficiency is materially affected by panel orientation i.e. south and south west facing panels perform best. As a rough rule of thumb it requires circa 1 hectare of land to provide 1MW of generation capacity. The intermittency and lack of suitable space mean solar is not a viable option for Shore Power.

ii. Wind energy: Wind power is also an intermittent renewable form of energy and only generates during windy conditions. Turbines need to be in exposed, relative windy locations and are also very tall. At a commercial scale they would typically fall somewhere 100m and 200m in height (to blade tip). In the context of geography like Portland, to avoid wake effects etc. they would need to sit on top of the Isle. Their intermittency renders them unsuitable for Shore Power. Further, I see no practical prospect of securing planning permission for commercial scale wind turbines on Portland.

iii. Battery Energy Storage Systems (BESS): BESS require power input before they can provide any power output. The vast majority of BESS projects take power off the grid. This is not an option at the port. Alternatively they can be associated with solar and / or wind energy. As above, these are not feasible options. Further, even if solar or wind was deliverable (they are not), the intermittency still remains a problem as the BESS would still be very likely to become depleted if reliant on wind or solar input, based on likely Shore Power demand.

iv. Biomass: Biomass combustion plants are effectively the same as an ERF, it is just that the fuel burnt is 100% biogenic as opposed to circa 50% biogenic in an ERF. There are a number of waste biomass plants (waste wood and agricultural wastes) operating in the UK and a very limited number of non-waste ('clean') biomass plants. All are heavily supported / subsidised by the former Renewables Obligation. I have historically worked on numerous

biomass plants, but nothing for several years. My understanding is that, unlike an ERF which gets a gate fee for the input waste fuel, a biomass plant which has to actually pay for its input fuel, is no longer viable under the Contracts for Difference (CfD) regime which has replaced the Renewables Obligation. I have reviewed the auction results for the last 3 rounds of CfD awards (Rounds 3, 4 and 5, spanning back over 4 years) and not a single biomass plant has been awarded a CfD. Further, many of the planning objections levelled at the Appeal Proposal would be equally applicable to a biomass plant in any event.

v. Hydrogen: whilst not my area of planning expertise, my firm is working on a number of hydrogen energy related projects. The use of hydrogen is an early stage technology primarily focussed on the use of the element for energy storage. Whilst it could be theoretically be used as a fuel at the port to produce power in a gas engine.[22] the production of the hydrogen via electrolysis of water would require significant electricity, not available on Portland. Further the energy losses in using electricity to convert water to hydrogen and then hydrogen to electricity via gas engine are so significant as to make this not commercially viable.

vi. Diesel or gas generators: These run 100% on fossil fuels, emit pollutants and have significantly inferior abatement systems to the Appeal Proposal. Providing Shore Power in this way would effectively result in the same outcome as the current practice, albeit that the generators would be located on-shore as opposed to on-ship, and almost certainly not be as efficient.

vii. Wave power and tidal technologies are not considered viable and certainly note within and around Portland harbour.

8.2.4 Based on the foregoing, there are no alternative energy sources to the Appeal Proposal being proposed to provide Shore Power. Further, even setting this aside, I do not believe there are any feasible, viable or preferable alternative technologies for powering such a system.

[22] Alternatives to gas engines are not a deployable technology at the scale required

8.2.5 Finally, and as referenced previously, in the event the shipping industry converts to battery or partial battery propulsion and powering, the first thing ships will need to do when berthing, is re-charge their batteries. Hence, Shore Power is entirely compatible with this future scenario.

8.3 Noise

8.3.1 A number of parties have raised noise impacts as an issue, notwithstanding that the relevant technical consultee had no objection and is entirely satisfied on the issue subject to the imposition of conditions (as proposed).

8.3.2 In the run up to the appeal and as part of the Environmental Permit process, the Environment Agency (EA) raised a limited number of new matters in relation to the potential effects of the Appeal Proposal on the Bibby Stockholm migrant accommodation barge / ship.[23] This request was made irrespective of the fact the Bibby Stockholm has a contract to be at the port for just 18 months (it arrived 17th July 2023), and the Appeal Proposal could not be operational before 4 years from the barge's arrival. One of the issues raised was in relation to noise effects.

8.3.3 Accordingly, the Appellant commissioned Arup to provide a noise assessment. A copy of this document forms my Appendix NR14. As can be seen, and as explained with the Noise Assessment report, previously baseline noise data and monitoring, which had fed into earlier assessment, was potentially influenced by irregular day to day activities owing to the effects of the Covid-19 pandemic. As such, Arup took the opportunity to update the entire previous noise assessment, but with the addition of the Bibby Stockholm as a possible new noise receptor. The outcome of this process demonstrates that for all noise sensitive receptors there would be no significant or unacceptable noise impacts.

8.4 UKWIN Objection

8.4.1 I provide some comments on UKWIN's objection to the Inspectorate dated October 2023, the majority of which is focussed on claims around climate change and fall

[23] As explained by Stephen Othen the queries raised around the Bibby Stockholm were the only outstanding information requirements in relation to the Permit determination process.

within Stephen Othen's area of expertise as opposed to mine. I comment briefly on matters they raise relevant to my evidence.

8.4.2 In their paragraphs 42-69, UKWIN refers to the inclusion of non-RDF residual waste in the proposed feedstock for the Appeal Proposal and in particular pick on a minor reference in the SSoC (one of a number of reasons for including non-RDF residual waste) to the near elimination of biodegradable waste to landfill. In addition, they claim moving away from exclusively treating RDF conflicts with recycling and the waste hierarchy.

8.4.3 As a matter of fact the Government is working towards the reduction of biodegradable wastes sent to landfill and has been doing so since the implementation of the Landfill Directive in 1999. The call for evidence on the 'near elimination' of landfilling such wastes is simply the next phase of policy spanning back over 2 decades. I further comment on related points made by UKWIN:

i. Non-combustible waste for the purposes of the Appeal Proposal is that which falls below the CV range which the ERF could treat. It is still theoretically combustible and if formed from mixed residual waste is undoubtedly biodegradable.

ii. Soil and soil like material is not part of the feedstock and references to it are wholly irrelevant.

iii. In paragraphs 50 and 51, UKWIN alight on the fundamental point I make in my sub-section 3.4 on recycling. Increased and improved recycling is almost entirely reliant on greater segregation of waste at source (i.e. the point of collection). Thus, the Government's main method on increasing the recycling rate is consistent and improved source segregated collection (details of which it has recently announced). Hence the management of the ensuing residual waste, post improved source segregation, does not conflict with recycling targets or the hierarchy (also refer to my Government quote in the next paragraph on the same point).

iv. UKWIN state that the measures to be introduced to near eliminate biodegradable waste to landfill would also reduce the quantity of waste that could be incinerated. This is 100% correct. This is why my need

assessment incorporates a major reduction in residual waste quantities between now and 2042.

8.4.4 In their paragraphs 197 to 263 UKWIN make various statements on 'need. I comment as follows:

i. In their paragraph 201, in support of an assertion the Government requires 'need' to be demonstrated, they provide a very limited extract from an answer to a Parliamentary question from July 2022. I draw the Inspector's intention to a subsequent response given by Rebecca Pow MP speaking in debate on 1st December 2022 (underlining added), which rather counters UWKWIN's point:

"That issue was also raised by the shadow Minister, the hon. Member for Leeds North West (Alex Sobel). DEFRA has no plans to introduce a moratorium on new energy-from-waste capacity in England, because we expect the market itself to assess the risks and determine the economic viability and deliverability of developing the new infrastructure. There is no financial advantage for the public sector or the market in delivering overcapacity in the energy-from-waste provision in England. Through the resources and waste strategy, we have committed to monitoring residual waste treatment capacity and we intend to publish a fresh analysis of that in due course.

The strategy is about reducing waste, reuse, recycling and so forth. The whole point is to reduce the amount of waste we get, and the strategy will play an important part in diverting residual waste that cannot be prevented, reused or recycled from landfill. Landfill is generally considered the least favourable method of managing waste; incineration comes above that. We are putting in place consistent collections, deposit return schemes and extended producer responsibility schemes, which all seek to reduce the amount of waste that we need.

In October 2020, we changed the law to introduce a permit condition for energy-from-waste operators that prohibited them from accepting separately collected paper, metal, glass and plastic, unless it had gone through some form of treatment process. We are at the point of setting up the new scheme where every single authority will have to have consistent collections, where

they will separate such waste, and none is able to go into an incinerator. That is what I mean when I say that the market will determine the life of incinerators and whether we need future incinerators. Taken together, our policies will reduce the dependence on energy-from-waste plants. Even so, there will always be some residual waste and some energy-from-waste capacity will always be required".

ii. In paragraph 210, UKWIN reference a target to half the amount of residual waste sent to landfill and incineration. The target is of course no such thing. As explained in my sub-section 3.4, it is about halving the amount of residual waste generated per capita. I have dealt with this point extensively and shown that there remains a need for the Appeal Proposal in a scenario consistent with achieving this 'stretching' target.

iii. In paragraphs 217-221 UKWIN points towards draft NPS EN-3 as a reason why in determining 'need', consideration should be given to existing ERF capacity and that already 'in development'. They align 'in development' with unimplemented planning permissions. In response:

a. NPS Draft EN-3 is aimed at ERF proposals whose minimum size is more than twice as a big as the Appeal Proposal.

b. I suggest extant NPPW paragraph 7 (only taking into account existing operational capacity in circumstances where the relevant waste plan is out of date) should be preferred over a draft NPS.

c. I definitely do not align an unimplemented permission with something being 'in-development'.

iv. In their paragraphs 227-236, UKWIN alleges ERF over-capacity in the South West region. My assessment (sub-section 3.4) provides a more detailed and finer grained sub-regional assessment. I conclude there is no such overcapacity.

v. In the remainder of their objection, UKWIN revert to 'need' and recycling and only raise the same or similar points to those I have already addressed.

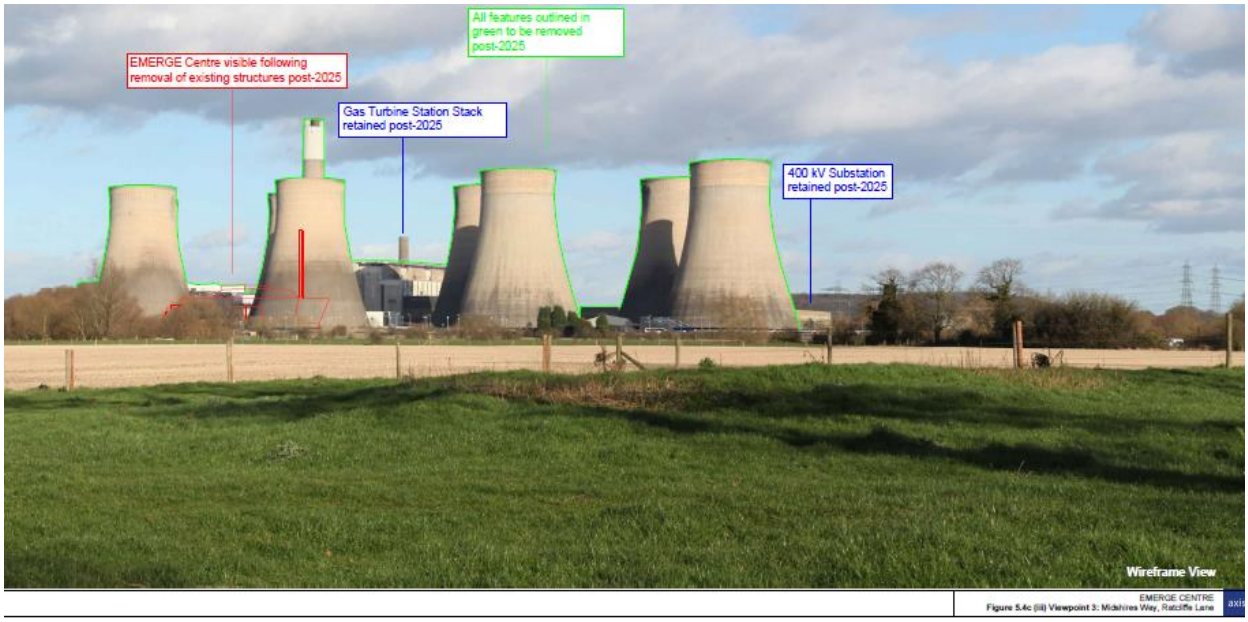
8.5 MVV Objection

8.5.1 MVV is the applicant for the current Canford ERF application. They have submitted an 'IP Statement' (dated October 2023). This document is in two parts. The first part is a brief written statement (of which half relates solely to listing their company credentials, on which I provide no comment). The second part is a tabular commentary on the Appellant's SoC.

8.5.2 The first, and most remarkable, point of note is that MVV provides virtually no response to the substantive points of objection to their proposal made by the Appellant and as set out in my Appendix NR13. I comment on what they do say as follows:

i. In section 1.4 of their written statement (titled 'Summary of the most important issues') they discuss the DWP allocated sites, but fail to acknowledge that none has ever delivered an operational true residual waste management facility. In the case of Canford it has actually been allocated for 17 years. Neither do they make reference to the capacity of the Canford proposal relative to the DWP allocation.

ii. In paragraph 1.4.6, MVV indicates that ERFs can be consented in the Green Belt citing, in support of its case, an ERF proposal at Ratcliffe-on-Soar in Nottinghamshire and, unhelpfully I suggest, an example outside of the Green Belt. There are in fact three consented ERFs in the Green Belt, two built and the unimplemented Nottinghamshire proposal (referred to as the EMERGE Centre). I did all of the planning work on all three. I can confirm that the planning, development and Green Belt context for each is vastly different to the situation at Canford. By way of example, the EMERGE Centre (which MVV cite) sits within the massive 2,000MW Ratcliffe-on-Soar coal-fired power station complex, which happens to be washed-over by Green Belt. I have reproduce below a verified wire-frame image (extract) from the application. The wire-frame of the proposed ERF, the EMERGE Centre, is shown in red towards the left hand end of the image. I believe it fair to say the Green Belt context differs to that at Canford.



8.5.3 In addition, the EMERGE Centre permission (ref: 8/20/01826/CTY) is subject to a planning condition (no. 2) which reads as follows:

"The development hereby permitted shall not be commenced until such time as:

a. Planning approval has been demonstrated to exist for the demolition of the two cooling towers.

b. A programme for the demolition for the two cooling towers has been approved in writing by the Waste Planning Authority (WPA).

c. A record of the heritage asset of the two cooling tower structures to be demolished has been submitted to the WPA and approved in writing. The heritage record shall incorporate visual, descriptive and analytical information including the use of drawings to identify the cooling towers' location, age, history, materials, dimensions and use and incorporate arrangements for making the document publicly available including entry onto the historic environment record.

The demolition of the cooling towers shall take place in accordance with the agreed programme and timetable and be completed no later than 31st December 2030".

The purpose of this condition was to ensure structures of the same (or greater) built volume as the new ERF would be demolished, ensuring the new development would have no greater impact on the openness of the Green Belt than the existing situation. This helpfully illustrates the extent of policy constraint the Green Belt presents to development of the scale of an ERF. By way of contrast the following photomontage extracts from the Canford ERF application show it sat within its particular Green Belt context.

iii. MVV comments about the efficiency of the Appeal Proposal. As Stephen Othen explains this has now been increased.

iv. In their paragraph 1.4.11 MVV claims cruise ships do not sit well with base load because demand is there only whilst they are in harbour. As is clear from the Appeal Proposal application / appeal documentation, Shore Power is not limited to cruise ships and would also include RFA vessels. Ships are (near) permanently present in the port. The Appeal Proposal could also supply other power off takers (i.e. via private wire).

v. MVV claim benefit from co-location with the Canford MBT plant. Dorset / BCP LACW is only contracted to go to the existing MBT plant at Canford until 2027. MVV could not even deliver its ERF until 2027 at the absolute earliest. Further, even if MBT plant was operational its output would only represent 36.5% of the Canford Plant requirement. Some 165,000 tpa (almost the capacity of the Appeal Proposal) would need to come from elsewhere.

vi. At paragraph 1.4.13, MVV claims benefit for providing space for a possible future carbon capture plant. They have completely ignored (as set out in the Appellant's objection) the only space available is firstly already

purposed for something else and, secondly, less than half the size it needs to be to accommodate any currently deployable carbon capture technology.

vii. The tabular commentary on the Appellant's SoC provides (by definition), no further material points of objection not comprehensively covered in the Appeal Proposal evidence.

8.5.4 In conclusion, I stand by the totality of the objection to the MVV Canford ERF proposal set out in my Appendix NR13 and as summarised in my paragraph 4.2.21 points i-xiv previously.

9.0 APPRAISAL OF THE APPEAL PROPOSAL AGAINST THE DEVELOPMENT PLAN AND MATERIAL PLANNING CONSIDERATIONS

9.1 Introduction

9.1.1 This final section of my proof considers the Appeal Proposal in the context of the requirements of section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that planning applications should be determined in accordance with the statutory development plan unless material considerations indicate otherwise.

9.1.2 Section 5.0 of the SoCG identifies the relevant constituent elements of the Development Plan and the relevant policies, as does Appendix D of the Appellant's Statement of Case. I do not repeat them here.

9.1.3 My assessment firstly considers compliance with polices related to land use and the principle of the development of the Appeal Proposal. It then assesses the Appeal Proposal against development management / environmental protection policies before concluding on development plan compliance. Finally it briefly considers other materially planning considerations before drawing concise conclusions.

9.2 Planning Assessment

Land Use and the Principle of the Development

9.2.1 I believe that the appropriateness of the land use and the acceptability of the Appeal Proposal in-principle are firmly established in relation to my appraisal of the 1st reason for refusal and demonstrating compliance with DWP Policies 1 and 4.

9.2.2 I deal with DWP Policy 2 briefly. This provides that proposals for waste management facilities which are co-located with complementary activities, will be supported unless there would be an unacceptable cumulative impact on the local area. Sub-section 4.3 of my proof sets out the broad range of co-locational benefits associated with the Appeal Proposal and the complementary activities at and around the Appeal Site. For reasons set out in my evidence and the Appellant's other evidence, I find that no unacceptable cumulative impacts would occur in the local area. Accordingly, the Appeal Proposal meets the requirements of Policy 2 and should benefit from the positive support it provides.

9.2.3 DWP Chapter 7 'Forecasts and the need for new facilities' sets out an assessment of need across a range of waste types, including (at paragraphs 7.60-7.78) residual wastes. The numerical need is summarised in 'Table 7 Capacity & Need - Non-hazardous residual waste (tpa)', which shows a capacity gap for residual waste management of 214,000 tpa in 2028 rising to 234,000 tpa in 2033. Thus, the Appeal Proposal would largely fulfil the capacity gap identified in the DWP and is, therefore, entirely consistent with the waste infrastructure requirements envisaged in the DWP.

9.2.4 This leaves DWP Policy 6, which is the policy specific to 'Recovery facilities', including ERFs (described in the policy as thermal treatment). Policy 6 sets several tests which I consider below.

i. In terms of criterion a. I have already fully addressed the issue of the spatial strategy in relation to DWP Policy 4. I have shown that as of 2022, in relation to residual waste, the position with regard to the spatial strategy was that none of Dorset and BCP's waste was being subject to final fate treatment or disposal within the authorities' administrative areas (this remains the same today), and 261,055 tonnes of residual waste went to either landfill, 'out of county ERF' or overseas ERF. The original focus of the strategy has failed and is failing. The south east Dorset allocations have not delivered, for over 17 years in the case of Canford and Binnegar. However, delivery of the Appeal Proposal would give Dorset and BCP a true 'in county' residual waste treatment facility for the very first time. In doing so, the overarching objectives of the spatial strategy would be immeasurably better delivered than is the case at present, and there would be a very significant contribution to meeting the need identified in the DWP. As such, I believe criterion a. is met.

ii. With regard to criterion b. at present the waste that would treated at the Appeal Proposal is currently being managed at 'out of county' or overseas ERF, or (circa 70,000 tonnes) being disposed of at landfill. In my sub-sections 3.5, 4.2 and 4.3, I have fully described the very significant benefits that would accrue to Dorset and the Portland area through the 'displacement' of using remote / overseas ERF capacity. Clearly moving waste out of landfill and into the Appeal Proposal would move it up the hierarchy. Accordingly, criterion b. is demonstrably met.

iii. In terms of criterion c. all operations including the reception, handling, processing and storage of waste would take place within an enclosed building and thus the criterion is met.

iv. Criterion d. requires that where energy is produced, a facility should produce combined heat and power (CHP), or if impracticable, it should export power only and be designed to have the capability to deliver heat in the future. As set out previously in my evidence and in the proof of Stephen Othen, the Appeal Site / Proposal offers an opportunity for delivering a feasible and viable District Heating Network (DHN). In short, it is in close proximity to two existing HM Prisons, both of which have a significant heat demand that is currently met by the use of fossil fuels. The Appellant has engaged with the Ministry of Justice, a credit worthy and willing heat off-taker, and a local heat network connection to the prisons is judged to be technically, environmentally and economically viable. Further, the prospects of an effective DHN being delivered from the Appeal Site are far greater than from any of the allocated sites. Notwithstanding, it is extraordinarily difficult to deliver a firm contract for heat off-take in advance of an ERF actually becoming operational. This has been recognised in national waste strategy for well over a decade. The DEFRA document 'Government Review of Waste Policy in England 2011' (DEFRA 2011), which remain an extant part of the suite of national waste strategy documents, states (paragraph 237) that: *"Experience to date with CHP infrastructure has highlighted a potential difficulty in securing long term customers for heat ahead of construction of the plant…."* (see my Appendix NR7).

v. At the aforementioned Northacre ERF appeal (see CD10.1 at paragraph 49) the Inspector concluded on heat offtake: *"Although the proposed development would have the capability of exporting approximately 25.6 MW (net) of electricity to the local electricity grid, at the time of the Inquiry, no contractual arrangements had been entered into or any preliminary discussions disclosed with any potential local heat users. However, I do not find it unusual for there to be no such contractual arrangements to be in place at the planning application stage. The evidence presented in the Inquiry leaves no doubt that the facility would be capable of exporting heat, in the form of steam or hot water to local heat users, and would be 'Combined Heat*

and Power' (CHP) ready. The proposal would be sited adjacent to the largest heat user in the area (Arla)".

vi. In short, the Appellant does not presently have a contract guaranteeing heat offtake. It has simply not been commercially deliverable at this stage of the project's life. However, the Appeal Proposal would export power and be designed to have the capability to deliver heat in the future. Further, given the location of the Appeal Proposal, the prospects of delivering heat offtake are tangible and realistic. Further still, the Appellant has proposed a planning condition that the Appeal Proposal must be full CHP ready and an undertaking in the planning obligation to connect to a DHN if technically and commercially viable to do so. Thus, I believe the Appeal Proposal complies with criterion d.

vii. Criterion e. is not relevant to this ERF technology and in terms of criterion f. the evidence of Jeff Picksley for the Appellant demonstrates (following the Appropriate Assessments performed by both the Council and the EA; and agreed by Natural England) that, following Appropriate Assessment, the Appeal Proposal would adversely affect the integrity of European and Ramsar sites either alone or in combination with other plans or projects. Hence this criterion is met.

9.2.5 The penultimate sentence of Policy 6 require residues to be managed in accordance with the waste hierarchy and the proximity principle.

9.2.6 Dealing firstly with the waste hierarchy:

i. With regard to IBA management, as set out in my sub-section 2.3 previously, it is proposed that it be exported from the Appeal Site by ship, by the Day Group, an established IBA reprocessor and producer of IBA Aggregate (IBAA). They have confirmed (see my Appendix NR4) they can take IBA from Portland by ship and have capacity in either of their dockside reprocessing facilities at Avonmouth or Greenwich to accept the IBA and re-process it into IBAA, whilst recovering additional metals for recycling. Thus, the IBA would become a recycled product and move up the hierarchy.

ii. With regard to APCR, this is planned to be removed from the Appeal Proposal in sealed powder tankers. It is then planned to be recovered with O.C.O

Technology Limited (a Grundon Group company), to produce a lightweight building material in demand for use in the construction industry. Refer to my Appendix NR16 for a letter of support from O.C.O. and confirmation of the above. Thus, as per the IBA, the APCR would be recycled and moved up the hierarchy.

9.2.7 With regard to the proximity principle, this does not apply to the treatment of IBA and APCR, relating solely to the management of mixed municipal waste collected from households (see my paragraph 4.3.10). Notwithstanding, and applying the principle 'generally', both residue streams would be treated in England at specialised recovery facilities, of which there are limited numbers in the UK. It is most likely the Day Group will take the IBA to their Avonmouth site which is located in the South West region. I consider this to be one of the nearest appropriate installations, its appropriateness being underpinned by the fact it accepts IBA by ship, and it providing the most appropriate recovery technology. Given we are considering a 'quasi-proximity principle', I believe it appropriate to have regard to the mode of transport, particular where it avoids the use of road.

9.2.8 APCR recovery is a far more specialised process than dealing with IBA. Historically, nearly all APCR was disposed of in a specialised hazardous waste landfill. However, as of 2022, Tolvik advises that the UK's ERF APCR recycling / recovery rate is at 39% having circa doubled over the previous 4 years.

9.2.9 There are very few APCR recovery facilities and O.C.O. is very much a market leader. They describe their treatment process as follows:

"O.C.O. uses its patented Accelerated Carbonation Technology to treat APCr with carbon dioxide which, in doing so, permanently captures the carbon and mixes the carbonated material with other binders and fillers to manufacture a carbon sustainable aggregate, Manufactured Limestone or "M-LS". The M-LS captures more carbon than it generates in its manufacture.

Very little energy is required for the process, which relies upon the reactivity of the waste material. Many wastes are naturally reactive with carbon dioxide in the presence of water. If the conditions are carefully controlled, this can be accelerated, taking place in minutes rather than years and resulting in the formation of calcium carbonate (manufactured limestone).

O.C.O Technology is one of the few companies in the UK to hold End of Waste approval from the Environment Agency, which means that our product can be used in a range of construction activities. We offer a range of M-LS products, including our BlockMix aggregate, which is certified to BS EN 13055-1 (Lightweight Aggregate for Concrete), is specifically suited for use in masonry. Our 6F Series aggregate, certified to BS EN 13242 (Unbound Aggregates) is ideal for use in earthworks, pavements and bound materials."

9.2.10 O.C.O. currently operates permitted recycling facilities at Avonmouth (Bristol), Leeds (Yorkshire) and Brandon (Suffolk), but are bringing additional capacity onstream. The plants are very sophisticated and capital intensive, and so are located regionally in order to serve a number of ERFs. Their letter of support (my Appendix NR16) indicates that they could recover the APCR at their Avonmouth facility, located in the South West region. I consider this constitutes one of the nearest appropriate installations offering the most appropriate recovery technology for such a waste stream.

9.2.11 Thus, the Appellant has clearly put in place proposals to manage residues from the Appeal Proposal on the basis of moving those residues up the waste hierarchy through management at one of the nearest appropriate installations. As such the waste hierarchy component of Policy 6 is met and, in so far as the waste 'proximity' element of Policy 6 is relevant, I conclude it is also met.

9.2.12 It must be realised that in a commercial world by the time the Appeal Proposal is commissioned, or at some point during its operational life, the management route of its residues may potentially change from that described above. Similarly it may not. I cannot recall ever, having worked on the planning of circa 35 ERF projects, a situation where the management of residues was contractually fixed prior to the grant of planning permission. Similarly, neither can I recall any planning condition tying ERF residue management to a specifically named or located facility. The reality is that the Appellant has fully considered and evidenced the availability of existing, commercially available residue management routes, which meet the aforementioned policy requirements.

9.2.13 The final sentence of Policy 6 requires processing facilities for IBA to be located at or close to the source of waste arisings. Whilst I am clear that this part of the policy relates only to the development of new IBA processing facilities, and is therefore not

applicable to the Appeal Proposal, it could be misinterpreted. In short, misinterpreted as meaning that there should be IBA processing facilities at or close to the source of the waste arising. To address any argument of this sort, I also cover what I believe would be the incorrect interpretation.

9.2.14 If misinterpreted, this last part of Policy 6 could arguably either contradict or duplicate the preceding requirement (hierarchy and proximity) in that it requires IBA to be managed at or close to the source of the waste arising, without regard to any other factors. I make a number of comments on this matter:

i. It would be perverse (and wholly at odds with national policy) if a proposal could comply with the hierarchy and 'proximity' requirements (as the Appeal Proposal does) and fail the 'close to' requirement.

ii. 'Close to' is not defined.

iii. Nearly all IBA recovery facilities manage waste from a number of different ERFs and are thus serving a region or sub-region. Thus, I believe treatment at a regional or sub-regional facility, as per the Appeal Proposal, constitutes 'close to'.

iv. In reality, less than a handful of the 76 ERF plants operational or under construction in the UK have on-site or immediately adjacent IBA management facilities.

v. It would be interesting to know if Dorset and BCP Councils are grappling with the objectives of this requirement in relation to their own waste (or other waste arising in their area). This is because, as the wording is drafted, the principle it sets would require all of the IBA from the waste exported from Dorset / BCP to out of county / overseas ERFs (over 156,000 tonnes in 2022), to be brought back to Dorset / BCP so it can be managed at or close to the source of arising.

vi. When considering the Councils' application of distance that recyclable material should be able to travel in order to be reprocessed, I return to the spatial strategy (as shown in Appendix 1 to the DWP), which shows it is fine for recyclables to travel to North Wales for reprocessing.

9.2.15 Whilst I am clear that the final part of Policy 6 does not apply, if it did, having regard to the foregoing, I believe that in meeting the proximity principle test (which should not apply anyway), the management of IBA from the Appeal Proposal within a South West regional facility which can accept the IBA by ship direct from the Appeal Site, represents a solution 'close to' the source of arisings. Alternatively, should the Inspector disagree with me on this point, I believe the preceding dialogue presents material planning considerations which support determination of the appeal other than in accordance with this part of Policy 6.

9.2.16 I conclude the Appeal Proposal is entirely appropriately located in terms of land use and that the principle of the scheme, at the scale proposed, fully accords with the policies and provisions of the DWP.

Development Management / Environmental Protection Policy

9.2.17 On the issue of development management and environmental protection policies, I have provided a concise tabular analysis broadly based on Tables 6.1 to 6.4 of the Planning Statement (CD1.22) submitted in support of the planning application for the Appeal Proposal. Whilst I did not author this document, I generally agree with the summarised findings and believe it remains an up-to-date assessment of the Appeal Proposal in relation to development plan policy. I reproduce Tables 6.1 to 6.4 as my Tables 9.1 to 9.4 below. I have added a few policies in (from the agreed list) and made some minor changes to the text / commentary in the compliance column. Further, I do not use the Tables in relation to the land use / principles of development policies considered above, nor in terms of the policies referenced in the reasons for refusal, where I rely on my more detailed assessment contained in the preceding sections of this proof.

Table 9.1: Bournemouth, Christchurch, Poole and Dorset Waste Plan 2019

Policy ref	Policy	Compliance
Policy 12 Transport and access	A transport assessment should demonstrate a safe access and sufficient highway improvements to mitigate or compensate for any significant adverse impacts	Fully compliant A transport assessment has been undertaken which demonstrates that a safe access can be achieved and that the HGV movements associated with the facility when considered in the context of the overall highway network and traffic levels would not give rise to any significant highway impact. No highway improvements required and the Appeal Site location supports alternative modes of transportation i.e. waste and IBA transfer by ship.
Policy 13	Proposals must demonstrate that any potential adverse impacts on amenity	Fully compliant

Policy ref	Policy	Compliance
Amenity and quality of life	arising from the operation of the facility and any associated transport can be avoided or mitigated to an acceptable level	The Appeal Proposal is designed not to give rise to any significant adverse effects on amenity and its location within a commercial port places the facility away from any sensitive receptors. The ES and other supporting technical studies indicate that with appropriate mitigation and management measures in place there would be no significant adverse impact in terms of noise and vibration, airborne emission including dust, litter or windblown material, vermin, birds and pests or loss of privacy. The inquiry evidence provides an updated noise and odour assessment which reach the same findings. The assessment indicates that traffic generation would not give rise to an unacceptable level of impact and that the site is not subject to any land stability issues. The Appeal Proposal has been carefully and sensitively designed, with guidance from landscape officers, to minimise visual impact on the local setting and character and wider views from designated landscape areas such as the AONB and the WHS. The outline CEMP demonstrates how the commitments made in the ES will be implemented during the construction phase. It also sets out the monitoring and auditing activities that should be undertaken to demonstrate that such mitigation measures are carried out and that they are effective. The Lighting Statement has considered the potential impact from lighting and has devised an appropriate lighting strategy that would mitigate any impact from light spill to an acceptable level.
Policy 15 Sustainable construction and operation of facilities	Requires proposals to demonstrate that the site design, layout and operation takes account of climate change mitigation and resilience	Fully compliant The Appeal Proposal incorporates sustainable design and construction principles including the use of recyclable materials where possible and recovery of construction waste as set out in the framework Site Waste Management Plan. It minimises water usage and as an energy recovery facility (also with PV panels) will generate its own power all of which will be partially renewable, low carbon energy.
Policy 16 Natural resources	Sets out the requirements for waste management facilities in relation to water resources, ground conditions and agricultural land	Fully compliant The ES concludes that the Appeal Proposal will not give rise to any adverse impact on the quality or quantity of water resource, and that ground conditions are suitable for this use. As previously developed industrial land there are no soils to be protected and no loss of high quality agricultural land.
Policy 17 Flood risk	New waste management facilities in flood zones 2 and 3 and of one hectare or greater in flood zone 1 require a flood risk assessment and must comply with the set requirements	Fully compliant The Appeal Proposal is located in Flood Zone 1 (low risk) and is not subject to any significant flood risk. The Flood Risk Assessment has been undertaken and this has not identified any significant risk of site flooding. A sustainable drainage system has been devised, as an integral part of the site design and landscaping strategy, to manage surface water and would not give rise to flooding occurring elsewhere.
Policy 18	Proposed waste management facilities must not adversely affect the integrity of	Fully compliant

Policy ref	Policy	Compliance
Biodiversity and geological interest	designated sites and, where practicable, enhance biodiversity and geological interest	The evidence of Jeff Picksley demonstrates that the Appeal Proposal and its associated process, traffic and ship related emissions to air would not adversely affect the integrity of European sites, or other designated ecological sites. This position has been accepted by Dorset Council. The Environment Agency and Natural England though Appropriate Assessment. It is recognised that the Appeal Proposal would lead to a vey limited loss of the existing on-site habitat and off-site mitigation is proposed to deliver a net biodiversity gain, by introducing measures to enhance other agreed ecological interests and habitats.
Policy 22 Waste from new developments	Sets out the requirements in relation to waste from new developments	Fully compliant The Appeal Proposal includes measures for the separation and storage of waste from staff areas for recycling. The Appeal Proposal itself is a waste management facility that would facilitate recover energy from residual waste that cannot be re-used or recycled.

Table 9.2: Adopted West Dorset, Weymouth and Portland Local Plan 2011-2031

Policy	Policy summary	Compliance
ENV 2 Wildlife and habitats	Proposals should not have adverse impacts on the designated wildlife sites and habitats	Fully compliant As per Dorset Waste Plan Policy 18 above
ENV 3 Green infrastructure network	Development should not harm the green infrastructure network	Fully compliant The Appeal Proposal is located on previously developed industrial land within thin an operational port and would not cause any significant harm to the green network
ENV 5 Flood risk	Development should be planned to avoid flood risk and steered towards the areas of lowest risk. Further, it should not generate flooding through surface water runoff.	Fully compliant As per Dorset Waste Plan Policy 17 above
ENV 9 Pollution and contaminated land	Development will not be permitted which would result in an unacceptable risk of pollution to ground water, surface water-bodies and tidal waters. Development on contaminated land must demonstrate no unacceptable risks to future occupiers.	Fully compliant Chapter 8 of the original ES covers ground conditions and water quality. Subject to the adoption of the proposed mitigation measures and controls via planning conditions, no significant or unacceptable effects are predicted in these topic areas.
ENV 10 The landscape and townscape setting	Development proposals should contribute positively to local identity and distinctiveness. Development should be informed by the character of the site and its surroundings. Trees and other features should be retained, appropriate landscaping schemes are required and opportunities to incorporate features like public art as appropriate.	Fully compliant As per my evidence in relation to Dorset Waste Plan Policy 14 in sub-section 5.3 of this proof. No trees exist to be retained and the Appeal Proposal is in a non-public area, sitting within a secure port environment. Thus public art etc. would not be appropriate.
ENV 12 The design and positioning of buildings	Development will achieve a high quality of sustainable and inclusive design. It will only be permitted where the siting, alignment, design, scale, mass, and materials used complements and	Fully compliant As per Policy ENV10 above.

Policy	Policy summary	Compliance
	respects the character of the surrounding area	
ENV 13 Achieving high levels of environmental performance	New buildings are expected to achieve high standards of environmental performance.	Fully compliant As per Dorset Waste Plan Policy 15 above
ENV 16 Amenity	Proposals for development should be designed to minimize their impact on the amenity and quiet enjoyment of both existing residents and future residents within the development and close to it, with regard given to loss of privacy, noise, pollution, odour and lighting.	Fully compliant As per Dorset Waste Plan Policy 13 above
SUS 2 Distribution of development	Within development boundaries, employment development to meet the needs of the local area will normally be permitted	Fully compliant The Appeal Proposal site is located in Portland Port which is identified as a focus for new development.
ECON 2 Protection of key employment sites	Within key employment sites, applications for B1, B2 B8 and other similar uses will be permitted subject to proposals not having a significant adverse impact on surrounding land uses	Fully compliant The Appeal Proposal is on a "key employment site" and is a waste management use, which is considered to be a similar use to B2 employment and therefore does not conflict with the objective of this policy to protect key employment sites. The Appeal Proposal will generate new jobs. The site is also subject to an extant planning consent for an energy plant, using waste material as fuel and the principle has been established.
COM 7 Creating a safe and efficient transport network	Development will not be permitted unless it can be demonstrated that it would not have a severe detrimental effect on road safety and delivery of a strategic cycle network and improvements to the public rights of way network will be supported.	Fully compliant As per Dorset Waste Plan Policy 12 above. Further, the Appeal Proposal would complete an important public right way around the Isle of Portland.
Policy COM 11 Renewable energy development	Generally permits proposals for generating heat or electricity from renewable energy sources where ever possible provided the benefits of the development, such as the contribution towards renewable energy targets, significantly outweigh any harm taking account of potential impacts and mitigation in respect to local landscape, areas of historical interest, residential amenity and wildlife sites and biodiversity.	Fully compliant The Appeal Proposal will generate a partial renewable energy from the biodegradable element of residual waste for production of power, much of which would be used locally. It could also result in the delivery of a DHN with local heat off take. Mitigation measures have been introduced to ensure that impacts on landscape, cultural heritage, amenity and ecology are minimised and overall the scheme delivers significant benefits that outweigh any residual harm.

Table 9.3 Minerals Strategy 2014

Policy ref	Policy	Compliance
SS1 Presumption in favour of sustainable development	Mirrors the NPPF in its presumption in favour of sustainable development	Fully compliant The Appeal Proposal represents sustainable development
SG1 Mineral Safeguarding Area	Requires demonstration that the sterilisation of proven mineral sources will not occur as a result of the development nor pose a serious	Fully compliant Whilst the site lies within a Minerals Safeguarding Area, the site comprises previously developed industrial land located within the operational Portland Port. The site has previously been

	hindrance to future mineral development in the vicinity	occupied by port buildings and is subject to an extant consent for an energy plant. It has more recently been used for the storage and preparation of construction aggregate for port construction works. The Appeal Site does not offer a viable mineral reserve and thus the Appeal Proposal would therefore not lead to the sterilisation of any mineral resources.
SG2 Mineral Consultation Area	Requires consultation with the County Council for proposals	Fully compliant As per Policy SG1 above the Appeal Proposal would not constitute inappropriate development in a Mineral Consultation Area.

Table 9.4 Portland Neighbourhood Plan 2019

Policy ref	Policy	Compliance
Policy Port/EN0 Protection of European Sites	Reflects other local development plan policies that protect the integrity of European sites	Fully compliant As per Dorset Waste Plan Policy 18 above
Policy Port/EN1 Prevention of flooding and erosion	Supports development in areas protected from coastal flooding	Fully compliant As per Dorset Waste Plan Policy 17 above. The proposed site is not subject to coastal flooding.
Policy Port/EN2 Renewable energy development	Supportive of proposal for energy generating infrastructure using renewable energy or low carbon sources, subject to no unacceptable effects on stated interests	Fully compliant The Appeal Proposal will generate partially renewable and low carbon energy from residual waste without unacceptable effects on the relevant interests and therefore is in accordance with this policy.
Policy Port/EN6 Defined development boundaries	Supports development within the define development boundary of Portland, subject to consideration of other policies	Fully compliant The proposed site is located within the defined settlement boundary of Portland and in compliance with the other policies.
Policy Port/BE1 Protecting existing employment sites and premises	Generally aims to preclude the loss of key employment areas	Fully compliant As per West Dorset, Weymouth and Portland Local Plan Policy ECON 2 above
Policy Port/BE3 New employment premises	Development proposals to create new employment premises within or adjacent to settlement areas will generally be supported provided they can be shown to benefit the local economy subject to acceptable effects I relation to noise, light, traffic, flood risk, parking.	Fully compliant As per the evidence of Simon Elliot there would be significant economic benefits. As per responses in relation to Dorset Waste Plan Policy 12, 13 and 17, unacceptable effects would not occur.
Policy Port/BE6 The northern arc	Recognises the economic and employment potential of the northern arc and the aim to improve the environmental quality of the area.	Fully compliant The site is located with the Portland northern arc which is identified for its employment and growth potential. The availability of local power and heat should act to attract energy intensive businesses to the Port and vicinity on the island.
Policy Port/ST1 Sustainable tourism development	Supports proposals that extend or expand existing tourism uses, subject to consideration of specific criteria	Fully compliant The Appeal Proposal will provide energy to the shore power facility, which will enable the Royal Navy Royal Fleet Auxiliary and cruise liners to switch off their diesel engines whilst in port. Cruise

Policy ref	Policy	Compliance
		liners are increasingly expecting ports to be able to provide shore power facilities to deliver more sustainable cruise based tourism. The provision of this will help to safeguard cruise liner visits in future and maintain and encourage grow in this part of the tourism sector. There is no evidence that the presence of the Appeal Proposal located within the existing industrial port area, and screened from many public viewpoints, would preclude visitors from coming to Portland or cruise liners from continuing to visit Portland. The Economic Impact Assessment provides details of the benefits for local tourism associated with providing a shore power facility at the port.
Policy Port/ST3 Tourist trails	Proposals that further the creation of a network of tourist and leisure trails will be supported subject to criteria.	Not relevant The Appeal Proposal does not further the creation of a network of tourist and leisure trails and thus the policy is not applicable. However, as per Policy COM7 of the Local Plan it would complete an important public right way around the Isle of Portland.

9.3 Conclusion on the Development Plan

9.3.1 In terms of the development plan, the preceding analysis shows that the Appeal Proposal would be in compliance with, or not result in any breach of, all relevant planning policies.

9.3.2 Thus, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act, the appeal should be allowed and planning permission granted unless material considerations indicate otherwise.

9.4 Material Planning Considerations

9.4.1 Without unduly repeating my evidence, I find that the following material planning considerations weigh in favour of the Appeal Proposal:

i. In my sub-sections 3.2 to 3.4 of my proof I have gone into and beyond the ‘need’ for residual waste treatment capacity envisaged by the DWP and demonstrated, using the most contemporary data and policy objectives, that the Appeal Proposal would still fulfil an identified need.

ii. Having established a need for residual waste management capacity, in my sub-section 2.5, I identify that extant Government policy and strategy support energy from waste (i.e. ERF development) as the best solution for meeting that need. They have done for some time and continue to do so.

iii. There are several other significant benefits that would accrue from the Appeal Proposal as set out in my sub-section 3.5, including:

a. Delivering new renewable and low carbon energy generation infrastructure.

b. Providing a source of baseload, dispatchable power generation, using an indigenous fuel source and thus contributing towards local, regional and national energy security.

c. Providing 'Shore Power' which will directly result in improvements to local air quality.

d. Mitigating / resolving the power constraint on the Isle of Portland.

e. A credible opportunity to deliver a viable and feasible DHN on the Isle.

f. The various socio-economic benefits including energy security and Shore Power removing a barrier for Port investment and underpinning and supporting the future continued growth of the cruise business, both of which Simon Elliot affords substantial positive weight. Plus the employment and other benefits which he affords moderate weight.

g. It resulting in £180 million of capital investment, the creation of new jobs and delivering ongoing opex investment throughout the life of the scheme.

h. It resulting in a in a net reduction in CO_2 emissions over its design life.

iv. Weight must be given to the fact that the port is a rapidly developing and dynamic environment and that the likelihood is that large scale, industrial port related development will come forward across the Appeal Site, and elsewhere in the port, without any formal planning applications being required. Further, that notwithstanding the port's numerous designated heritage assets, industrial port related development has been able to grow around them without significant restraint.

v. In terms of consistency in decision making, it is notable that an extant planning permission exists on the Appeal Site for a large scale energy plant which can use classified wastes as a fuel type.

vi. Finally, I note that Table 6.5 of the Planning Statement (CD1.22) supporting the application for the Appeal Proposal sets out a tabular analysis showing that the Appeal Proposal is in compliance with a wide range of other national and local policy and strategy documents. Whilst this analysis is at a very high level, I do believe it correct that the Appeal Proposal can draw support from these documents.

9.4.2 Conversely, I have not identified any material planning considerations that weigh against the Appeal Proposal, nor have material planning considerations been identified which would indicate that the appeal should be determined other than in accordance with the Development Plan, indeed they reinforce the logic for doing so.

9.4.3 Finally, I note that there are no emerging development plan policies of any material weight related to this appeal.

9.5 Conclusions

9.5.1 Based on the foregoing, I believe that the Appeal Proposal accords with the development plan and the identified material planning considerations only lend further support for the scheme. Thus, it follows that the appeal should be allowed and planning permission granted.

9.5.2 Notwithstanding this conclusion, in the event the Inspector finds tension with, or a breach of, any particular planning policy, I believe this is a case where the combined material planning considerations weighing in favour of the Appeal Proposal indicate that the appeal should be allowed in any event.

Glossary of Acronyms & Key Terms

ACT	Advanced Conversion Technology
AD	Anaerobic Digestion
APCR	Air Pollution Control Residues
ATT	Advanced Thermal Treatment
C&I waste	Commercial and Industrial waste
CD	Core Document
CfD	Contracts for Difference
CMC	Case Management Conference
CV	Calorific Value
DC	Dorset Council
DEFRA	Department for Environment Food & Rural Affairs
DWP	Dorset Waste Plan
EfW	Energy from Waste
EIA	Environmental Impact Assessment
EIP	Environmental Improvement Plan
EPC	Engineer, Procure & Construct (contractor)
EPR	Extended Producer Responsibility
ERF	Energy Recovery Facility
ES	Environmental Statement
ETS	Emissions Trading Scheme
Framework	The National Planning Policy Framework
GVA	Gross Value Added
HRA	Habitats Regulations Assessment
IBA	Incinerator Bottom Ash
IBAA	Incinerator Bottom Ash Aggregate
LACW	Local Authority Collected Waste
LHA	Local Highway Authority
MBT Plant	Mechanical Biological Treatment Plant
Mt	Million tonnes
Municipal Waste	A combination of LACW and C&I waste similar in nature and composition
MW	Mega Watt
NPPW	National Planning Policy for Waste
NPS	National Policy Statement

NCV	Net Calorific Value
PA	Portland Association
RDF	Refuse Derived Fuel - DEFRA have defined it as consisting of residual waste that complies with the specifications in a written contract between the producer of the RDF and a permitted end-user for the thermal treatment of the waste in an energy from waste facility or a facility undertaking co-incineration such as cement and lime kilns. The written contract must include the end-user's technical specifications relating as a minimum to the calorific value, the moisture content, the form and quantity of the RDF (DEFRA 16th February 2017).
Residual Waste	DEFRA have defined it as: *"Residual waste is mixed waste that cannot be usefully reused or recycled. It may contain materials that could theoretically be recycled, if they were perfectly separated and clean, but these materials are currently too contaminated for recycling to be economically or practically feasible. It may also be that there is currently no market for the material or it is uneconomic to take to market. An alternative way of describing residual waste is 'mixed waste which at that point in time would otherwise go to landfill"*.
SoC	Statement of Case
SoCG	Statement of Common Ground
SPWI	Stop Portland Waste Incinerator
SRF	Solid Recovered Fuel
Tolvik Consulting	A leading provider of independent market analysis and commercial due diligence to the European waste and bioenergy sectors
tpa	Tonnes per annum
WDA	Waste Disposal Authority
WDI	Waste Data Interrogator- Government waste data managed by the Environment Agency for England
WPA	Waste Planning Authority