

STATES OF JERSEY

PLANNING AND BUILDING (JERSEY) LAW

**PLANNING AND BUILDING (PUBLIC INQUIRIES)
(JERSEY) ORDER 2008 (as amended)**

SOUTH-WEST ST HELIER WATERFRONT PUBLIC INQUIRY

PLANNING APPLICATION REFERENCE PP/2021/1969

PROPOSAL: "REVISED APPLICATION & DESCRIPTION: OUTLINE APPLICATION (with all matters reserved). Demolish existing structures. Phased construction of new development comprising up to 984 residential units with basement parking; up to 31,125 sqm of non-residential floorspace comprising retail, commercial, social infrastructure, leisure, arts and cultural facilities; public and private open spaces; new pedestrian and vehicular access; other associated landscaping, infrastructure and highways alterations including relocation of the slipway and La Fregate, land reclamation and flood defence measures. 3D Model available."

REPORT TO THE MINISTER FOR THE ENVIRONMENT

by

Mr Philip Staddon BSc, Dip, MBA, MRTPI

An Independent Inspector appointed under Article 3

29 JUNE 2023

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INTRODUCTION

Background

1. My name is Philip Staddon. I am an independent Planning Inspector appointed by Jersey's Minister for the Environment. I am a chartered town planner with over 35 years' relevant experience across the planning and development industry in both public and private sector roles. In Jersey, I have worked as a Planning Inspector since 2015 and undertaken a number of complex Hearings and Public Inquiries.
2. The Minister has asked me to conduct a Public Inquiry to assess the Outline planning application for a proposal to construct a major mixed-use development on the Waterfront site in St Helier. The application has been submitted by States of Jersey Development Company (JDC), which is a States owned company.

Terms of Reference and Scope of the Inquiry

3. The former Minister for the Environment decided to call this Public Inquiry in February 2022¹. There was a period of delay arising from the preparation and submission of revised plans and documents. In January 2023², the current Minister confirmed the Inquiry and set the following terms of reference:
 1. *The production and public announcement of a timetable, adhering to the requirements of the Planning and Building (Public Inquiries) (Jersey) Order 2008, as soon as is reasonably practical.*
 2. *The consideration of the planning application under the policies of the Bridging Island Plan (2022).*
 3. *The delivery of a written report, summarising the planning issues and containing your recommendation for a decision on the application, by 30 June 2023.*
4. The Minister has further decided³ that, pursuant to Article 12(2) of the Planning and Building (Jersey) Law 2002, he will form a Determining Panel to decide the outcome following the Public Inquiry and the receipt of my report. This provision is used where the Minister considers that the nature of the application or the decision is of such significance for the public of Jersey that it is expedient to do so. The Panel will comprise the Minister Jonathan Renouf, Assistant Minister Hilary Jeune, and the Planning Committee Chair, Philip Le Sueur.

¹ Ministerial Decision MD-ENV-2022-47

² Ministerial Decision MD-ENV-2023-38

³ Ministerial Decision MD-ENV-2023-311

The Inquiry

5. I held the formal Inquiry sessions over five days, opening on Monday 15 May 2023 and closing on Friday 19 May 2023. The Inquiry was held at the St Paul's Centre in St Helier. It included an open 'plenary' evening session on Wednesday 17 May 2023. In addition to those appearing in person, I have reviewed and considered a significant volume of written representations, all of which are listed in, and can be accessed through, the Inquiry's electronic document lists⁴.
6. I would like to record my thanks to all participants for their contributions at the Inquiry and to those that made written representations. This has greatly assisted my understanding and assessment of the main issues and enabled me to reach informed evidence based conclusions and recommendations.
7. I also record my thanks to Helen Wilson, the Inquiry Programme Officer, whose skill in managing the complex programme and the very large volume of material and participants, has ensured that the Inquiry was efficient and effective. I would further like to thank the St Paul's Centre for providing such a welcoming venue for the Inquiry and to the events company Delta, for their skill and expertise in managing the complex array of technology in terms of live streaming, remote participation, the sound system, and the display of material.

Site inspections

8. I am very familiar with the application site, its context and its visibility from key locations. I have visited it on numerous occasions over the last 8 years and I have undertaken detailed site inspections with regard to the application proposals in April and May 2023.

Report structure

9. In terms of the structure of this report, I begin by addressing some preliminary and procedural matters. I then describe the application site, the application proposal and the relevant planning history. I then explore the legislative and planning policy frameworks, including an overview of the relevant adopted Bridging Island Plan (BIP) policies. I then summarise the cases made by the applicant, the planning authority officers and the many interested parties who have contributed to this Inquiry.
10. My report then explores the main issues that I have identified. These broadly follow the order of the thematic sessions set out in the Inquiry programme. Where relevant and appropriate, I have made reference to

⁴ The document lists can be found at:

<https://www.gov.je/Government/PublicInquiries/pages/southweststhelierpublicinquiry.aspx>

key evidence documents, consultee responses and representations. However, it would be unrealistic to reference every single document and representation, and the absence of a reference to any specific document does not mean that I have not considered it. Indeed, I have endeavoured to read and assess every single document and submission placed before me.

11. The main issues explored are:
 1. The 'all matters reserved' Outline planning application
 2. Community engagement
 3. Broad planning principle and spatial strategy
 4. Urban design, townscape/landscape and visual impacts
 5. Historic environment
 6. Natural environment, tree and landscape practicalities
 7. Housing, employment, health and education
 8. Amenity
 9. Transport
 10. Community infrastructure
 11. Drainage, flood risk and the coastal defence proposal
 12. Sustainability and BREEAM
 13. Ground conditions, excavation, waste arisings and disposal and pollution risks
 14. Other planning matters
 - Demolition and construction impacts
 - Air quality
 - Noise
 - Wind
 - Crime
 15. Planning conditions and agreements

12. My report then provides my overarching assessment and my formal recommendations to the Minister.

PROCEDURAL AND PRELIMINARY MATTERS

The Order

13. This Inquiry has been conducted in accordance with the provisions and procedures laid down in the Planning and Building (Public Inquiries) (Jersey) Order 2008. This Order sets out my functions and powers and the rules concerning announcements, submissions to the Inquiry, its timetable and other related matters.

Pre-Inquiry Meeting

14. In accordance with Article 8 of the Order, I held a Pre-Inquiry Meeting (PIM) on 3 April 2023. The purpose of such a meeting is purely procedural in nature and intended to make preparations to ensure that the Inquiry runs smoothly and efficiently. The agenda⁵ and notes⁶ of that meeting are available through the Inquiry document library.

Documents and document lists

15. The application contains a substantial number of documents and a further significant body of documents arose through consultation and publicity processes, and through the Inquiry itself. The Programme Officer did an excellent job in collating and managing this documentation, through the production and regular updating of 3 document lists, and including hyperlinks for ease of reference.
16. The first is the Core Documents list⁷, which includes all of the application documents, plans and the Environmental Impact Assessment.
17. The second is the Inquiry Documents list⁸, which itemises all of the Statements of Case, proofs of evidence, consultation responses, comments on the application, and documents that were introduced in the course of the Inquiry.
18. For completeness, the third document list itemises all of the Superseded Documents⁹, which includes all of the original plans and documents that have now been replaced by amended versions.
19. It is worthwhile recording at this point that a good number of people found the application documents to be confusing and difficult to navigate and understand. Some of the confusion arises from the fact that the application is submitted in Outline with all matters reserved, and yet much of the

⁵ Inquiry Document PGD1 – Inspector’s Note and Agenda for the Pre-Inquiry Meeting.

⁶ Inquiry Document PDG2 – Notes and Actions following the Pre-Inquiry Meeting.

⁷ <https://www.gov.je/Government/PublicInquiries/InquiryDocuments/Core%20Documents%20List.pdf>

⁸ <https://www.gov.je/Government/PublicInquiries/InquiryDocuments/Inquiry%20Documents%20List.pdf>

⁹ <https://www.gov.je/Government/PublicInquiries/InquiryDocuments/Superceded%20Documents%20List%20.pdf>

documentation relates to design and landscape matters, and I address this issue later. It is also the case that certain documents are very weighty, running to hundreds of pages and virtually unprintable for most people without access to professional high volume colour printing machinery. The large file size of documents required many to be split into smaller parts on the planning authority's online planning register, adding to the challenge of comprehending the application. There have also been amendments and further submissions in the life of the application, and during and even after the Inquiry week.

20. In many ways, much of this difficulty is attributable to the complexities of a modern-day planning application for such a large proposal. However, it is important that I record and note the expressed frustrations and difficulties, in terms of other parties being able to understand the proposal and its documentation.

Late application documents and errata

21. A few days before the Inquiry opened, the applicant submitted a Retail Planning Policy Statement. This has been added to the Core Documents list¹⁰ and I have considered its content in my assessment.
22. On the opening day of the Inquiry, the applicant introduced an errata schedule document (INQ4), which picks up and corrects various errors and inconsistencies between the parameter plans and the Design Codes documentation, as an alternative to reissuing and printing corrected versions of very weighty application documents. Whilst this is less than ideal, I accepted the errata schedule and it was added to the Inquiry Documents list (INQ4). Following the Inquiry, and at a point where this report was at an advanced stage of drafting, the applicant issued a corrected pack of documents and plans which has been added to the core documents list. Given the lateness of their receipt, I have not reviewed this material in any detail, although I have no reason to doubt that it picks up the matters set out in INQ4.

Livestreaming and virtual attendances

23. The Inquiry was livestreamed and recordings captured and made available to view on YouTube. There was a temporary computer server failure for a short period on the Friday morning (19 May 2023) which meant that about 25 minutes of the Inquiry was not recorded. When this became apparent, I adjourned the session and resumed when the issue was resolved.
24. The Inquiry also had facilities to allow virtual attendances by witnesses.

¹⁰ CD3.23

Conflicts of interest, public perception issues and Jersey politics

25. The applicant, JDC, is the Government of Jersey's regeneration arm. It is a delivery vehicle for major regeneration and development with a remit to complete the development of the St Helier Waterfront area and to undertake the regeneration of surplus States owned assets. Every initiative JDC undertakes is Government led.
26. The planning authority is also part of the Government of Jersey and sits within the Infrastructure and Environment (I&E) department. Other regulatory regimes relevant to the consideration of this application, including those covering waste, pollution, noise, transport, drainage, and protected species, are also part of the Government's organisation and functions, and many of these also sit with the I&E department.
27. There is an inescapable potential for perceived conflicts of interest, with one arm of the Government putting forward a development proposal, with a purported £1 billion¹¹ Gross Development Value (GDV) and a commercial return on investment prerogative, and other arms of the Government seeking to regulate and judge it. There are further complications arising from the fact that, in certain areas, planning policy differentiates its approach to development on States owned land.
28. Throughout the Inquiry, one interested party made repeated allegations about poor governance and conflicts of interest. There were also opinions expressed by a number of contributors about 'Jersey politics' and, it was claimed, its propensity to 'kick the can down the road' when it came to difficult and strategic decisions. It was further expressed that this resulted in a short-termism, with a claim that any politician being seen to grasp political nettles that resulted in short term unpopularity, would quickly find themselves out of office. There was also criticism levelled at the selection for the Minister's Determining Panel, on the basis that the members were not St Helier representatives.
29. For the most part, these are not matters that impact directly on my assessment of the planning merits of the application, but it is nonetheless important that I record them in the interests of transparency. In many ways, these perceived conflicts, complexities and allegations are part and parcel of modern-day Jersey life, but they do provide a further justification, were it needed, for the Ministerial Decision to call this Inquiry.

¹¹ States of Jersey report - *Action on Housing – Recent Progress and Waterfront Guidance*, September 2021
Page 8 paragraph 1 (INQ16c).

30. I have conducted this Inquiry independently and impartially and in accordance with accepted principles¹² for such proceedings. I can record that I have been able to conduct my role with complete freedom and without interference. There have been no secret briefings, lobbying or instructions seeking to influence a particular outcome or recommendation. My assessments and findings are my true and professional opinions arrived at after assessing the application, evidence and representations, over a period of some 5 months.

Terminology of regulatory functions

31. The Government of Jersey has a complex departmental structure and departmental names change over time. For clarity, I adopted the terms 'planning authority', 'highway authority', 'drainage authority', 'education authority' and 'waste authority' throughout the Inquiry and in this report. This helps to define the regulatory functions, many of which sit within one large government department (I&E), with clarity and assists legibility and understanding, particularly for members of the public.

The 'live' application

32. It is important to appreciate that the Inquiry has been considering a 'live' planning application. It does not relate to a planning appeal where a decision has already been made. It is equally important to appreciate that the application is for an extremely major and complex development.
33. Notwithstanding the timetable for the submissions of Statements of Case and proofs of evidence, I have not sought to prevent later submissions from interested parties. It is worth noting that a not inconsiderable amount new material was introduced just before and during the Inquiry week. In writing this report, I have considered all of the evidence before me up to the date of issue.

Statements of Common Ground

34. A Statement of Common Ground (SCG) is a written statement containing factual information about the proposal which the applicant and the planning authority do not dispute. These can save time and enable the Inquiry to probe the key issues, questions and differences of view.
35. In this case, 5 SCGs have been produced, albeit that 4 of these arrived rather late, which limited their value to the preparations for the Inquiry. The SCGs cover contaminated land and hydrogeology (SCG1); planning matters (SCG2); waste regulation matters (SCG3); drainage (SCG4); and

¹² The key guiding principles for Inspectors are openness, fairness and impartiality, which formed the basis of the recommendations of the 'Franks' Committee on Administrative Tribunals and Enquiries, chaired by Sir Oliver Franks in 1957.

transport (SCG5). All of these documents are well written and helpful to the Inquiry and I have referred to them where appropriate in this report.

Compliance with publicity and consultation requirements

36. At the Inquiry, the planning authority confirmed that all publicity and consultation requirements with regard to the application have been met.

Future reserved matters submissions should Outline permission be granted

37. Through the Inquiry process a number of representors made the point that, with all matters of detail reserved, it would be important that future reserved matters submissions should be fully scrutinised.
38. A procedural request made by Mr Young and others was that such reserved matters application submissions should be determined by the Planning Committee rather than under officer 'delegated' powers. There appeared to be a consensus that this would be the likely procedural route in any event. Whilst this is not a matter directly relevant to my consideration, I record the request made for the Minister to note.

THE APPLICATION SITE

39. The application site covers a large area between the St Helier town centre and the seafront. It extends to some 11.8 hectares and much of the land is reclaimed through infilling to the south of the historic Esplanade seawall, which took place in the late twentieth century.
40. Starting in the southern part of the site, the application's red-lined boundary includes Castle Street roundabout, Waterfront Gardens and the modern leisure complex, which includes the swimming pool, cinema, health and fitness centre and a range of other leisure and food and drink uses.
41. Moving northwards, the central part of the site includes the 6 lane La Route de la Libération (the A1), which bisects the site into two parts, the eastern part being a former open temporary car park adjacent to the modern finance centre office buildings, and including the Listed Esplanade promenade and seawall and Esplanade highway (from Gloucester Street to Castle Street). The western central part is also a large temporary open car park and currently includes the temporary marketing suite and construction compound for the Horizon apartments development (which is just outside the site to the south), and extends to include the seawall and revetments to the north of the Radisson Blu hotel. There is an underpass/subway (beneath La Route de la Libération) connecting these eastern and western parts, which is currently closed off by construction site fencing.
42. The northern part of the site lies between Victoria Avenue/Esplanade and the coast and includes Les Jardins de la Mer, the Listed La Frégate café, kiosks and ticket office for the Elizabeth Castle ferry, the slipway, the Listed World War 2 Casemate, public parking adjacent to Victoria Avenue, the seafront walkway and cycle paths, and an area of the beach beyond the seawall.
43. There are several other significant heritage assets in the wider context of the site, including Elizabeth Castle to the south-west of the site and Fort Regent to the south-east.
44. The precise application boundaries are shown on drawing number P12157-00-003-GIL-0002 Rev 05¹³.

¹³ CD2.1

PLANNING HISTORY OVERVIEW

45. The application site forms part of the land reclaimed from the sea by landfilling of waste in the period between 1980 and 1995, under the 'West of Albert' project. This project moved the town's seafront from Esplanade to its current position and delivered Elizabeth Marina and the Elizabeth Harbour ferry terminal. It created about 23 hectares of land which became known as the New Waterfront.
46. Within this wider area of reclaimed land, completed developments have included the Victoria and Albert apartments (2003), Harbour Reach apartments (2006), the Radisson Blu hotel (2007) and Castle Quay apartments (2011). More recently, office buildings have/are being constructed at the International Finance Centre (IFC) (2017 – present) and the Horizon development, comprising 3 large and tall buildings housing 280 flats, are at an advanced stage of delivery.
47. Within the application site itself, much of the development took place in the early 2000s and includes: two surface car parks; a basement car park with a landscaped park above (Waterfront Gardens); a leisure complex including cinema, swimming centre, night club, health and fitness centre and a number of restaurants and bars (completed around 2003); the Waterfront promenade and a formally landscaped seaside park (Les Jardins de la Mer); a number of cafes (including the recently Listed La Frégate café); and a ferry kiosk.
48. There are some lapsed planning permissions for residential development on a part of the site, just to the north of the Radisson Blu hotel.

THE APPLICATION PROPOSAL

49. The application was actually submitted in 2021, but has been the subject of amendment and revised plans and documents, the main body of which were submitted in December 2022. The application, as amended, seeks Outline planning permission with all matters of detail reserved. The development components for which Outline permission is sought includes:
- Demolition of most existing buildings and structures
 - The construction of 'up to 984 residential units with basement parking'
 - The construction of 'up to 31,125 sqm of non-residential floorspace comprising retail, commercial, social infrastructure, leisure, arts and cultural facilities'
 - The creation of public and private open spaces
 - New pedestrian and vehicular access
 - 'Other associated landscaping, infrastructure and highways alterations including relocation of the slipway and La Frégate, land reclamation and flood defence measures.'
50. The application is supported by a significant body of plans, documents and reports. The plans include sets of drawings described as 'parameter plans' which are indicated as being 'for approval', along with a further set of illustrative plans.
51. The documents include an Environmental Impact Statement (EIS). Volume 1 of the EIS provides the applicant's detailed assessments covering: population and health; townscape and visual impact; the historic environment; transport and access; air quality; noise and vibration; ground conditions and excavation waste; flood risk and drainage; marine ecology; daylight, sunlight and overshadowing; wind; and intra development cumulative effects. Volume 2 includes a detailed set of figures and Volume 3 contains a significant body of appendices.
52. Other documents include a Design and Access Statement (DAS), Design Codes, Design Codes Summary (DCS), a Planning Statement, a range of reports covering: utilities; a pre-demolition survey; coastal defence concept design; La Frégate structural assessment; community consultation; sustainability; ecological impacts and enhancements; tree; waste management strategy; daylight and sunlight; noise; and crime impacts.
53. The proposal, as defined by the maximum proposed parameters, is available to view through the Government of Jersey's 3D model¹⁴.

¹⁴ <https://www.gov.je/citizen/planning/Pages/PlanningApplication3D.aspx?s=1&r=PP/2021/1969>

LEGISLATION AND POLICY

The Law

54. The Planning and Building (Jersey) Law 2002 (as amended) provides the legal framework for the operation of the planning system in Jersey. In essence, it adopts a 'plan-led' system where a development plan, 'The Island Plan', produced through an open and participative process and thereafter approved by the States Assembly, takes primacy in decision making. There is a general legal presumption that development in accordance with the Island Plan will be permitted and development that is inconsistent with the Plan will normally be refused.
55. Making an assessment of whether a development proposal is in accordance with the Island Plan, or inconsistent with it, can often involve complicated and balanced judgments. This is particularly so with major and complex developments.
56. Sometimes policies can appear to pull in different directions, whereby satisfying one policy creates a tension with another. This is not a fault with the Plan, but simply a product of a highly sophisticated development plan, which seeks to control and influence a wide range of different aspects of proposed development, in the interests of the principles of sustainable development.
57. UK case law¹⁵ has established that a proposal does not have to accord with every single policy contained in the development plan, but the key test is whether it accords with the plan when considered as a whole. Jersey case law¹⁶ has similarly established that the Island Plan needs to be looked at holistically.
58. Under Jersey law, should the overall assessment find that a proposal is inconsistent with the Island Plan, the decision maker is not automatically required to refuse the application. The law allows the decision maker to depart from the Plan if there is 'sufficient justification'¹⁷ for overriding its provisions. That is to say, there is some discretion for decision makers, but any inconsistencies (with the Plan) have to be justified. What constitutes a sufficient justification is not defined in law, or set out in guidance, and is therefore a matter for the decision maker.
59. The proposal is also of scale and type that means that it constitutes prescribed development under Schedule 1 of Planning and Building (Environmental Impact) (Jersey) Order 2006. This means that the

¹⁵ City of Edinburgh Council v. Secretary of State for Scotland and Others [1997].

¹⁶ Therin v Minister for Planning and Environment [2018] JRC098.

¹⁷ Article 19 of Planning and Building (Jersey) Law 2002 (as amended).

application must be accompanied by an EIS which properly assesses and determines the likely significance of environmental effects arising from the proposal, and the nature of any mitigation measures that may be required to mitigate or reduce any identified any negative environmental effects.

The Bridging Island Plan (Adopted March 2022)

60. At the time the application was submitted, the relevant plan was the 2011 Island Plan (Revised 2014), but this was at the end of its tenure and a new plan, the BIP, had been prepared, consulted on and was the subject of an independent examination process by a panel of Inspectors. The BIP was produced as a shorter term (3 year) 'bridging' plan rather than the usual 10-year plan period. This was a response to exceptional circumstances arising from the Covid-19 pandemic and Britain's exit from the European Union. As a result of its nature, the BIP carries forward significant common ground, in terms of strategy and environmental protection, to the plan it replaces.
61. Following the issue of the Inspectors' report in January 2022, and debate on the draft plan and amendments to it, the States Assembly approved the BIP on 25 March 2022. Upon approval, the BIP immediately became the statutory development plan for Jersey and is the Island Plan under which the Waterfront application should be assessed.
62. I have set out below, in shorthand form, the list of key BIP policies that are relevant to the consideration of the application proposal. I explore the policies' wording and specific requirements in more depth in the thematic assessments where appropriate.
 - SP1 – Responding to climate change
 - SP2 – Spatial strategy
 - SP3 – Placemaking
 - SP4 – Protecting and promoting Island identity
 - SP5 – Protecting and improving the natural environment
 - SP6 – Sustainable Island economy
 - SP7 – Planning for community needs
 - PL1 – Development in Town
 - PL5 – Countryside, coast and marine environment
 - GD1 – Managing the health and wellbeing impact of new development
 - GD2 – Community participation in large-scale development proposals
 - GD3 – Planning obligation agreements
 - GD5 – Demolition and replacement of buildings

GD6 – Design quality
GD7 – Tall buildings
GD9 – Skyline, views and vistas
GD10 – Percent for art
NE1 – Protection and improvement of biodiversity and geodiversity
NE2 – Green infrastructure and networks
NE3 – Landscape and seascape character
HE1 – Protecting Listed buildings and places, and their settings
HE5 – Conservation of archaeological heritage
ER1 – Retail and town centre uses
ER2 – Large scale retail
ER4 – Daytime and evening economy uses
EO1 – Existing and new office accommodation
H1 – Housing quality and design
H2 – Housing density
H3 – Provision of homes
H4 – Meeting housing needs
H5 – Provision of affordable homes
H6 – Making more homes affordable
ME1 – 20% reduction in target energy rate for large-scale developments
ME2 – BREEAM rating for new larger scale non-residential buildings
ME3 – Air quality and increased emissions
CI1 – Education facilities
CI2 – Healthcare facilities
CI5 – Sports, leisure and cultural facilities
CI6 – Provision and enhancement of open space
CI7 – Protected open space
CI8 – Space for children and play
TT1 – Integrated safe and inclusive travel
TT2 – Active travel
TT 3 – Bus service improvement
TT4 – Provision of off-street parking
WER1 – Waste minimisation

WER2 – Managing flood risk
 WER3 – Flood infrastructure
 WER4 – Land reclamation
 WER6 – Surface water drainage
 WER7 – Foul sewerage
 UI3 – Supply and use of water

63. The above list of policies is almost identical to the agreed list of BIP policies that the main parties have set out in their Planning SCG¹⁸, although I have added policies GD10 and HE5 for completeness.
64. In addition to the policies, some of the BIP evidence base documents are relevant to this Inquiry, and have been referred to in evidence. The most notable are:

Jersey Integrated Landscape and Seascape Character Assessment (May 2020)

St Helier Urban Character Appraisal: Review 2021(March 2021)

Infrastructure Capacity Study (December 2020)

Strategic Flood Risk Assessment (April 2021)

St Helier Public Realm and Movement Strategy Stage 3 Report (March 2021)

Objective Assessment of Housing Need (January 2019)

Assessment of Housing Supply Methodology (November 2021)

Supplementary Planning Guidance

65. In addition to the Island Plan, the Law¹⁹ allows the Minister to publish 'guidance' and this, where relevant, must be taken into account when considering planning applications.
66. There is a wide range of such Supplementary Planning Guidance (SPG) in Jersey. Its purpose is to provide assistance and information on policy considerations under the Island Plan, as well as guidance on how to make planning applications. On the States' website SPG is listed under 3 categories: masterplans and frameworks; supplementary planning advice notes; and supplementary planning policy notes. The most relevant documents are set out below under these headings.

¹⁸ SCG2

¹⁹ Article 6 of Planning and Building (Jersey) Law 2002 (as amended)

SPG masterplans and frameworks

67. Of particular note is the Southwest St Helier Planning Framework (SWSHPF), which was adopted as SPG in 2019. On adoption, it superseded earlier adopted guidance and masterplans, which included the ambitious, and seemingly undeliverable, proposal to put the 6 lane La Route de la Libération (the A1) into an underground tunnel.
68. The SWSHPF sets out a vision and development principles, identifies key opportunity sites, and discusses delivery and community engagement. Whilst the adoption of the SWSHPF as SPG predates the BIP's adoption, it remains relevant and broadly consistent with the BIP and it is therefore a material consideration in the planning assessment.

SPG planning advice notes

69. The most relevant notes are:
- Percentage For Art SPG (June 2008)
 - Practice Note 21: The Jersey Architecture Commission (April 2014)
 - Advice Note – Site Waste Management Plans (2013)
 - Design Guidance for St Helier (January 2013)
 - Planning Advice Note No.4 – Design Statements (2006)
 - Development of Potentially Contaminated Land (August 2017)
 - Disposal of Foul Sewage (May 2012)
 - Planning Obligation Agreements SPG (adopted July 2017)
 - Supplementary Planning Guidance Note 1: Archaeology and Planning (January 2008)
 - Managing Change in Historic Buildings (June 2008)
 - Supplementary Planning Guidance Note 18: Crime Impact Statements (March 2012)

SPG planning policy notes

70. The most relevant notes are:
- Roofscape Policy Note 4 (May 2008)
 - Minimum Specification for Housing Development SPG6 (adopted Feb 1994) * NOTE – due to be replaced – see draft SPG below

- Parking Guidelines Policy Note 3 (September 1988) ** NOTE regarded as completely out of date and carrying no weight. Due to be replaced – see draft SPG below

Draft SPG

71. In addition to the adopted SPG, there are 3 draft SPG documents:
- Density (October 2022)
 - Residential Parking Standards (March 2023)
 - Residential Space Standards (March 2023)
72. At the Inquiry, Mr Coates (Government of Jersey planning policy officer) advised that these draft SPGs were likely to be adopted prior to a decision on the Waterfront application, with minimal change to the published draft versions.

Other States policies and documents

73. Planning policies and SPG does not exist in a vacuum and has links and inter-relationships with a wider public policy framework. Whilst my assessment is understandably focused on the BIP policies (and relevant SPG) I have also had regard to other policies including:
- Government of Jersey Common Strategic Policy 2023–2026
 - Government of Jersey Carbon Neutral Roadmap 2022
 - Sustainable Transport Policy Framework 2020–2030
 - Children and Young People’s Plan 2019–23
 - St Helier Open Space Audit (2018)
 - St Helier Public Realm and Movement Strategy (March 2021)

**SUMMARIES OF THE CASES MADE BY THE APPLICANT, THE
PLANNING AUTHORITY OFFICERS AND INTERESTED PARTIES**

The Applicant's Case

74. In addition to the application plans and documents, JDC provided a statement of case (SOC1) and 18 proofs of evidence. The contributors were: Mr Nicholson (Planning APP/1); Mr Conn (Urban Design APP/2, APP/2a and APP/2b); Ms Gibson (Landscape and Visual APP/3); Messrs Fielding and Waddington (joint proof covering Architecture and Design Codes APP/4); Mr Hyde (Transport APP/5a and APP/5b); Mr Farman (Heritage APP/6); Mr Slater (Ground Conditions APP/7a and APP/7b); Mr Simmonds (Drainage APP/8); Ms Safe (Ecology APP/9); Ms Judd (Flood Risk APP/10); Mr Short (Coastal Defence APP/11); Mr Maclagan APP/12a and APP/12b); Mr Fowler (Air Quality APP/13); Dr Singh (Sustainability APP/14); Mr Symes (Wind APP/15); Mr McKenna (Daylight and Sunlight Amenity APP/16); Ms Curran (Engagement APP/17); and Ms Beard and Mr Geraghty (joint proof covering Population and Health APP/18).
75. The summary below is based on the opening submission of Mr Henry (INQ1) and the closing submission of Mr Nicholson (INQ17a), which, together capture the applicant's summary case. I have made some minor edits for clarity.

Mr Henry's opening

76. Mr Henry explained that JDC is 100% owned by the Government of Jersey and it is the Government's regeneration arm, carrying out major mixed-use projects. It is the applicant and it will be the developer for this project. The company supports and assists the Government of Jersey in delivering its strategic objectives and outputs that are balanced socially, environmentally and financially. He set out the following points.
77. To date, JDC has delivered almost 400 residential units and two Grade A office buildings at the IFC Jersey and we are completing the final block of a major residential development and a third Grade A office building. It has delivered and maintains extensive areas of public realm including Weighbridge Square, Trenton Square, Marina Gardens and Les Jardins de la Mer and we maintain the landscaping on Route du Port Elizabeth.
78. Placemaking is at the heart of what JDC does and it is passionate about design and ensuring that the buildings and public realm that it delivers will stand the test of time. There has been a step change in the quality of developments on the Waterfront since the establishment of JDC in 2012.
79. The application proposal responds to consultation feedback as well as providing for the needs of the Island as set out by the Government. The

Island has a need for 7,000 new homes by 2030. This demand is being created by the continuing trend for smaller household sizes and the requirement for inward migration to support the needs of the Island as a result of the ageing population causing a reduction in the amount of working age people.

80. The spatial strategy for the Island, as restated in the BIP, is to focus new development within the existing built-up areas. From a transport, infrastructure and environmental perspective, this Waterfront area provides a natural extension to the town and provides the Island with a release valve that will reduce pressure for green-field rezoning.
81. Islanders who participated in the consultation process identified the need for new residential accommodation and that the Waterfront could provide for such use, however they also wanted the area to be landscape led and for the Waterfront to be a destination for Islanders and visitors. We have taken these key directional markers and selected a design lead, with landscaping at their core.
82. As a result, 56% of the development area is dedicated to open space and public realm and, as well as proposing almost 1,000 new homes, the area will also deliver sport, leisure, art, culture and commercial uses at the ground floor. Placemaking has been a key consideration and generating a range of spaces and amenities for all age groups and all abilities will feature in the new areas of open space and ground floor activities.
83. JDC recognises that there will be no public finances invested in this project and it is therefore committed to investing £150 million in public infrastructure in the area. This includes: new public parks, new public squares, new pedestrian and cycle streets, creating a tree lined boulevard on La Route de la Libération, delivering a new sports centre, that will include an indoor 25m pool and a gym, a 390-space cycle hub, below ground public parking, enhancing vital sea defences and the relocation of the West Park slipway. Plus, enhanced connectivity, with a new pedestrian crossing of the dual carriageway, which will no longer be a barrier between the Waterfront and the heart of town.
84. This is the most significant consolidated piece of underused brownfield land in the Island and it is essential that we get it right. We are genuinely very excited by the proposals and look forward to further engagement with the community as these plans evolve to ensure that we align with expectation and requirements.

Mr Nicholson's closing/summing up

85. Mr Nicholson made the following key points.
86. The scheme is landscape-led, supporting placemaking, children's play, wellness and climate objectives. It provides flexibility (responding to the recent planning history) and sets a framework for the next steps, helping to delivering our Waterfront, as set out in adopted SPG, and embedded in the BIP.
87. It is not a prescriptive masterplan, neither is it a full and detailed proposal. It is a step towards realising the aspirations expressed in the Island Plan and supplementary planning guidance, in a framework of on-going engagement. It takes the policies off the page and transposes their objectives onto the site, with delivery through a series of future reserved matters applications, on a phased basis over a 12-year period.
88. There is a natural desire for more information, which is understandable and which I see as positive. This will come as future phased reserved matters applications, subject to full regulatory controls and public engagement. The nature of the application is clear, and legitimate. Design Codes are a positive tool to support the application intent and assist all parties in expressing the design objectives.
89. A great deal of understanding, common ground and positivity has emerged through the Inquiry week. I am grateful for the early clarification from the planning authority that the site is sustainably located, underutilised, spatially accepted and supported in principle – that is a very good start for an Outline application of this nature.
90. It is also clear and accepted by all that the application has involved considerable public consultation and legitimate engagement. This is rightly required by the Framework and has been embraced by the applicant – the circumstances in lockdown necessitated a range of innovative approaches. Examples being 3D virtual-reality on-site tours, and the most recent public event which commenced with a 'press conference' where the mainstream journalists were replaced by over 20 GCSE and A level school children, as has been happening annually.
91. This level of engagement is unprecedented. The engagement process is not one-way. It has led to significant changes, and considerable rethinks, with feedback from the public, Jersey Architecture Commission (JAC) and planning authority, leading (for example) to the reduction of the G1 building and requiring a 3-month review of the road to align with their longer-term aspirations. The final response to the most recent comments of the JAC will follow. This is not box ticking, it is positive, constructive and useful. Based on my experience of applications in Jersey it is 'exemplar' in

relation to its scope and intent – setting the tone for the application. It will continue through the reserved matters phases.

92. On day 1 of the Inquiry, we reviewed the approach to the masterplan, townscape and visual impacts, and heritage. We have acknowledged the challenge of delivering the plan-led objectives on this site in relation to townscape and heritage. The architectural team discussed the context of their work and how the Coding was approached, peer reviewed, with a flexible intent – following the guidance of the Urban Character Appraisal and the policy framework of the plan – responding to the JAC, which we will continue through the detailed stages.
93. We discussed how heritage policy HE1 has evolved from the 2011 plan to the 2022 BIP and how it now includes considerations, where public benefits are clear, direct and evidenced. The supporting text indeed identifies coastal defence works are an example of such public benefits – I would submit that delivering the objectives of the States endorsed Island Plan are public benefits, particularly when we recap the evidence of Mrs Day in relation to the pipeline of housing, and the emphasis given in the Island Plan, being that the delivery of housing is a primary need that must be fulfilled in order to create strong, healthy and sustainable communities.
94. On day 2 of the Inquiry, we recapped the landscape-led approach, and the emphasis this gives to the spaces, and character of the place, noting the intentions of this strategy underpinning the application, and embedded in the Codes. We discussed the specific choice of Gillespies to bring their excellence and experience into the application. We discussed the track record of JDC in delivering public realm of a high quality, well used landscaped areas as public assets – this extends through their commitment to management. This positivity was continued through the submissions in relation to biodiversity, ecology and the marine environment. This has evolved into conversations in relation to biodiversity net gain – this is a first for Jersey, secured by condition and beyond the policy requirement. This is further evidence of the approach of the applicant.
95. The next witness confirmed there is no concern about school capacity – which can be managed through existing catchments. We then moved to housing need, which is an issue that I believe sits at the heart of the BIP, at the top of the policy hierarchy. There was clear agreement with the position from the witness for the planning authority that: *"it is essential we agree a housing pipeline"* and that the application is *"strategically important"*, with the witness concluding that she was *"very strongly in support"*. That was echoed in the room, with other comments recording a *"very serious housing situation"*, with *"severe housing need"*. This clear need does not give a free rein, but it is a significant consideration in the

balance, which is about the need to create successful places, for new communities.

96. This led to a discussion about density – the policy position is for a design led, contextual approach. This is supported by a parallel approach to numerical density targets, which set a minimum threshold. It is notable that the Urban Character Appraisal Review considers the New Waterfront as the only area in St Helier with low sensitivity to (higher) density. Our proposal is entirely consistent with all approaches in the draft guidance, and we are content with the management plan by condition – aligning with positive and high-quality placemaking.
97. Continuing this theme, we reviewed issues of residential amenity – internal standards, sunlight/daylight and wind. We reviewed the position set out within policy – discussing successful placemaking, GD1 and H1. There was a general acceptance that the final detailed design stage was the appropriate time for these points to be concluded (guided by the Codes) with the witnesses explaining that there are no concerns with looking ahead.
98. Day 3 commenced with a clear focus on highways, with excellent common ground and a clear understanding of all the background work done. I am grateful for the endeavours of the technical specialists which acknowledges the relationship between transport, the spatial strategy of the plan, and the carbon agenda. Indeed, the witness for the planning authority considered the approach to the promotion of active travel was "*iconic*". The blue light services also raised no operational concerns with the proposals, agreeing their input at the Byelaws stage, and we are grateful for their time.
99. The next session allowed the opportunity to clarify the intention in relation to the pool and cinema, with clear commitments secured via a planning obligation agreement (POA). These would be subject to their own full applications and key groups have already been re-engaged, offering their support. There was agreement from the planning policy team in relation to demolition of the existing buildings, the retail material was considered competent and well evidenced, supporting the position expressed throughout the application material. 47% of the site area is new open space – supporting the landscape led intent – across a dynamic range of uses, landscaped squares, public gardens, private spaces and children's play, being considerably in excess of new policy thresholds.
100. The afternoon session moved into consideration of the flood risk and drainage, with clear common ground, supporting the technical work done to date. The coastal defence proposals presented by our witness was wholeheartedly endorsed by the witness for the planning authority, who confirmed the proposal was "*very positive*" and "*needing to be put in*

place". The evening session was extremely useful and the team will continue to interact with the Youth Parliament, and other stakeholders.

101. On day 4, we commenced by reviewing sustainability, across a range of topics, both at a spatial level, and moving through into details. There was a clear acknowledgement of commitments which go above and beyond the current obligations, including BREEAM "Excellent", and with flexibility as standards may evolve.
102. Ground conditions, excavation, waste and pollution were then reviewed in a detailed session. We are grateful for the involvement of the appointed advisors who came to a great deal of common ground in relation to a "no reason to doubt any element of the methodology or conclusions, considered robust". It is clear that the situation with La Collette is fluid, this is no different to as it has been for many years.
103. Our approach has been reviewed through the waste hierarchy to (1) justify the need for the basement in relation to urban design principles; and (2) critically analysing the volumes, reducing the parameter to the absolute minimum.
104. There is a common understanding that the issues of waste are not unique to this application, the recent hospital approval includes a larger volume of material to be disposed of. There is, irrespective of this application, a need for the island to resolve its waste problem. There has been a live planning application, since 2016, seeking to resolve this, and now a pending States Debate. It is not unreasonable to look ahead (in the relatively short term) and Mr Jones expects this to be concluded, and we discussed the options available to manage the implications for the application.
105. On day 5, I am grateful for the input of the technical teams in relation to air quality, noise and the CEMP. It was a very practical review of the issues. The worst-case forecasts were 50% lower than any trigger values, and a general acceptance that noise is entirely manageable through the detailed design proposals.
106. Referring to my opening submissions, I restate my opinion that in the context of a plan-led system, this is a plan-led application. It has not emerged from a vacuum and is rooted in the Island Plan, the adopted SPG and the UCA Review. It is this Island Plan which provides for the sustainable development needs of the Island. It sets the "single compelling narrative" about what the planning system is seeking to achieve.
107. This plan sets the clear objectives that have been constantly reviewed, it requires the doubling of housing delivery, it sets the height parameters, and it sets the desire to protect the natural and historic environment and so support positive placemaking. This is acknowledged in the UCA as the

development dilemma, and in the BIP as natural tensions, from which a planning balance needs to emerge. The former minister proves a clear acknowledgement of the implications of the plan strategy in its foreword:

- Encouraging the better use of already developed land
- Enabling the development of denser, more compact forms of development
- Include taller buildings on sites that are best able to accommodate them

108. With reference to the UCA, SPG and BIP, this is a site which is best able to accommodate density and height. There is no building over 8 floors proposed, and we must also acknowledge that the immediately adjacent context already includes existing buildings of 8, 9, 10 and 11 storeys, at numerous points on the Esplanade and Waterfront. I refer you to the planning statement, where the tensions are acknowledged.

109. Aside from the acknowledged housing need, the high-level outcomes include:

- Helping to reconnect the old town with the new Waterfront with an at-grade crossing of the dual carriageway as part of a coherent series of landscaped spaces
- Supporting active travel by making the most efficient and effective use of land and in a spatially appropriate location, balancing modest levels of car parking with excellent cycling facilities and new public footpaths
- Helping to deliver long-term climate resilience by improving flood defences, adding up to 1.5m to the seawall, and infilling around the current slipway, which is reprovided to the west – this benefits the site and wider St Helier businesses and residents, in accordance with the shoreline management plan.

110. My professional opinion is that this application is technically sound and is a positive and compelling package, which accords with the BIP, and should be positively welcomed as an important step to delivering the vision for the Waterfront.

The Planning Authority Officers' Case

111. The planning authority officers' statement of case (SOC2) made clear that it had been prepared by the officers of the department. It acknowledged the need for housing as confirmed in the BIP and that the proposal will deliver approximately 984 residential units, a mix of non-residential uses, together with areas identified for open space, landscaping and wildlife

enhancements and transport initiatives, and that it will enhance flood defences in this part of St Aubin's Bay. However, notwithstanding these benefits, the department assessed that the application has not demonstrated that significant detailed matters have been adequately addressed.

112. Ms Johnston provided a proof of evidence (PA/1) which expanded on the detailed matters of concern and explored the policy compliance of different aspects of the scheme including matters relating to: residential uses; community and leisure use; retail content; healthcare; education; public open space; office use content; design, landscape and visual impacts; amenity considerations; open space provision; sustainability, climate change and renewable energy; waste; and public feedback on the proposals. Ms Ingle provided a more focused proof (PA/2) covering heritage, townscape and landscaping matters.
113. Proofs of Evidence were provided by a range of other regulatory and expert officers on specialist matters. The contributors were: Mr Monks on pollution control (PA/3); Mr Downie on liquid waste (PA/4); Mr Rive on waste (PA/5); Mrs Jones on sustainability, climate change and renewable energy (PA/6); Mr Hayward on transport (PA/7); and Mr Ruddlesden on ground conditions, contamination and hydrogeology (PA/8).
114. The following summary of positive benefits and negative concerns is based on Ms Johnston's closing statement (INQ19) with some minor edits and formatting changes for clarity:

Positives/Benefits

- The application site performs well at a strategic level for a residential-led mixed-use scheme due to its sustainable location within the built-up area where policies SP1(1) and SP2 direct new development.
- The scheme seeks to deliver a mix of 1, 2 and 3 bed apartments in a highly sustainable location and this carries significant weight as a material consideration. In principle, the delivery of up to 984 new homes accords with policy H3, which supports housing in the built-up area and the provision of a minimum of 15% affordable housing is in line with the Government Plan 2023 – 2026 and BIP policy H5.
- The applicant also offers a package of infrastructure and public realm upgrades and improvements, which in turn delivers value to the public of St Helier and future residents of the waterfront area.
- The proposals retain the two existing areas of Protected Open Space at Marina Gardens and Les Jardins del la Mer, with the Design Codes articulating a commitment to enhancing these areas to support play and activity for a range of users, secured via planning condition. These

enhancements are welcomed and supported. The footprint of the proposed lido falls within Les Jardins de la Mar Protected Open Space, which would require careful consideration and management in the future to ensure that it provides a greater community benefit than the open space that currently exists, in line with the requirements of policy CI7.

- The proposals are also viewed favourably in terms of supporting a modal shift away from motorised vehicles to more sustainable means of travel. The applicant has committed to the provision of supporting infrastructure to be secured via a Planning Obligation Agreement.
- The proposed office use is in line with BIP policy and the applicant has committed to delivering these building to a BREEAM rating of "Excellent", exceeding the requirements of policy ME2.

Negatives/concerns

- The approach of an outline permission with all matters reserved has not helped to allay the concerns in terms of the deliverability of the placemaking vision articulated in the application.
- The department is not convinced that the proposals to connect the town with the Waterfront deliver the aspirations required by the Southwest St Helier Framework SPG. The severance of the site from the town caused by La Route de la Libération is not resolved to an acceptable degree.
- The proposed height of parts of the scheme exceeds the 8-storey limit set by policy GD7, underpinned by the St Helier Urban Character Appraisal. The maximum vertical heights within the parameter plans of Blocks D1 and E1 allow for 9 storeys of development. The taller buildings, their mass and scale result in unacceptable harm to longer views and the context in this part of Town.
- The proposed heights mean the new streets are proportionally narrow at ground levels, notwithstanding the cut outs and block articulations to manage pinch points. This is a city scale and not responsive to St Helier. The height, mass and scale are not adequately justified in the Design and Access Statement, contrary to policy GD7.
- Policies SP3 and GD6 require development that is responsive to place in terms of scale, height and character. The mass and scale of any development must have a good relationship to the settlement form and distinctive character of town; accepting that this is in part a modern context and will be a new district of Town. The development does not conserve, protect or contribute positively to the distinctiveness of the built environment, landscape and wider setting, contrary to policy GD6,

and challenges the identity, character and sense of place, contrary to policy SP3.

- Policy GD9 requires that the skyline, strategic views, important vistas, and the setting of listed buildings, places and key landmark buildings must be protected or enhanced and that development that will lead to adverse impacts will not be supported except where the overall benefit to the community demonstrably outweighs the adverse effects of any harm. The SWSH SPG articulates a 'Community Expectation' (3.49) of still being able to get open or framed views of the open sea, Elizabeth Castle, from the historic harbours, from and to Fort Regent and across the bay towards Noirmont headland.
- The proposed heights envisaged, illustrated in the Townscape and Visual Impact Assessment, provide evidence that strategic views and important vistas between Fort Regent and St. Aubin's Bay will be irreversibly lost, together with permanent negative impacts on the setting of Elizabeth Castle. The supporting text to this policy confirms that where proposals would result in adverse impacts, evidence will be required as part of the application to demonstrate that there are "*overriding public benefits or needs to justify and outweigh any adverse impact*". The supporting text cites the delivery of a new hospital or new coastal defences as overriding public benefits. Housing is not cited as an example and is not considered to be an overriding public benefit. The application has not demonstrated that the "overall benefit to the community of the proposal demonstrably outweighs the adverse effects of (any) harm" contrary to policy GD9.
- In terms of townscape and urban design, as noted by the Jersey Architecture Commission, the aspiration to achieve a sustainable community and to create places that nurture vitality and have a distinctive character that complements St Helier remain the ambition; but this is sadly not delivered by the Outline planning application.
- The issue of continuity of swimming pool facilities during the period of demolition of the existing leisure centre and replacement with a new facility remains of concern to the planning authority. Given that this was the number one concern raised by representations from the public, the weight to be afforded to this policy consideration is high.
- Policy CI5 of the BIP requires *the prior provision of alternative facilities in Town to be assured*. The accompanying text to the policy notes that this is to ensure the continuation of access to an indoor public swimming pool. The applicant's proposal to repurpose the proposed lido which is to be built in an earlier phase of the development has not been consulted on and it is unclear whether this would provide an adequate level of temporary provision for the approximately 3-year

period it will be required for, given the significantly smaller size of the lido (circa 145 sqm) when compared to the current Aqua Splash provision (circa 3,500m²). On this basis, the application fails against policy CI5.

- Policy CI5 also extends the same requirement for assurance of prior provision of facilities to the cinema provision. As identified during discussions earlier this week, the applicant's proposal to "rephase" the scheme to provide a cinema within an earlier phase will not resolve this issue. The application is not seeking planning permission for the necessary quantity of the relevant use class to allow for re-provision of adequate cinema facilities within an earlier phase of the scheme. Therefore, the proposal fails to meet the requirements of policy CI5 in this regard.
- It is the planning authority's view that the Retail Impact Assessment was submitted too late in the process to be taken into account in the determination of the application. The authority had 3 working days prior to the start of the Inquiry to review the submission. Furthermore, the public and other interested parties have not been consulted. To accept this approach to the submission of core studies dilutes the value of the policies that call for such evidence. The impact of the development on the St Helier retail core is an important consideration and deserves appropriate analysis. This has not been undertaken and therefore the proposal fails to meet the requirements of policies ER1 and ER2.
- Whilst submitted in Outline, the maximum parameters of development have been tested through the Environmental Impact Assessment. The planning authority maintains its concerns regarding the significant overshadowing of ground level private amenity space, the potential for unacceptably low levels of daylight for some facades, significant wind impacts on parts of the site which are reliant on landscaping to provide mitigation, and the overall viability of private amenity space at rooftop level. There will be large frontages of the development that appear to be only capable of being developed as single aspect, incapable of receiving natural ventilation without significant noise impacts, contrary to policy H1.
- The application as submitted is dependent on basement level infrastructure. There is no viable option that has been identified to dispose of approximately 113,000 cubic metres of waste that, until further investigations are undertaken, will need to be assumed as all being contaminated.
- The BIP is underpinned by the principles of sustainability with waste management to follow the principle of the waste hierarchy of reduce,

re-use, recycle, recover and disposal is a last-resort option. Of course, the most desirable option of all is to avoid the generation of waste to the greatest extent possible. The application is predicated on waste being landfilled on Island. There is no facility with planning permission to receive this contaminated waste. The applicant's fallback position of exporting waste overseas for recovery is complicated and requires permissions from both the exporting authority and the competent authority on behalf of the recipient destination. No such permissions are in place and this option has not been assessed in the application's EIA.

- The unresolved issues of disposal of contaminated waste arisings carries significant weight in the consideration of this application and, as it stands, actually renders the development unimplementable. Mr Nicholson mentioned in concluding remarks that this situation is not unique and could be applied to many other developments. I fundamentally disagree with this position. The reality is, the volume of waste arisings from this scheme and the significant contamination issues associated with it are unprecedented. That is why we cannot simply turn a blind eye to this issue when considering the merits of this application, and look to come back to it at a later date. Due to the inability of the applicant to identify a viable solution to managing the significant waste arisings from the site, the planning authority regrettably cannot support planning permission being granted.
- Whilst acknowledging that housing need is a significant material consideration, there is not a housing crisis to the extent that housing need should outweigh all other considerations. There is no doubt that there is an affordability crisis, but this scheme is not going to solve that, nor would anyone expect it to.
- The fundamental tenet of the planning system is to deliver development in a sustainable way that meets the needs of current and future generations. The scheme as submitted fails to deliver this. There are other important deficiencies of the application as outlined in this submission which, with regret, result in the planning authority maintaining its position that it cannot support the development.

Interested parties' cases who gave evidence in person at the Inquiry

Mr Christopher McCarthy (COM9a, COM9b, COM9c, COM9d, SOC/13, SOC13/a, IP1, IP/1a, IP/1b, IP/1c and IP/1d)

115. Mr McCarthy set out a wide range of criticisms and objections relating to the application. He contends that it is an inadequate, misleading and false planning application and that the EIS is flawed; that no health impact

assessment had been undertaken in accordance with best practice; that no children's impact assessment has been undertaken; and that the application is not informed by Jersey Architecture Commission's (JAC) reviews and that it fails to achieve fundamental sustainable development principles.

116. He also makes a number of allegations about JDC, the governance and management of regulatory functions, Jersey's political systems and conflicts of interest. Mr McCarthy attended all days of the Inquiry and contributed to the sessions.

Jersey Youth Parliament (COM65)

117. Jersey Youth Parliament made written submission and two of its representatives attended the mid-week evening Inquiry session (on 17 May 2023) and explained their concerns. They disagree with the proposals and explained their objections with reference to articles of the United Nations Convention on the Rights of the Child (UNCRC).
118. They consider that the removal of play and leisure facilities such as Cineworld, AquaSplash and Arcadia breaches Article 31, which sets out children's right to be able to engage in play and recreational activities. They also cite conflicts with articles 12, 15 and 27 which, respectively relate to children's rights to express views freely and be heard, the right to freedom of association and assembly, and the right to a standard of living adequate for physical, mental, spiritual and social development.
119. They explained that they felt that family housing rather than flats was needed; that survey work evidenced low physical activity rates for children in Jersey; that the leisure facilities were valued and important; and that alternatives, such as at Les Quennevais, would not be able to accommodate the lost facilities. They ask that children be put first.

Mr John Young (COM198)

120. Mr Young is the former Minister for the Environment who made the Ministerial Decision to call this Inquiry. He explained that he was attending the Inquiry as a private individual and had a keen interest in the main issues. Mr Young made submissions in writing, attended all days of the Inquiry and contributed to most of the sessions.
121. In his summing up, Mr Young said his starting point was whether the application is fit for purpose. He was concerned that such a major application was an Outline application with all matters reserved. He felt the documents were complicated and inaccessible for the public, and that some areas are so incomplete that it would be impossible to make a decision.

122. He has concerns about urban design and place making as there are no designs, and questions whether this will be a good place to live and work and whether it will have a sense of place. He does not think that the scheme has achieved a sense that this is St Helier, which has been achieved in developments such as at Albert Place and Harbour Reach. He considers the scale and massing is too much.
123. Mr Young also expressed traffic concerns with the buildings being next to the Island's busiest roads. With regard to the current absence of waste disposal facilities, he felt there is the prospect of this being dealt with in the future, but not at present and questioned why consent is needed now when it will not be built for some years. He further expressed concerns about noise and air quality and said that more work needs to be done. He does endorse the arts centre element of the proposal, which could be a landmark building, and the community can shape the project.
124. Overall, he concluded that there were too many negatives and gaps and unqualified approval should not be given at this stage.

Mr Ted Vibert (INQ7, INQ10 and INQ18)

125. Mr Vibert attended most of the Inquiry sessions and offered his views.
126. In his closing remarks he stated that, when building on the Waterfront first began, the then Chief Minister promised a world class Waterfront, but there was deep disappointment with what was subsequently built.
127. With regard to the need for housing, he said there has been a huge drop in demand and sales of properties, with one real estate agent referring to it as a catastrophe, and the real need was for affordable homes. He questioned why the whole Waterfront was being sacrificed for just 120 affordable units. He also expressed concerns about the impact on people living in the area during construction. He cast doubt on the percentage figures for the amount of the site that would be open space, and believes that roads and pavements have been included, which is not the same as open spaces for people to use. He expressed further concerns about noise and pollution and stated that, other than a convenience shop, the scheme should not include any other retail space, as that would be against the BIP which protects the town centre.
128. Mr Vibert submitted documents to the Inquiry covering 'The Rise and Fall of the Jersey Shipyard' (INQ7), the numbers of registered vehicles in Jersey (INQ10) and house price index information (INQ18).

Mr Derek Mason (COM1a, COM1b)

129. Mr Mason ARIBA was directly involved in the design and construction of the now Listed La Frégate café building and worked on the project with the

renowned architect, Will Alsop. He set out his views opposing any plans to demolish or relocate the building and considers the setting to be critical to the building and its Listing. He attended a number of the Inquiry sessions and spoke on this and other subjects.

Mr Richard Day

130. Mr Day attended briefly on the last day of the Inquiry. He introduced himself as a former school teacher. He explained that he was concerned about people being pushed into 1-bedroom flats, as he considers this to be unhealthy, and will result in social problems on this site. He questioned whether these homes would be for local people or investors, and stated that we should look at the health of the Island as being for our children. He also raised transport related questions and noted that whilst trying to get people out of their cars and reduce emissions, they still need to get to places. He wondered whether a light railway could be the answer and said this should be considered early and planned as part of the scheme, as it won't be added later. He also suggested stretching out the scheme so it would not be so high.

Other parties who submitted statements of case, written representations and comments

131. In addition to those appearing at the Inquiry, I have considered and taken into account the following written submissions.

Statements of Case

132. Save Jersey's Heritage (SOC10). Its conclusion states: *The proposed scheme will damage an area rich in heritage, a place which links St Helier with the grand sweep of St Aubin's Bay and its two treasures of Elizabeth Castle and St Aubin's Fort. It consists of unimaginative architecture misleadingly illustrated from midair or surrounded by fluffy trees with barely a car in sight. The reality will be very different; no local relevance, no placemaking for St Helier, no celebration of Jersey, and detrimental to the Island's visitor economy.*
133. Kim Carpenter (SOC11). Objects to what she says will be '*a large concrete jungle spoiling the view for thousands of islanders who like to stroll along the promenade*' and states that people won't be able to look out to sea as the sea wall is to be made higher. She also questions where all the cars are going to be parked, and says the scheme is all down to greed by the developers.
134. Sue Baron (SOC12) objects to the proposal and considers the scheme to be absolute madness, that looks like a ghetto.

Written representations

135. Ben Ludlam (WR1) provides a detailed review which explores procedural matters concerning the second (amended) application proposal, the roles of the Planning Minister, the responsibilities of JDC, the Regeneration Steering Group and the need for a town masterplan.
136. Steve Beddoe (WR2) sets out his alternative vision which would entail utilising Lower Park as a large car park, and decking over Victoria Avenue to create an 'iconic gateway'.

Written comments

137. The Inquiry documents list records submissions from 205 parties (COM1 through to COM205). Almost all are in objection or expressing concern. By far the most significant concern raised relates to the loss of the swimming pool, cinema and leisure facilities, the pool issue being the most prevalent concern (about 75% of respondents raised it).
138. Other concerns raised in these representations include:
- Complexity of the application documents and difficulty in understanding the proposals
 - Overdevelopment
 - Scale and mass
 - Harm to views
 - Too many flats
 - Housing affordability issues
 - Potential for pollution
 - Waste disposal concerns
 - Sustainability and climate change issues
 - Heritage impacts
 - Transport, parking and congestion concerns
 - Crossing La Route de la Libération, poor connection to St Helier, and road safety conflicts
 - Cumulative impacts arising from the Waterfront development and other large development e.g., Elizabeth Terminal
 - Impacts on tourism

- Flooding and sewerage impacts
- Insufficient open space
- Level of affordable housing should be more ambitious
- Lack of capacity in schools
- Questioning the need for more office space
- Lack of meaningful public engagement

CONSULTATION RESPONSES

139. The following bodies made consultation responses on the application:

I&E Historic Environment Team (CR2)

I&E Drainage (CR7a, CR7b and CR19)

I&E Coastal Engineering (CR14 and CR14a)

I&E Solid Waste (CR12)

I&E Transport (CR8a and CR8b)

I&E Land Resource Management – Water and Pollution (CR13)

I&E Land Resource Management – Terrestrial Ecology (CR11a and CR11b)

I&E Marine Resources (CR10a and CR10b)

I&E Environmental Health – Air quality, noise, contaminated land, lighting (CR3)

Jersey Water (CR21)

Parish of St Helier (CR4a and CR4b)

Strategic Policy, Planning and Performance (CR16b which supersedes CR16a and CR9)

Children, Young People, Education and Skills (CR20a and CR20b)

Public Health Directorate (CR17)

Housing and Regeneration

Tourism Regulation (CR5)

Jersey Police (CR6)

Jersey Fire and Rescue (CR1 and CR1a)

Jersey Ambulance Service (CR18 and CR18a)

I&E Parks and Gardens did not respond to its consultation, although I understand that some feedback was given at the earlier application stages.

140. A specialist consultee is the Jersey Architecture Commission (JAC), an advisory group set up to provide independent, expert advice and guidance on major and sensitive developments in Jersey. The JAC notes cover 7 sessions over the period 18 January 2020 to 31 March 2023. The notes from these meetings are included in the Inquiry documents list (CR15a through to CR15g).

141. I have considered these responses in my assessment of the application and incorporated the gist of consultee's responses where appropriate.

MAIN ISSUE 1 – THE ‘ALL MATTERS RESERVED’ OUTLINE PLANNING APPLICATION

142. At the outset, it is important that the Minister and the determining panel are clear about what development is being proposed to be permitted through this Outline application. This is less straightforward than it might at first appear.
143. The Law²⁰ allows for planning applications to be made, and for planning permission to be granted, in ‘Outline’. The application is submitted in Outline and all matters are reserved for subsequent approval. These reserved matters relate to:
- scale and massing
 - siting
 - means of access
 - external appearance and materials
 - landscaping
144. The application is lodged in accordance with these legal provisions and it is validly made. However, the type of application and the status of plans and documents submitted with it does create some complications, limitations and, as claimed by a number of representors, a degree of confusion, uncertainty and barriers to understanding the proposal.
145. Whilst there is a two-stage process, comprising an Outline application (stage 1) followed by a reserved matters application (stage 2), it is important to appreciate that any Outline application approval is the planning permission. It is therefore imperative that there is a complete understanding of what the permission would cover.
146. The starting point in establishing what any Outline permission would allow is the application form and development description. These should define the maximum quantum and types of development proposed. Since its submission, the application has been amended but the application form (CD1.1) has not been updated. However, the applicant’s updated Planning Statement (CD3.1) and the updated EIS (CD4.3) confirm that the amended description reads:

"Outline planning application (with all matters reserved). Demolish existing structures. Phased construction of new development comprising up to 984 residential units with basement parking; up to 31,125sqm of non-residential floorspace comprising retail, commercial, social infrastructure, leisure, arts and cultural facilities, public and private open spaces, new pedestrian and vehicular access; other associated landscaping,

²⁰ Article 19 (4)(a) – Planning and Building (Jersey) Law 2002 (as amended).

infrastructure and highways alterations including relocation of the slipway and La Frégate, land reclamation and flood defence measures”

147. The description is clear and helpful in establishing the types and maximum quantum of development for which permission is sought. It also confirms beyond any doubt that ‘all matters’ of detail are reserved.
148. This leads to a need to consider the status of plans and documents submitted with the application, some of which are indicated as ‘for approval’. This also links to UK caselaw concerning the minimum requirements for undertaking a sound assessment of environmental effects (the EIS). That caselaw²¹, which has been applied in Jersey on other cases, established that an Outline planning application with all matters reserved could not satisfy the EIA requirements, as the development proposal would be too imprecise to be meaningfully assessed. However, with a sufficient set of parameters, the EIA requirements could be satisfied. The approach allows a project to be broadly defined, within a number of agreed parameters, to enable its assessment, whilst also allowing a certain level of flexibility while a project is in the early stages of development and is likely to be subject to further iteration and change.
149. In this case, the applicant has followed that approach and the EIS includes a set of ‘parameter plans’ at its appendix 5.1 (CD4.9). These plans are listed in a table²² in the main EIS report as follows:
- P12157-00-003-GIL-0003 Existing Site and Demolition Plan
 - P12157-00-003-GIL-0010 Development Plot Plan
 - P12157-00-003-GIL-0011 Plot Dimensions and Edges
 - P12157-00-003-GIL-0012 Access and Circulation
 - P12157-00-003-GIL-0013 Maximum Horizontal Plot Limits
 - P12157-00-003-GIL-0014 Maximum Vertical Plot Limits (Roof Level)
 - P12157-00-003-GIL-0015 Basement Maximum Extents
 - P12157-00-003-GIL-0016 Level 00 Land Use
 - P12157-00-003-GIL-0017 Level 01 Land Use
 - P12157-00-003-GIL-0018 Level 02 and Above Land Use

²¹ R. v Rochdale MBC ex parte Milne (No. 1) and R. v Rochdale MBC ex parte Tew [1999] and R. v Rochdale MBC ex parte Milne (No. 2) [2000].

²² Table 5.1 of EIS Volume 1 Main Text (CD4.3).

P12157-00-003-GIL-0019 Ground Floor Frontage

P12157-00-003-GIL-0020 Ground Floor Public Realm and Amenity Space

P12157-00-003-GIL-0021 Podium Private & Amenity Space

P12157-00-003-GIL-0022 Proposed Ground Floor Levels

P12157-00-003-GIL-0050 Proposed Phasing Plan

Note: just prior to the issue of this report, the applicant issued an updated set of drawings, which addressed errata matters in some of the above plans. These plans will be added to the Core Documents list.

150. These parameter plans are sufficiently detailed and precise to establish a maximum (or 'worst case') envelope within which the development will fit, for the purposes of the EIA requirements. It is worth noting here that the parameters are very precisely set and detailed, and perhaps more so than is strictly necessary for EIA purposes. The resultant 3-dimensional envelopes defined by these parameter plans moreorless 'designs' the layout of the development and fixes the sizes, heights and interrelationships between buildings, land-uses and spaces.
151. The application also includes a set of 18 plans which are not marked 'for approval' but are categorised as 'illustrative plans' on the applicant's document register. These include application site boundary plans, existing site levels, the landscape masterplan, proposed site levels and grading, and 'masterplans' at each building level from the basements, through each floor, up to the roof levels. There is a further set of 4 plans under the category of 'site sections/elevations.'
152. The application also contains a substantial volume of material, notably in the DAS and DCS documents, that relate to how the future reserved matters schemes would be designed, laid out, detailed and landscaped.
153. The DCS (CD3.20d, CD3.20e, CD3.20f and CD3.20g) is marked 'for approval' and includes detailed design principles and codes which are defined as 'mandatory' or 'advisory', along with very detailed guides for each of the development plots within the site. Whilst it is titled as a 'summary', it is only marginally smaller than the full document and it is an enormous and rather unwieldy tome, running to 387 pages, which needs to be printed in colour on A3 paper to be a readable hard copy. This level of detail does not sit comfortably with the type of application made, as design codes would normally provide the interpretative detail of a set masterplan, but in this case the masterplan is illustrative and not for approval. Generally, design code documents supporting Outline applications, particularly those with all matters reserved, tend to be more strategic and

contain less technical detail, than those produced at later design stages. It is also not altogether unusual on large schemes for a planning condition to be attached to the grant of Outline planning permission, requiring the submission for approval of strategic and detailed design codes.

154. At the Inquiry, I explained to the main parties that one of my first tasks in writing this report is to provide the Minister and the panel with clarity on the development proposal, and precision concerning what plans and documents are being considered, and the effect of any decision to approve the application. On the face of it, the situation appears muddled, as the 'all matters reserved' Outline application has been submitted with a huge amount of material about matters that are not for approval at this stage. For example, the applicant has promoted the application as 'landscape led' but landscape is a reserved matter and cannot be 'approved' through the selected application route.
155. Similarly, if 'approved', the mandatory and advisory design codes, which are very detailed, could be seen to predetermine 'reserved matters' submissions in respect of scale and massing, siting, external appearance and materials. Indeed, it does feel like it could be akin to a 'painting by numbers' approach to design, which may actually stifle innovative design and not allowing for design flexibility, over what will be a long delivery period.
156. Whilst much of the material is helpful and informative, great care needs to be taken in ensuring that it does not create confusion about what is and what is not being considered for approval at this Outline stage. In the absence of any Jersey caselaw, I drew the main parties' attention to a UK case²³ where the courts had considered these issues. In essence, this says that where all matters are reserved under an Outline application, any plans and drawings can only ever be illustrative.
157. As well as being a legally sound principle, this does have a strong commonsense basis, and it chimes with the Government of Jersey's published guidance on Outline applications²⁴. This states that '*If the matters you choose to reserve for later are key to the assessment of the proposal, they should be included within the outline application.*' It further states that '*The details submitted with the application must also be consistent with those matters selected on the form. For instance, if external appearance and materials are to be reserved for later, then those details shouldn't be indicated on the plans. We can't approve drawings which show features for which you're not applying at this stage.*'

²³ Crystal Property (London) Ltd v SCLG and London Borough of Hackney EWCA Civ 1265 [2016].

²⁴ <https://www.gov.je/PlanningBuilding/MakingApplication/Planning/PlanningApplicationProcess/pages/planningoutlineandreservematters.aspx>

158. I invited the main parties to examine this legal case and to provide me with a post Inquiry note on these matters, which could potentially be common ground. The main parties did not reach an agreed position, albeit that there is consensus on many points. They made separate submissions which have been added to the Inquiry Document list, the applicant's submission being INQ24 and the planning authority's being INQ25b.
159. The applicant's position remains that the parameter plans and the DCS summary document should be 'for approval'. In making that argument Mr Nicholson references my findings on the 2018 new hospital application²⁵ which was also submitted in Outline; however, the cases are not entirely comparable as the hospital scheme sought approval of siting, scale and mass, and means of access, leaving only 2 matters reserved (external appearance and materials, and landscaping).
160. The planning authority now considers, in the light of caselaw, that whilst the parameter plans should form part of any approval, the design codes documentation should be treated as illustrative. This differs from its view stated in SCG2.

Main issue 1 – conclusions

161. This main issue is not about the planning merits of the scheme, but about what the application proposal is and the status of the submitted documents and plans. It is a necessary and important precursor to an assessment of the merits. Having considered the above, relevant caselaw, and the post Inquiry submissions from the main parties, I reach the following findings:
- The application is submitted in Outline with all matters reserved and that is a legally valid form of planning application under the Law.
 - The types and quantum of development proposed are as set out in the revised description and in the EIS²⁶.
 - The parameter plans form a substantive part of the application, as they define the maximum 3-dimensional envelope required to accommodate the development.
 - The parameter plans form the basis of the EIS assessment.
 - Should Outline permission be granted, all reserved matters detailed submissions would need to fall within the parameters, i.e., those limits are fixed and not flexible.

²⁵ Planning application reference PP/2018/0507

²⁶ EIS Volume 1 Main Text – paragraph 5.10 (CD4.3)

- The parameter plans defining plot limits have the effect, if approved, of largely pre-determining siting (a reserved matter), but some flexibility remains.
- The illustrative plans and the DAS are useful in explaining the applicant's design intentions at the reserved matters stage, but must be treated as illustrative material at this stage.
- The design codes documentation is also useful in explaining the applicant's detailed design intentions, but I do not agree with the applicant that the DCS can be 'for approval' at this stage. It jumps ahead and strays well beyond the level of design code detail that is appropriate for an all matters reserved Outline application. It must therefore be treated as illustrative material at this stage.

162. I have undertaken my assessment on this basis.

MAIN ISSUE 2 – COMMUNITY ENGAGEMENT

163. On the first day of the Inquiry, the issue of community engagement was discussed. It also featured throughout the week in other sessions, with a number of contributors critical of the applicant's engagement efforts and the limited attendance by members of the public at the Inquiry.
164. BIP policy GD2 addresses community participation in large-scale development proposals. It requires such proposals to be subject to consultation with the community, prior to a planning application being made. It says that a community participation statement should be submitted as part of the proposal.
165. The application is supported by a 'Summary of Community Consultation' document (CD3.2) dated November 2021 and evidence is set out in Ms Curran's proof (APP/17). There is also an account of the public consultation processes contained in the DAS (CD3.18).
166. These documents describe 'an extensive programme of engagement' which was launched in autumn 2020 and then followed 3 stages of consultation relating to i) Initial Concept (November – December 2020), ii) Visionary Framework (May – June 2021) and iii) Revised Visionary Framework (July 2021). It also details the types and methods of engagement which included websites, videos, questionnaires, media campaign, in person sessions with community groups and young people, display boards, interactive exhibitions, leaflets and social media. It also explains how the feedback received informed changes to the evolving scheme.
167. The planning SCG (SCG2) confirms the applicant and planning authority shared view that policy GD2 has been complied with. I agree that the evidence supports this view.
168. Whilst policy GD2 compliance is noted and therefore carries weight in the overall planning assessment, some further comment is necessary.
169. First, the application proposal represents one of the largest and most significant and important mixed use regeneration projects in Jersey in modern time.
170. Second, despite its scale and importance and the applicant's undoubted endeavours to explain and engage, it has not resulted in any tangible public support for the proposal expressed through submissions to this Inquiry.
171. Third, the engagement process failed to identify and fully address what became biggest public concern, in terms of the loss/replacement of the swimming pool/cinema. Details of how a temporary covered lido pool might be provided were emerging during the Inquiry.

172. Fourth, a number of representors made reference to the limited numbers of members of the community attending the Inquiry's main and evening sessions, and questioned whether there was true engagement.
173. Fifth, and related to the fourth point, comments were made that the application documentation was so complex and difficult for a layperson to understand, that it acted as a barrier to engagement.
174. I make these observations purely to assist the Minister in understanding the views and facts before me. It is complex field and it is always the case that planning applications have a higher propensity to attract objector comments from those who perceive harm, than supporter comments from those who may perceive benefits, but do not feel the need to formally express that view, who may be the 'silent majority'.
175. I do not think that any of this equates to a public opinion ambivalence, and there is little doubt that the future development of the Waterfront site and its success (or otherwise) will be of profound importance and will, no doubt, attract a spectrum of views from the community. I also consider that, should the Minister grant Outline planning permission, the applicant's community consultation undertaken to date, whilst complying with policy GD2, should be seen as the very first step of an extended programme of engagement, which will inform reserved matters designs, address ongoing concerns about leisure facility continuity, and ensure that certain elements, such as the open space and play areas and the indicated arts centre use, are community led. Such ongoing community engagement measures could be secured by a planning condition and/or POA.

Main issue 2 – conclusion

176. The evidence confirms that the applicant has conducted a wide range of community engagement and that policy GD2 is complied with. However, should the Minister grant Outline planning permission, there remains more work for the applicant to do to ensure that the wider Jersey community is meaningfully engaged on this large and complex mixed-use development, over what will be a protracted delivery period. The issues concerning continuity of appropriate leisure facilities requires particularly close attention and effective communication.

MAIN ISSUE 3 - BROAD PLANNING PRINCIPLE AND SPATIAL STRATEGY

177. The assessment of a major Outline application requires an initial high-level assessment of the 'planning principle' of the development proposal. This relates to considerations of the BIP spatial strategy. In simple terms, it is asking the question of whether the type of development being proposed is in the right place?
178. Setting aside the more detailed and technical considerations, this is a straightforward and uncontentious matter in this case and is agreed by the main, and most other, parties. In terms of the high-level planning principle, the proposal accords with the thrust of BIP strategy, as set out in policies SP1 concerning responding to climate change, and the spatial strategy set out in policy SP2.
179. It would deliver a substantial number of new homes, employment generating floorspace, other uses and public realm, in a highly sustainable location, utilising previously developed land. The delivery of new homes and large-scale office employment development in the built-up area, would be in line with policies H3 and EO1 respectively.
180. In many ways, the broad principle of the development proposal is established by the SWSHPF and it promotes new developments in its identified key opportunity areas, with a mix of uses to strengthen the sense of community and vibrancy in this quarter of St Helier.

Main issue 3 – conclusion

181. Whilst this is a short main issue section, the proposal finds strong 'in principle' support in the BIP strategy policies, and this carries considerable positive weight.

MAIN ISSUE 4 – URBAN DESIGN, TOWNSCAPE/LANDSCAPE AND VISUAL IMPACTS

182. The assessment of design is clearly a very wide-ranging one and involves a degree of subjectivity around what constitutes good design and how the impacts of the selected design should be assessed. It also has links with a number of other main issues, including impacts in respect of amenity, landscape, and the natural and historic environment. The assessment is further complicated in this case by the nature and the type of application, being Outline with all matters reserved; this means that there is actually no worked up 'design' for approval, beyond the maximum building envelope defined by the parameter plans.
183. The assessment is assisted by the content of the illustrative plans, the DAS and the DCS. The latter includes detailed plot guides, with guides and annotated drawings covering matters such as 'general appearance', 'wind mitigation', design treatments for the 'top', 'middle' and 'bottom' of each building, 'building adjacencies', 'openings' (windows and doors), 'balconies', and 'materials'. All of this documentation is very helpful and informative and much of it very well grounded but, for reasons explained under main issue 1, these must be treated as illustrative and not determinative of the final designs. As a result, the design assessment has to be relatively strategic, and focus on the likely size, height, shape and siting of the building blocks within the maximum limits as defined by the parameter plans.

The key BIP policies

184. Strategic policy SP3 addresses 'placemaking'. It says that all development must reflect and enhance the unique character and function of the place where it is located, and that it must contribute to the creation of aesthetically pleasing, safe and durable places that positively influence community health and well-being outcomes. It continues by stating that proposals will be supported where they meet stated criteria. These include, amongst other matters, being responsive to their context and sense of place; being environmentally responsible and sustainable; providing green infrastructure; achieving a high standard of accessible and inclusive design; and making provision for all modes of travel and supporting active travel choices.
185. Strategic policy SP4 gives a 'high priority' to 'protecting and promoting Island identity' by ensuring that, amongst other matters, all development should protect or improve the historic environment; respect the landscape, seascape or townscape character of the area in which it is proposed to be located and make a positive contribution to the local character and distinctiveness of a place; and, where appropriate, include the provision of public art.

186. Policy GD6 addresses 'design quality'. It states that '*a high quality of design that conserves, protects and contributes positively to the distinctiveness of the built environment, landscape and wider setting will be sought in all developments, in accord with the principles of good design*'. It then sets out a list of key principles, which include the relationship to the existing character and form of the area; the use of materials; impacts on neighbouring uses; integration with the existing area; designing out crime; protection and enhancement of green infrastructure; operational usability; and the sustainable use of resources.
187. Policy GD7 sets out the approach to 'tall buildings', which are defined as those being two or more storeys above the prevailing contextual height or over 18m (or 4 – 6 storeys) high. It says that such building proposals will only be supported subject to meeting a set of criteria. These include: being well located and relating well to its context, which should be considered relative to the St Helier Urban Character Appraisal (2021) (the SHUCA) building height guidance; not unacceptably harming longer views and context at street level; incorporating the highest standards of architecture and materials; including ground floor activities that provide a positive relationship to the surrounding streets, and public realm; not adversely affecting the locality in terms of microclimate, wind turbulence, overshadowing, noise, reflected glare, privacy and amenity of surrounding buildings; contributing to improving the permeability of the site and wider area; and that its height can be fully justified in a design statement. Most of the site, where the new large buildings are proposed, lies within character area 6 'New Waterfront' where the policy's associated height guidance²⁷ is 'up to 8 storeys'. The north-western part of the site falls within character area CA1 'Elizabeth Castle/First Tower', where the height guidance is '*single storey above seawalls. Keep below building outlines as seen from shore*'.
188. Policy GD9 covers 'skyline, views, and vistas' and states that these must be protected and enhanced. It further states that any development that will lead to adverse impacts will not be supported, except where the overall benefit to the community of the proposal demonstrably outweighs the adverse effects of any harm.
189. Policy GD10 sets out the 'percent for art' requirement for larger development proposals.
190. Policy NE3 requires new development to protect or improve landscape and seascape character. It affords the highest level of protection to the Protected Coastal Area (PCA) and the Coastal National Park (CNP). Part of the site (the slipway and section of beach in the north-western area of the

²⁷ Bridging Island Plan – Table GD1.

site) falls within the PCA. Policy NE3 says that proposals that do not protect or improve landscape/seascape character will not be supported unless they meet a range of criteria including being demonstrably necessary; there being no reasonable alternative; that harm has been avoided, mitigated and reduced as far as reasonably practicable; and that the public benefit of the proposal outweighs the harm to the landscape and seascape character, and where the nature of that benefit to the public is clear, direct, and evidenced.

191. The SHUCA (2021) and the Jersey Integrated Landscape and Seascape Character Assessment (May 2020) are relevant background documents which assist in assessing a proposal's consistency with certain BIP policies. I understand that neither is formally adopted as SPG, but both formed part of the BIP evidence base, and the SHUCA is directly linked to policy GD7. Both documents are therefore material considerations in decision making.

Key Application documents and Inquiry evidence

192. As the application is submitted in 'Outline' with all matters reserved the 'for approval' parameter plans are the most significant drawings on which to base the assessment of this main issue. Also relevant are the supporting illustrative plans which include indicative masterplans for each building level from basement to roof, along with indicative elevations and site sections. There is also a substantial DAS (CD3.18a, b and c), the Design Codes (CD3.19a, b, c, and d), the DCS (CD3.20a, b and c) and 2 Planning Statements (CD3.1 and CD3.1a). The EIS is also relevant to design considerations. In particular, its chapter 8 and related appendices sets out the applicant's Townscape and Visual Impact Assessment (TVIA) (CD4.3, CD34.12, CD4.13, CD4.14, CD4.15a, CD4.15b, CD4.16a, CD4.16b). Also relevant is a Density Statement (CD3.22) and the applicant's document responding to the most recent JAC feedback, which was introduced at the end of the Inquiry (INQ17b).
193. The applicant's Inquiry evidence on design matters was covered by the proofs of Mr Conn (APP/2a and b), Ms Gibson (APP/3), Messrs Fielding and Waddington (APP/4) and Mr Nicholson (APP/1), with contributions at the Inquiry from Mr Henry. For the planning authority, the proofs of Ms Johnston (PA/1) and Ms Ingle (PA/2) cover urban design related matters. I have taken into account the representations from interested parties and consultees, that have been submitted on design related matters. These include the Statements of Case of Save Jersey's Heritage (SOC10), Kim Carpenter (SOC11), Sue Baron (SOC12), Mr McCarthy and the views of the JAC (see below).

Design review process – Jersey Architecture Commission (JAC)

194. The JAC was set up in 2010 as Jersey’s official design review body. It comprises up to 15 formally appointed commissioners who have a wealth of expertise in architecture, planning and urban design. JAC works with the planning authority, agents and developers to promote and support the Minister’s aspiration for the highest possible standards of design in Jersey’s environment. At least 3 commissioners attend each design review meeting, along with the support of an executive officer.
195. JAC has had a significant involvement in reviewing the Outline application proposal. This began with its first review in January 2020 (at the pre-application stage), through various meetings on the originally submitted application proposal, to more latterly reviewing the amended proposal that is the subject of this Inquiry. In total there were 7 review meetings over the period 18 January 2020 to 31 March 2023. The notes from these meetings are included on the Inquiry Documents List (CR15a through to CR15g).
196. The notes of the final review meeting record the JAC’s reservations about the scheme and says that the plans require more work. It says that the scheme has been reviewed 6 times previously and there are recurring issues that have not progressed as would befit a government project in such a prominent position and at such a significant moment of global concern about the behaviour change that is necessary to address the climate crisis. It sets out criticism under each of its ‘6 Cs’ of context, community, connectivity, climate, character, and change.
197. It states that ‘The Commission finds it difficult to support the plans as currently submitted’ and the concluding remarks are: *The Commission wants to see an exciting new place grow up over the next 12 years. The question at the heart of all the design reviews is has the design been inspired by, and captured, the character and atmosphere of St Helier? The parameter plans presented sadly do not deliver this.*

The challenges and pressures are understood. The need for new high-quality homes is paramount; dealing with the severance and damage of La Route de la Libération remains; new ways to build polite density around a placemaking framework; and to challenge the current norms by encouraging the modal shift to healthier active travel.

The ambition remains to deliver a future focused, landscape-led vision for a new district. More emphasis should be placed on how to make this the place of choice to live in St Helier. Creating a new part of any town is difficult, more so in St Helier and Jersey. The plans require further work to resolve climate resilience challenges, to achieve a sustainable community

and to create places that nurture vitality and have a distinctive character that complements St Helier.

198. The applicant has issued a tabulated point by point set of responses to the design issues raised by JAC (INQ17b).

Assessment

Starting points

199. There are some starkly different views held by those involved in this Inquiry process. The applicant company has clearly committed considerable resources to the design process and is passionate about its presented scheme, which it says is landscape led and strikes the right balance. However, the Minister's design panel (JAC), and the planning authority officers, have considerable reservations, and do not support the scheme in urban design terms. Interested parties have also voiced negative assessments, with statements including *'unimaginative architecture'*, *'no local relevance'*, *'concrete jungle'*, *'a ghetto, the buildings are so close together, one can just imagine washing lines being strung across from window to window, it's awful'*.
200. Whilst respecting this spectrum of views, there are some broad principles and observations that are useful to record as first steps in any assessment and I would hope the points below will be accepted by most readers.
201. First, the site represents 'new' land which did not exist 30 years ago. It is also important to note that the West of Albert project, of which the site forms a part, was not a one off, but a further phase in the expansion of St Helier westwards from Fort Regent and southwards from the town's historic core, which can be traced back to the 18th century²⁸.
202. Second, the quantum and type of development proposed in the Outline application necessitates a series of large and tall buildings, along with basement structures. Without large and tall buildings and basement structures, the development could not be accommodated.
203. Third, the existing commercial leisure buildings are unremarkable architectural structures. Whilst fulfilling a popular leisure function for swimming, cinema and other recreational activities, they do not make the best use of the site and are seen to turn their back on the town centre. It seems to be acknowledged that they reflect a 'plot by plot' development approach following the landfilling that created the site. Many individuals, along with the SWSHPF (2019), record a sense of disappointment and

²⁸ The Design and Access Statement (CD3.18) provides an excellent historical summary of this evolution with maps and photos at pages 19 – 21.

failure of these developments to make the best use of the site and to create a successful new quarter, connected to the town.

204. Fourth, the broad principle of placing large and tall buildings on much of the site is uncontentious in planning terms. Esplanade Quarter (East) and Esplanade Quarter (West) are identified as key opportunity areas (KOS1 and KOS2) for development in the SWSHPF (2019). The BIP also references development in this area and it includes height guidance²⁹ of 'up to 8 storeys' within the main part of the site, that guidance being directly drawn from the SHUCA 2021.
205. Fifth, the site does not exist in a vacuum. Its immediate context is not formed by the historic townscape of St Helier, but by large modern buildings, some of which are very tall and dense and have been built on other areas of new (reclaimed) land. These include the Horizon apartments development, Castle Quay, and the Raddison Blu hotel to the south of the site; Victoria Place and Albert Place flats to the east of the site; and north of La Route de la Libération, the new IFC buildings and office blocks and apartment buildings on the north side of Esplanade and Victoria Avenue. In the view from the Elizabeth Marina harbour wall, or from the beach at low tide, the panorama view is of a collection of large and tall modern buildings, with only the Grand Jersey hotel giving a nod to the former 'seaside town' of earlier times referred to by a number of contributors. This is well captured in the SHUCA 2021, which says of the area around the marina, that the dominant character has become less obviously linked to that of historic St Helier and that the area has taken on 'a more global commercial style' and, of the Esplanade area, that it has more in common with the New Waterfront than with old St Helier but that it is more successful as 'it has street activity, a range of uses and a certain buzz about it'. It also observes the IFC and other office buildings offer an upscaled, sleek and global take on the 21st century office and set a new tone for this part of St Helier that is reasonably positive.
206. Sixth, the application site has three distinct components: the 'open part' including Les Jardins de la Mer and the area to its north-west which will include some 'new' land; the 'IFC part' (between La Route de la Libération and Esplanade); and the 'main part' (between La Route de la Libération and the existing hotel and flats to south and east).

Heights

207. Policy and guidance on heights of new development is now mature and supported by the evidence contained within the SHUCA 2021. However, a degree of confusion arises from the use of 'storeys' as the main height

²⁹ Bridging Island Plan (2022) – table on page 97.

metric in the SHUCA 2021³⁰ and BIP³¹, the latter containing narrative explaining that storey heights can vary but are commonly 3 to 4.5 metres. As an example, applying the higher height in the range to a 6 storey building would result in a 9 metre taller building (27 metres) than applying the lower end (18 metres), and the difference could be very significant in urban design and townscape terms. Clearly, the actual height above ordnance datum (AOD), rather than the number of storeys, is the most precise and relevant in any planning assessment, particularly in terms of townscape and views.

208. The proposal involves some buildings within CA1 Elizabeth Castle/First Tower but these are limited and single storey structures, comprising the lido pavilion building and the relocated La Frégate. The heights of these would fall within the SHUCA 2021 and BIP Table GD1 guidance of single storey above the sea walls, albeit La Frégate is a rather tall single storey structure.
209. All of the 13 tall buildings would be 6 – 8 storeys and be within CA6 New Waterfront. This height of development would fall within the broad guidance set out in the SHUCA 2021 and included in the BIP's Table GD1, which is for 'up to 8 storeys'. I have noted Ms Johnston's challenge concerning whether the maximum vertical heights within the parameter plans of Blocks D1 and E1 would allow for 9 storeys of development, but Mr Nicholson was consistent in his line of 'nothing over 8 storeys'. Moreover, I give greater weight to the precise maximum parameter heights and note that both of these blocks would be notably lower than the Horizon blocks, which I believe extend to 11 storeys, that would form their immediate backcloth when viewed from the north and east.
210. At this point, I will just record that I regard the general tone of the maximum heights proposed in the application does, in my view, accord with those set out in the SHUCA 2021 and the BIP Table GD1, which policy GD7 references as considerations. Although this is a useful starting point, it is some way off satisfying policy GD7 and other design policies, as there is a wide range of other considerations that have to be addressed. However, I explore some of the key themes below, and then return to the assessment of compliance with the suite of BIP design policies and guidance.

Layout, scale and massing

211. Under main issue 1, I established that the plot limits parameter plan would, if approved, have the effect of broadly fixing the layout and position of the building blocks. There would be some flexibility, but not so much

³⁰ St Helier Urban Character Appraisal Review 2021 - Figure 6.13.

³¹ Bridging Island Plan 2022 Table GD1 on page 97.

that buildings or areas of public realm could be substantially moved around the site to different locations.

212. Within the 3-dimensional envelopes established by the proposed horizontal and vertical parameter limits, the applicant has demonstrated that the described development does physically fit. This is quite an important point, not just in terms of answering the 'will it fit?' question, but also establishing how much flexibility there would be within the parametric envelopes. The commercial buildings are straightforward and the parameters reflect the likely floorplate and storey heights. The residential buildings are a little more complex, but an Inquiry Note (INQ6) produced by the applicant demonstrates that applying dwelling unit space standards³² to the indicative housing mix would mean that the combined floorspace of the apartments would take up about 70% of the gross residential building floorspace. The applicant says that a normal net to gross ratio would be about 80%, suggesting there is a 10% buffer built in to the maximum parameters. This may mean that the residential blocks could be smaller in footprint or lower in height than the maximum parameters, but only marginally so; that is to say the buildings will always occupy the vast majority of the envelope.
213. Taking these matters together does then allow for an assessment of the layout and likely scale and massing in urban design terms, which is necessary to inform the assessment of this Outline application with all matters reserved. For these reasons I have made this assessment at a relatively strategic level, and have done so under the 3 component parts that I referenced earlier. I have throughout been mindful of the DCS content in terms of informing the applicant's intentions with regard to design approach and quality, and how this has the potential to articulate and finesse the appearance of buildings within the rather stark parametric blocks.
214. Within the open part, where new land will be created and public realm laid out, the likely layout and form of development will be acceptable and appropriate in urban design terms. I am satisfied that the public realm areas and modest pavilion type buildings, along with the relocated La Frégate, will all work well and the DCS information indicates the potential to achieve a high standard of public spaces and facilities.
215. Within the IFC part, the scale and likely form of buildings G1, G2 and G3 is appropriate and in line with that on the adjacent developed, and developing, IFC. When viewed within the context of the IFC, the likely layout appears appropriate and block G1 creates a statement/landmark building opportunity which could be a very positive feature on this key

³² Draft Residential Space Standards SPG (March 2023).

approach to the town. However, for matters addressed elsewhere in this report, including those relating to connectivity across the busy and wide road, the parametric layout may need to be revisited somewhat, but that feels like it would be evolution and refining, rather than a fundamental redesign.

216. Within the main part, there would be 10 tall buildings sited in close proximity to each other. This scale and massing and close spacings of this cluster of tall buildings would create a very densely developed and 'city' type layout, where streets and routes through would be proportionately narrow with high buildings either side, and some relief provided by setbacks and areas of public realm. The urban design approach of the proposal would have some similarities with adjacent developments to the south, but would feel tighter and denser, with many of the tall buildings separated by gaps as little as 8 metres apart³³. The proposal frontage toward La Route de la Libération would be very imposing and would create a solid and more or less continuous block of tall buildings, blocks E1, D1 and C1 having combined frontages of well over 200 metres, relieved only by a public square inset and a few narrow gaps between buildings. The frontage to Rue de L'Étau would also be quite solid and dense, but relieved to a degree by insets and gaps, and by the open hotel car park, and gaps through the Horizon development to the south. The overall scale, massing and close spacings of the buildings would mean that there would be very limited views through the development and, in most views, it would appear as a concentrated urban block.

Townscape and wider landscape/seascape impacts

217. The applicant's TVIA was produced by Ms Gibson and forms part of the EIS. It is further explained in her proof of evidence (APP/3). It was undertaken using an accepted methodology³⁴ to define the study area, establish the value and susceptibility of different character areas, and then undertake assessments of the proposal's impacts. It assesses both demolition and construction effects and completion/operation effects, along with cumulative impacts, such as including other permitted and known major developments, such as at Overdale hospital and South Hill. I will focus on the assessed operational effects which are summarised in Table 8.7 of the EIS, which makes assessment from 13 receptors. Of the 13 receptors, the TVIA assesses 'insignificant' impacts in 9 locations and significant impacts in 4.

³³ Figure 5.20 'Architectural Typologies' in the Design Codes Summary Report December 2022 (CD3.20) gives a good figurative impression of this.

³⁴ 'Guidelines for Landscape and Visual Impact Assessment' (third edition) published by the Landscape Institute and Institute of Environmental Assessment and Management.

218. From the St Aubin's Bay Intertidal Zone, Coastal Unit 11 St Aubin's Bay and the PCA (3 receptors), Ms Gibson assessed significant and beneficial impacts. Her evidence explains that, behind the seawall, the new West Park Gateway will provide an attractive new coastal frontage and the views and perceptual relationship between St Aubin's Bay, Elizabeth Castle and the coastline will be enhanced and the effect on the PCA will be beneficial. She explains that existing views of traffic and car parking will be replaced by views of trees and the relocated La Frégate and the additional tall buildings on the skyline 'will create a more cohesive and distinct urban backdrop to views from the beach' but she does acknowledge that from certain locations, some views of Fort Regent would be obscured. From the Waterfront (1 receptor), the TVIA also assesses positive beneficial effects, with surface level car parks and vacant plots, being replaced by new high-quality buildings set within an attractive new public realm and Waterfront promenade.

Views

219. The TVIA's assessment of visual impacts concerns views from streets and public places in locations near to the site and in the surrounding area, including more remote viewpoints. It is focused on the inevitably subjective concept of 'visual amenity' as experienced by people.
220. There are a lot of assessed viewpoints, in fact 33³⁵ in total, which represent a good spread of viewing locations. It includes viewpoints from locations within and close to the site, including La Jardins de la Mer, Marina Gardens, Esplanade, Trenton Square and La Route de la Libération; locations outside the site, such as Elizabeth Castle, Elizabeth Marina, People's Park and Fort Regent; further out town locations including Almorah Crescent and Victoria Crescent; and more distant locations such as St Aubin and Noirmont Point. The locations are shown on maps in EIS figures 8.3 and 8.4 (CD4.4b) and there is a viewpoint assessment for each location contained in EIS appendix 8.4 (CD4.15a). A selection of the viewpoints have corresponding Accurate Visual Representation (AVR) images and I would encourage a viewing of those (they can be found at CD4.16b), as they are very helpful in the assessment.
221. Of the 33 locations, the TVIA assesses insignificant effects at 19 locations and significant effects at 14 viewpoints. Of the 14 significant assessed effects, 7 are judged beneficial, 4 are judged to be neutral, and 3 adverse.
222. The TVIA assessed beneficial effects are within and close to the site (viewpoints 10, 11, 18, 19, 20, 21 and 25) the benefit being drawn from

³⁵ The TVIA actually identifies 34 viewpoints but viewpoint 7 from Coronation Park is listed as 'no view therefore not assessed' on page 38 of the EIS.

the new development of buildings and public realm replacing surface car parking and construction compounds.

223. The assessed neutral impacts include Elizabeth Castle (viewpoint 1) where the TVIA states *'to the centre-right of the view, the tops of the new 6 and 8-storey buildings will be visible above the Radisson Blu Hotel where they will merge into the existing waterfront buildings, including the new 9 to 11-storey Horizon development. The new buildings will add to the amount and density of development present in the view but will not materially affect its composition or appreciation.'*
224. The first assessed adverse significant effect is at Fort Regent (viewpoint 8) where there will be a loss of views to the sea and lower parts of the coastline, to the right of the Horizon blocks. The second is at St Aubin's Bay promenade (viewpoint 15) where the development will extend the urban skyline to the left of the Radisson Blu Hotel and Horizon development and obscure much of the Fort Regent walls and the wooded ridgeline to the south. The third is at St John's Road (viewpoint 29) where the denser and higher urban form of the development would obscure some of the sea views and may impinge on some views of Elizabeth Castle.
225. The Inquiry session that explored this evidence highlighted the subjectivity and judgement involved in making such assessments. Ms Gibson is a qualified and experienced expert in this field and I do not dispute the rigour of her work. However, I must also take into account concerns expressed by the planning authority, particularly in terms of Elizabeth Castle where they would not agree the effect is neutral and Fort Regent where they also consider there to be a harmful adverse effect.
226. I would also draw attention to some of the assessed beneficial and neutral viewpoints and observe that the change is very dramatic indeed, and will recast certain streetscapes quite profoundly. This is particularly so along La Route de la Libération, where the tall buildings either side will combine to create a very urban city scale corridor of a large and tall building blocks either side of a busy 6 lane road.

Public art

227. On larger development schemes, BIP policy GD10 requires a contribution to public art of approximately 1% of total construction costs. It says that all public art proposals must be appropriate to the setting and scale of the surrounding area, enhancing the quality of place and contributing to local distinctiveness and cultural identity. The applicant is in agreement with the GD10 policy requirement and, subject to an appropriate planning condition to secure its implementation, GD10 is fully complied with.

Main issue 4 – discussion and conclusions

228. Drawing the above threads together is a complex exercise, as it results in a somewhat confused and incomplete set of findings. Much of that arises from the pursuit of such a major development in one of the most visible and prominent parts of St Helier, through an all matters reserved Outline application. I can fully understand the applicant's desire to secure approval of a 'framework' and address detail later, but the challenge arises when a planning application is made for a certain amount and type of development.
229. As I set out under main issue 1, it is important to appreciate that should the Minister approve this application, the Outline permission will be the permission. The reserved matters stage cannot be used to backpedal, if it is subsequently felt that 984 is too many dwellings or 31,125 square metres of floorspace for other uses is too much. That means that the development must be tested against BIP design and related policies and guidance at this stage.
230. My 'starting points' analysis above indicates that the broad principle of a proposal comprising a layout of large and tall buildings for mixed uses of housing, employment, leisure and cultural uses is acceptable. In many senses, the development has been very well trailed and, indeed, encouraged. That is reflected in the SWSHPF, the SHUCA 2021 and the BIP. There is an expectation of area-wide regeneration and that this creates a new urban quarter which has its own identity, but is connected to, and integrated with, the town centre.
231. The evidence confirms that the development proposal will fit within the parameter envelopes set out and that those parameters will not exceed the guidance in terms of building heights, set out in the BIP and SHUCA. I attach weight to this, as it is very well researched evidence. Keeping the scheme within that vertical height limit, especially when such a large number of tall buildings are proposed in a concentrated area, is important to avoid unduly harmful townscape and skyline impacts. I broadly share Ms Gibson's conclusions on townscape and wider landscape/seascape impacts, and consider that the development has the potential to make a positive contribution, and sit comfortably in middle and longer distance character areas. In some ways, this is assisted by the higher and more strident presence of the Horizon blocks, which will contextualise the development in the townscape. I did a hindsight check in terms of applying the current height guidance with nearby built examples, and reached the view that the IFC buildings would comfortably fall within it and are successful, but the Horizon blocks would significantly exceed the guidance. That is reflected in observed townscape impacts.

232. However, not going too high is only a starting point, as it does not in itself achieve policy compliance with GD7, or with other relevant design policies including SP3 on placemaking, SP4 on Island identity, GD6 on design quality and GD9 on skyline, views and vistas. It is not easy to make these policy assessments, at least not in full, without a fixed design, although the DAS, DCS and illustrative plans do all assist in informing the likely designs that will come forward.
233. Having considered all of the evidence, I am left with reservations and uncertainties about the urban design implications of this Outline proposal. It would amount to the Island's single biggest cluster of tall buildings in a highly prominent location. It is a very dense scheme and is heavily constrained by an untamed 6 lane expressway running through the middle of the site, which the layout and indicative design appear to work around, rather than embrace and change as a key opportunity site (KOS 7); I explore that matter under main issue 9. The likely design would manifest itself in a very solid and massive form, and runs the risk of further blocking and separating the town centre from its seafront, thereby failing to achieve the SWSHPF community expectation of reconnection and framed views of the sea and key landmarks. Later in this report I also find some concerns about amenity impacts within the scheme, some of which are quite serious and beyond being mitigated by clever design; these include matters concerning outlook, privacy, noise, sunlight and daylight for future residents. I must also attach weight to JAC's reservations and concerns, which appear to have been consistently expressed over many review meetings, and whilst some changes have been made, these are not substantial enough. I share the most recent JAC conclusion that the plans require further work.
234. Without that further work and amendment, I would not be able to conclude that the quantum of development contained in the Outline proposal would be capable of satisfying the BIP's design requirements, as set out in policies SP3, SP4, GD6, GD7 and GD9.
235. I will return to the matter of 'further work' later in this report.

MAIN ISSUE 5 – HISTORIC ENVIRONMENT

236. Jersey has a rich and unique heritage. It also has strong heritage protections through the law and the Listing of buildings and places, and through planning policies in successive Island Plans, which provide strong presumptions against development that may be harmful to above ground and below ground heritage. My attention has been drawn to the States of Jersey being a signatory to the Valetta and Granada Conventions³⁶ which underline the importance of its heritage protection regimes.
237. There are several Listed buildings and structures within the application site: a Grade 2 Listed World War 2 ‘casemate’ defence; a Grade 4 Listed length of Esplanade Promenade and seawall; and the relatively recently Listed La Frégate café building.
238. The development would also fall within the wider settings of Listed buildings and places, including Elizabeth Castle, Fort Regent, Westmount Gardens, People’s Park and Victoria Park, the wider setting of the historic town of St Helier, and Noirmont headland.

Key BIP policies and guidance

239. Policy SP4 gives a high priority to ‘protecting and promoting Island identity’. It sets out a bullet point list of matters that the policy seeks to ensure, the first stating that: *all development should protect or improve the historic environment. Any development that affects a listed building and/or place, or conservation area, and their settings, will need to protect or improve the site or area and its setting, in accordance with its significance.*
240. Policy HE1 addresses ‘protecting Listed buildings and places, and their settings’. It states that proposals that could affect a Listed building, or place, or its setting, must protect its special interest, and that all proposals should seek to improve the significance of Listed buildings and places. However, the policy does include an exception provision, which is an important consideration in this case; that part of the policy says:
- Proposals that do not protect a listed building or place, or its setting, will not be supported unless, and with regard to the comparative significance of the listed building or place or its setting, and the impact of proposed development on that significance:*
- a. the changes are demonstrably necessary either to meet an overriding public policy objective or need; and*

³⁶ The Valetta Convention (1969 and revised in 1992) for the protection of the archaeological heritage of Europe. The Granada Convention (1985) for the protection of the architectural heritage of Europe.

- b. there is no reasonably practicable alternative means of delivering those proposals without harm to the heritage values of the listed building or place, or their settings; and*
- c. that harm has been avoided, mitigated and reduced as far as reasonably practicable; and*
- d. it has been demonstrated that the predicted public benefit outweighs the harm to the special interest of the building or place in its setting and where the nature of that benefit to the public is clear, direct, and evidenced.*

It continues:

Where exceptionally, approval is given to demolish or substantially alter a listed building or place, a programme of recording and analysis, and archaeological excavation where relevant, will be required as part of the implementation of the scheme, together with publication of that record to an appropriate standard in the Historic Environment Record.

241. Policy HE5 covers the conservation of archaeological heritage. The policy has a similar construction to HE1 and states that proposals should conserve archaeological heritage and, proposals that do not, should only be allowed subject to meeting stated exception criteria. These include meeting an overriding public policy objective or need and there being no practicable alternative. The policy says that, where it is determined that the conservation of archaeological resources (preservation in situ) is not justified as the most appropriate course of action, then provision through the use of a POA and/or planning conditions, must be made in respect of evaluation, recording, publication and deposition of finds.
242. Also relevant is the guidance contained in SPG Note 1: Archaeology and Planning (January 2008) and Managing Change in Historic Buildings (June 2008).

Key documents and evidence

243. The applicant's detailed evidence on these matters is contained within Chapter 9 of the EIS (CD4.3), the Heritage Impact Assessment (CD4.17a and CD4.17b) and the DAS (CD3.18).
244. I have also considered the evidence of Mr Mason (COM1a and COM1b) which relates specifically to his involvement in the building of La Frégate, Save Jersey's Heritage (SOC10), and other interested parties' comments relating to heritage matters.

Archaeological heritage

245. There is an agreed position between the applicant and the planning authority on archaeological resources. The fact that much of the site is reclaimed from the sea in modern times means that there is very limited archaeological potential. There is some potential where the works to the

short length of Listed Promenade are proposed (see below). A 'watching brief' requirement during those works could be secured by a planning condition and this would satisfy policy HE5.

Impacts on heritage assets within the application site area

246. The application proposal would have direct but differing impacts on the 3 designated heritage assets within the site. The limitations of the Outline application with all matters reserved create some challenges with the assessment. This is because there is no worked up detailed scheme for any of the works proposed to these heritage assets, and the assessment has to be made on the basis of descriptive text and illustrative material.

German Occupation Site: Casemate HE0995 Grade 2

247. The casemate is located just to the north of the existing slipway. It is part of an integrated network of German defensive structures constructed in Jersey during World War II. It has been subject to considerable change since its construction, including the addition of an extension to house a WC block and significant changes to its setting. However, it still retains its close visual link with the sea.
248. The Outline proposal would introduce a new coastal defence to its north and west, along with land reclamation behind, including infilling the slipway. This would dramatically alter the setting of the casemate. The applicant's DAS includes a section³⁷ which outlines 'design intent and opportunities.' The indicative approach involves removing the toilet block, reinstating the original frontage and other features, and setting it within an accessible sunken landscaped area. It also suggests the potential for a future cultural use.
249. In my assessment, the indicative treatment is appropriate and well conceived. There can be no escaping the harm caused by the loss of the direct visual connection between the casemate and the sea. However, given the overwhelming public interest case arising from the benefits of the coastal defence, along with the potential enhancements, repurposing, and interpretation, of what is currently a neglected and unused structure, I assess a net overall benefit.
250. In principle, I consider this element of the indicative proposal to be acceptable in terms of policy HE1. However, a detailed scheme would need to be worked up, submitted and approved, prior to any works. This could be secured by a suitable planning condition.

³⁷ Section 6.4 of the Design and Access Statement Addendum Volume 2 (December 2022).

Esplanade Promenade HE0992

251. The indicative scheme would involve the loss of about 6 metres of the Grade 4 Listed Esplanade Promenade to create a pedestrian route. This was the Georgian seawall. Now significantly inland as a result of land reclamation which has transformed its setting, it is still significant in terms of the evolution of the town over time.
252. I share Ms Ingle's view that, whilst any loss is regrettable, the indicative scheme seeks to minimise the length of wall lost and follows nearby precedents established within the IFC. Although I deal with pedestrian connections more fully under the transport main issue, there is little doubt that at least one breach of the Listed wall is necessary to deliver pedestrian connectivity and wider regenerative benefits. It is also unavoidable that placing large buildings on the seaward side of the historic wall will impact its setting.
253. I consider this element of the indicative proposal to be acceptable under policy HE1 in terms of the harms being demonstrably necessary, unavoidable, minimised and delivering substantial public benefits. However, a scheme would be required which included precise details including the appropriate reuse of any removed walling materials, along with a detailed method statement. This could be secured by a suitable planning condition.

La Frégate HE1942

254. La Frégate is a seafront café building with the form of an upturned ship's hull. It was built in 1997 on the land reclaimed from the sea under the seafront redevelopment being pursued by the then Waterfront Enterprise Board. It is based on a conceptual design by the acclaimed British architect Will Alsop³⁸ and was delivered in partnership with Mr Mason of the Mason Design Partnership.
255. The building was recently Listed Grade 2, and the Listing describes its significance as being: *La Frégate is a well-preserved piece of late 20th-century design of unique and innovative design, by a known and respected architect. It is considered to be of outstanding architectural significance.*
256. Under the originally submitted application proposal, the building would have been lost, as it sits within an area of considerable change. In the light of the Listing, the applicant has proposed a relocation of the building to the

³⁸ William Alsop OBE RA (12 December 1947 – 12 May 2018) was a British architect and Professor of Architecture at University for the Creative Arts' Canterbury School of Architecture. He was responsible for several distinctive and controversial modernist buildings which are usually distinguished by their use of bright colours and unusual avant-garde forms. In 2000, Alsop won the Stirling Prize, the most prestigious architecture award in the United Kingdom, for the Peckham Library in London.

north-west, where it would occupy a seaside location adjacent to the new slipway. There are no worked up detailed proposals for this relocation, but there is a structural assessment (CD3.12) which states that relocation *is 'a practically feasible option in structural engineering terms.'*

257. I do appreciate that the Listing of modern buildings can often divide opinion. What some might regard as a transient novelty/fun building, others may treat as outstanding architecture. Sometimes, both can be the case, and Alsop's work included some examples which were designed as temporary structures. The most often cited being the Cardiff Bay Visitor Centre, which became known as 'The Tube' and is still much remembered over a decade after its removal.
258. There is no suggestion that La Frégate was designed as a temporary structure, although the structural assessment does not quite chime with the Listing's 'well preserved' claim, with clear evidence of weathering, water ingress and corrosion after its relatively short life to date.
259. I have noted carefully the detailed and passionate submissions from Mr Mason who says 'it cannot be moved' and also to Mr Vibert's very interesting contributions on the history of shipbuilding along this part of the bay giving credence to the significance of the ship's hull form, although he made clear that this history did not link to the precise existing site of the café.
260. From a HE1 policy perspective, when taking into account the public benefits of the coastal defence and securing large scale regeneration, I am satisfied that relocation is an appropriate response. Indeed, there are potential benefits arising by addressing the repair/condition issues as part and parcel of the relocation. The proposed site would provide a new seaside setting, again adjacent to an area with a shipbuilding history, and place in a new area of public realm, where it could enjoy a new lease of life.

Impacts on heritage assets outside the application site area

261. Ms Ingle's proof (PA/2) sets out concerns about impacts on the settings of key heritage assets, notably Elizabeth Castle and Fort Regent and the wider setting of St Helier. I have assessed 'setting' as determined by caselaw³⁹ and as defined in the BIP glossary.
262. Elizabeth Castle and Hermitage (HE1426) is grade 1 Listed building and one of Jersey's iconic heritage assets. It is about half a mile to the south-west of the application site. The proposal would result in some change in its wider setting. Parts of some of the proposed tall buildings will be visible

³⁹ Herold v The Minister for Planning and the Environment and Sea View Investments [2015] JRC111 Royal Court (Samedi).

from the castle as will the new coastal defence and, of course, the modest area of reclaimed land would marginally reduce the expanse of sea between the castle and the land.

263. However, when viewed from the castle, most of the development would be largely screened by existing modern built form (the Radisson Blu hotel and the Horizon apartments) and none of the tall buildings extend further westwards than the hotel building. This is well evidenced by the AVR of viewpoint 1 that appears in the EIS appendix 8.5 (CD4.16a). The effect of the development on the castle's setting would be limited and would essentially be a continuation of the unfolding 'global commercial style' character of development in the Waterfront, identified by the SHUCA 2021. I reach similar findings in respect of the settings of Listed places including Westmount Gardens and Lower Park (HE1899), People's Park (HE1897) and Victoria Park (HE1916), and the more distant remote heritage assets at including St Aubin's Fort and Noirmont headland.
264. Fort Regent and South Hill Battery (HE1195/HE1917) is also a grade 1 Listed building and again one of Jersey iconic assets. From its elevated position to the east of the site, there will be a more tangible impact on its wider setting. The AVR of viewpoint 8 that appears in the EIS appendix 8.5 (CD4.16a) shows that the proposed tall buildings will obscure the view of the sea and coastline by filling the gap between the Horizon blocks and the IFC buildings. This does diminish the historic significance of the fort's connection to the sea. However, I am mindful that virtually every building and structure that appears in the AVR for this viewpoint, has been constructed subsequent to the fort and much of it on new reclaimed land, such that the historic association as coastal headland fortification, has been long since lost.
265. Overall, I find that the proposal would cause some, but very limited, harm to the wider setting of heritage assets, most of which are some distance from the site. However, any limited harm is outweighed by the substantial public benefit that would arise from the planned regeneration of the Waterfront area. Notwithstanding, the urban design issues I identified under main issue 4, any realistic redevelopment scheme on the application site is likely to have similar limited wider heritage setting impacts. I consider that policy HE1 would be complied with.

MAIN ISSUE 6 – NATURAL ENVIRONMENT, TREES AND LANDSCAPE PRACTICALITIES

Key BIP policies

266. Policy NE1 requires development to protect or improve biodiversity and geodiversity and, where possible, to deliver biodiversity net gain.
267. Policy NE2 addresses green infrastructure and networks. It says that development must protect and improve existing green infrastructure assets, and contribute towards the delivery of new green infrastructure assets and wider green infrastructure networks by a range of measures, including retaining and improving existing green infrastructure, incorporating the provision of new green infrastructure, and ensuring green infrastructure assets are adequately protected.
268. Policy NE3 states that new development must protect or improve landscape and seascape character. It also sets the highest level of protection for the PCA and its setting. Part of the site⁴⁰, which includes West Park slipway and St Aubin’s Bay Promenade to the north of La Frégate, falls within the PCA. Similar provisions are found in policy SP4(2).
269. Other relevant policies are SP1(8) and SP3(3) which seeks to protect, improve, and optimise the Island’s green infrastructure; SP5 which seeks to protect and improve the natural environment; and GD6(6) which requires green infrastructure to be an integral element of design.

Key documents and evidence

270. Chapter 15 of the EIS addresses marine ecology. Terrestrial ecology is covered in an Ecological Impact Assessment (CD3.6), a document titled ‘Broad Ecological Enhancement Proposals’ (CD3.5) and trees are covered in an Arboricultural Assessment (CD3.3).
271. Ms Safe’s (APP/9) evidence covers ecology for the applicant and landscape matters are addressed by Mr Conn (APP/2a and APP/2b) and Ms Gibson (APP/3).
272. For the planning authority, Ms Ingle’s evidence (PA/2) addresses landscape and Mr Binney (CR10a and CR10b) covers marine ecology. The consultation responses from I&E land resource management (CR11a and CR11b) address terrestrial ecology.

Trees

273. The Arboricultural Assessment (CD3.3) reviews the existing trees on site. Given the recent creation of the site by landfilling, all trees are relatively

⁴⁰ Bridging Island Plan (2022) - Figure NE8 on page 123.

young and modest in size. There are no large, veteran or legally protected trees. The comprehensive redevelopment proposed will mean that many of the trees will be lost, although a good number will be retained.

274. CD3.3 indicates that just over 100 trees would be removed to facilitate the development, the vast majority being lower category 'C' (90) and category 'U' (3) trees. It further indicates that the proposals will deliver a minimum 500 new trees which, with the retained specimens, will result in a total of 618 trees on the site. It also sets out that 162 would be large planting sizes (8 – 10 metres), 246 would be medium size (5 – 7 metres) and 210 small (2 – 4 metres). Most new trees would be at ground level in the public spaces, streets and courtyards, with about 50 in the roof gardens.
275. The planning authority has raised no objection on tree related matters and I consider the applicant's approach to be sound. Whilst a proportion of existing trees would be lost, the overall outcome would be a considerable increase in the tree stock on the site, which will contribute to the policy objectives of NE1, NE2 and NE3.

Terrestrial ecology

276. Terrestrial ecology was scoped out of the EIS due to the site's limited value and the absence of evidence of protected species on the site.
277. I share the views of the Land Resource Management team (CR11a and CR11b) that the applicant's Broad Ecological Enhancement Proposals (CD3.5) are satisfactory, and respond to the opportunity to create linked habitats and green infrastructure across the site.
278. Given the long duration of the proposed development implementation, there will be a need to undertake periodic resurveys, prior to certain phases being developed. There will also be a need to produce and implement Species Protection Plans and these should include the local rabbit population, which was a matter of concern raised by Jersey Youth Parliament. These matters could be addressed by suitable planning conditions.

Marine ecology

279. Chapter 15 of the EIS assesses marine ecology and concludes that, subject to mitigations including concerning managing pollution risk, there would be no significant effects. These conclusions are not disputed by Mr Binney (CR10a and CR10b).

Landscape design practicalities

280. The applicant has promoted its scheme as being landscape led. At the Inquiry, Mr Nicholson drew attention to the world class credentials of the landscape design team and Mr Conn stated that landscape was one of the

core benefits of the scheme. However, landscape is a reserved matter and is not for approval at this stage.

281. The Inquiry provided a useful opportunity to explore some of the practicalities that may arise for detailed landscape designs, and whether some of the indicative landscape approaches are realistic. There were a number of challenges.
282. First, concerns were expressed about whether planting depths would be adequate for tree planting, given that much of the planting will be over basement areas. In response, Mr Conn referred to the DCS and DAS which indicate 1.2 metres soil depths over most of the basement areas, with some localised reduction to 750mm. Mr Henry added that his company has experience and a good reputation for creating and managing public realm to a high standard.
283. Second, Mr Woodhall (Land Resource Management team) queried whether the larger trees would be acclimatised to Jersey prior to planting and recommended that this be done to minimise risks of failure.
284. Third, there were challenges and concerns about how the indicative design dealt with access to the beach. Mr Henry confirmed that the stepped access routes would be maintained in the new scheme.
285. Fourth, Mr McCarthy drew attention to the JAC response (CR15g) which stated that for this to be a truly landscape-led plan, the landscape design would be a full application now, not one of the numerous reserved matters applications to be resolved later.

Main issue 6 – conclusions

286. The proposal will result in the loss of some existing trees, most of which are of limited size and amenity value, but it will more than mitigate this loss with the planting of at least 500 trees, many of which will be planted as medium and large specimens. The site has limited existing terrestrial ecology value and there is good potential for enhancement and biodiversity new gain by measures that could be secured by a planning condition. The evidence indicates that marine ecology will be protected, subject to measures to be secured by planning condition. In terms of these aspects of the natural environment, the proposal would accord with the relevant provisions of policies NE1, NE2, NE3, SP1(8), SP3(3), SP5 and GD6(6).
287. Some practical landscape issues have been identified but, given that landscape is a reserved matter, they are of limited relevance to the assessment of this Outline proposal.

MAIN ISSUE 7 – HOUSING, EMPLOYMENT, HEALTH & EDUCATION

Housing

288. The Outline proposal would involve a very significant number of new homes. Up to 984 new dwellings are proposed, all of which would be apartments and would be a mix of 1, 2 and 3 bedroom units. The site clearly represents one of the largest and most strategically significant sites within the built-up area to deliver new homes.
289. The applicant's housing evidence is found in chapter 7 of the EIS (CD4.3), the proof of Mr Nicholson (APP/1), and the joint proof of Mr Geraghty and Ms Beard (APP/18). Ms Johnston (PA/1) addresses the matter on behalf of the planning authority.

Housing Need – policy H3

290. The significant need for new housing in Jersey is well evidenced. The BIP was informed by an Objective Assessment of Housing Need 2019 (OAHN) report. The BIP explains⁴¹ that modelling undertaken using the same methodology as the OAHN suggests that the projected near-term annual population increase of +800 per year would generate a need for an additional 6,100 homes over a ten-year plan period from 2021–2030 and that, with the net shortfall of 1,800 homes from the last plan period, a net target of at least 7,900 homes is required up to 2030.
291. For the BIPs more limited time period, policy H3 states that the plan makes provision for the supply of up to 4,300 homes up to the end 2025 to provide up to 2,650 open market homes and up to 1,650 affordable homes (including key worker accommodation), that split being roughly 62% market and 38% affordable. The policy continues by stating that to enable the supply of homes, proposals for residential development will be supported in the Island's built-up areas.
292. It should be noted that anything approaching that delivery rate would be a substantial uplift on actual delivery rates (roughly doubling) achieved in recent years. It seems unclear to me how that ambitious uplift in delivery rates will be achieved in the BIP plan period and it would appear likely that a further shortfall will roll forward into the next plan period. I also note that Mrs Day's evidence (SOC3) states that Jersey considers itself to be in housing crisis, largely driven by a supply/demand imbalance.
293. In terms of timing, the Outline proposal is unlikely to deliver any new homes within the BIP period to 2025, as development is not envisaged to commence until that year and complete in 2034⁴². However, all of the

⁴¹ Bridging Island Plan (March 2022) page 196.

⁴² EIS Volume 1 Main Report paragraph 6.5 (Inquiry document CD4.3).

evidence indicates that significant housing need will remain and it is highly likely to increase. The EIS assessment that provision of homes would result in a permanent significant beneficial effect is soundly based. Therefore, the proposal's delivery of needed new housing over the envisaged period of 2025 – 2034 should attract significant weight.

Housing density and mix – policy H2 and the draft Density SPG

294. Policy H2 addresses housing density and it is framed around adopting a positive design-led approach for the provision of new homes in the Island's built-up area to ensure optimum efficiency in the use of land. It supports schemes that meet or exceed adopted minimum residential density standards and sets out the considerations that inform appropriate density, which include the quality type and mix of homes and contribution to the creation of sustainable communities. It also requires schemes of more than 5 homes to be supported by a schedule of accommodation and a density statement, and schemes without this information will not be supported.
295. At the current time there are no adopted density standards but the Density draft SPG (October 2022) is expected to be adopted soon. It includes 'Interim Policy 2A' which adopts a minimum density of 50 dwellings per hectare (dph) in Town, presumes against developments above 350dph, and requires 'superdensity' schemes above 150 dph to demonstrate how they would be sustainably managed. There is also an accompanying table which indicates that 'mostly flats' schemes in Town would fall in the range of 80 – 150dph. The SPG includes some built examples at various densities and cross references the SHUCA. There is also an appendix setting out the information required in a policy H2 schedule of accommodation.
296. Although the mix is not fixed, the EIS includes an indicative split which would be 460 1-bed units (46.75%), 328 2-bed units (33.33%) and 196 3 bed units (19.92%). This information does not fully meet the listed requirements as set out in the draft SPG, but does give a reasonable indication of the likely mix which would cover the needs of a significant proportion of households. I deal with the tenure element of mix later.
297. The computation of density sounds a straightforward exercise, but it is not. There is some guidance in the SPG which seeks a net density figure, which excludes any elements of infrastructure and services which might serve a wider area, such as public open space that serves a wider area, significant landscape buffers, public roads or other community infrastructure. Through the Inquiry and after its conclusion there have been exchanges between the main parties and a Note⁴³ has been produced by the applicant. This gives a range of density figures, the lowest being 145dph, the highest being 185 dph and, for completeness, the other values are 148dph and

⁴³ INQ20b

170 dph, the range reflecting different assumptions about what land is in or out. The applicant prefers the lower 145 dph figure, but that includes public greenspaces (which the SPG indicates should be removed). The planning authority prefers the higher 185dph figure as representing the 'crude calculation' of net density. I consider the higher figure to represent what the SPG intends, but I do agree with the applicant that the absence of an agreed measurement methodology, along with the mixed-use nature of the proposal, makes it less than straightforward.

298. Assuming the SPG is adopted unchanged, the scheme would have no obvious tensions with its headline figures. The scheme would comfortably exceed the minimum required 50 dph density and not be close to the upper (unacceptable) density limit of 350dph. On balance it does feel to me that the scheme would pass the 150 dph threshold, which requires a demonstration of sustainable management, but the applicant is very willing to commit to this and it could be secured by a planning condition and/or POA. However, policy H2 does also include a qualitative dimension concerning 'appropriate density', which raises issues explored elsewhere in this report.

Affordable housing

299. There is a widespread recognition that housing affordability in Jersey is a significant issue for the Island. Sales values of homes have reached very high levels and, whilst some contributors suggested a slowing of prices and market activity, the stark facts are that prices are now very high in comparison to typical household incomes. The house price index for the fourth quarter of 2022 was introduced as an Inquiry document (INQ5) and it shows that the mean average price for a 2-bedroom flat was £535,000. Mr Vibert introduced the 2023 first quarter index, where the corresponding figure was £556,000. Evidence supplied by Mrs Day (INQ23) indicates a 2021/2022 median household income of £55,000, suggesting that 2-bed flat prices are currently around 10 times typical household incomes. At the Inquiry, Mr Henry agreed that Waterfront properties commanded a premium (over average prices), which suggests sales values at an even greater multiple of median income.
300. As noted above, policy H3 plans for up to 1,650 affordable homes in the BIP plan period. Policy H4 addresses housing need and states that to ensure the creation of sustainable, balanced communities, the development of new homes will be supported where it can be demonstrated that it positively contributes to meeting the identified housing needs of the local community or the Island, in terms of housing types, size and tenure, having regard to the latest evidence of need.
301. Policy H5 is the BIP's affordable housing policy and it allocates a range of sites specifically for the provision of affordable housing. The sites are

generally small and fall within a range of 0.3 – 1.9 hectares and the policy indicates that they should be developed in the proportions of 45% for social rent and 55% affordable housing for purchase. In addition to the listed sites, the policy says: *Where States of Jersey or States-owned companies' land is brought forward for the development of new homes, these shall be for affordable homes unless it has been otherwise approved that the development needs to specifically provide open market homes, particularly where this is required to ensure the viability of public realm and community infrastructure delivery, in line with an approved Government Plan. In such cases, a minimum of 15% should be made available to eligible persons in accordance with "Policy H6 – Making more homes affordable", for assisted purchase housing.*

302. The referred to policy H6 requires development proposals involving the creation of 50 or more new dwellings to provide at least 15% of the development to be made available for sale or occupation by islanders eligible for assisted purchase housing.
303. The application proposal would include (at least) 15% affordable housing in line with policy H6 and the applicant and the planning authority seem content that this is acceptable. However, the application site is States owned land and therefore the default H5 policy position is that it should be brought forward for the delivery of affordable homes, i.e., 100%.
304. Mrs Day is the Head of Strategic Housing and Regeneration and she gave evidence to the Inquiry (SOC3). She explained that the Government had otherwise approved that this would be a market housing led scheme and subsequently produced extracts from the Government Plan 2023 to 2026 (INQ16b) and a related, earlier document, titled Action on Housing – Recent Progress and Waterfront Guidance (September 2021) (INQ16c).
305. These documents only appeared at the Inquiry itself. I have to say that I find the adopted position on affordable housing to be unsatisfactory for a number of reasons. First, the Government Plan and associated documentation appears quite cursory and lacks the evidence base, such as a viability report, to demonstrate that the scheme cannot deliver more affordable housing; Mr Young indicated that it was just a line in the budget and suggested that it would not have been the subject of scrutiny. Second, the budget period may not include any affordable (or market) housing delivery from this site, as development is not envisaged to commence until 2025, so it should not set the affordable housing content, albeit as a minimum, for a scheme that will be delivering new homes into the next decade. Third, BIP policy H4 promotes balanced communities, and policy H3, and the OAHN that informed it, give a clear steer to the balance of market and affordable housing required, which indicates that a 15% content would be unduly low and hence not create a balanced community.

Fourth, the Waterfront site is unique in terms of its strategic scale and it represents a rare opportunity to deliver affordable homes in a highly sustainable location.

306. It would be absurd to suggest that this large site should be developed for 100% affordable homes, as that also would clearly not be a sustainable balanced community, and is also unlikely to be viable. I have also noted Mrs Day's submission (SOC3) that the States owned affordable housing provider, Andium Homes, is on track to deliver 3,000 new homes by 2030 and this exceeds projections. However, the starting point, from a balanced community perspective (and policies H2, H3 and H4), ought to be at least informed by the needs assessment as captured in policy H3, i.e., roughly 62% market and 38% affordable.
307. If there are viability or other good planning reasons for a lesser amount, then these would need to be evidenced. Mrs Day's evidence sets out concerns that providing more subsidised housing on this site would distort the market and reduce the amount of community and open space investment in the scheme. The distorted market notion might have some credence if the scheme was to be entirely subsidised housing, but this is not necessarily the case with a more balanced proportion and it is not lost on me that the market is already distorted and is in 'crisis'. The suggestion that the scheme cannot accommodate more affordable housing for viability reasons has not been clearly evidenced.
308. I consider the application proposal to be weak and underperforming on the provision of affordable homes and that it would not lead to the creation of a balanced community or play its appropriate role in addressing evidenced housing need which is likely to prevail in the longer term. This creates conflict with the objectives and requirements of policies H2, H3, H4 and H5.

Housing conclusions

309. The proposal's delivery of needed new market and affordable housing over the envisaged period of 2025 – 2034 should attract significant planning weight; this accords with the thrust and objective of policy H3, but delivery will actually take place in a new plan period.
310. The scheme would be developed at a density well above the minimum required by the Density draft SPG and comfortably below the maximum allowed, but it would fall into the superdensity category and require evidence of sustainable long-term management measures, which could be required by a planning condition or through a POA, the latter seeming more suitable in my view.

311. The scheme would include an element of affordable housing but this appears to represent an unduly low level of provision on finite States owned land and would not lead to a sustainable balanced community. This creates conflicts with policies H2, H3, H4 and H5.

Employment

312. Chapter 7 of the EIS undertakes an assessment of likely employment generation through the construction and then the subsequent operation of the scheme.
313. During the build phase, the project would deliver a significant number of construction sector related jobs, with a peak year being potentially 520 full time equivalent (FTE). This is understandably assessed as a major beneficial effect.
314. The operational phase jobs figure is 1,420, and adjusting this for the loss of the existing 100 or so jobs that would be lost, gives a net new jobs figure of 1,320 FTE. The estimated new jobs figure would not be fully attained until 2034, but this would equal 2.1% of employment in Jersey, and would clearly be a significant major beneficial effect as assessed by the EIS.
315. It should be noted that most (about 76%) of the new employment is predicted to arise from the office floorspace extending the IFC. Office floorspace has a much higher employment density than the other commercial floorspaces proposed. Although there has been some challenge, including from JAC, about the future of the office market, the applicant is able to point to the success of the IFC and very limited supply of Grade A office accommodation locally.
316. The scheme's predicted employment generation attracts significant positive weight and accords with policy EO1 concerning existing and new office and ER4 in respect of daytime and evening economy uses (I address the retail element under main issue 10).

Health

317. Chapter 7 of the EIS assesses a range of health effects and considers these all to be beneficial. These include health benefits arising through long-term employment opportunities, the provision of housing, accessibility to open spaces and social infrastructure, enhanced social cohesion, and improvement to health through active travel.
318. Although some Inquiry participants challenged the health credentials of the scheme, the consultation response from the Public Health Directorate (CR17) states that it believes that the proposed development has the potential to contribute positively towards mental and physical health and

wellbeing outcomes, and suggests a range of initiatives to be pursued to maximise benefits.

Education

319. Mr Stirzaker (CR20a and CR20b) from the education authority attended the Inquiry. He provided some very helpful evidence. He advised that the pupil yields from the development have been calculated and can be accommodated within the existing and planned education estate. This is the case for early years, primary and secondary school provision.
320. Although the Inquiry session on this matter highlighted some uncertainties and questions about some existing schools, I have no reason to depart from Mr Stirzaker's assurance that capacity would be available. However, he did draw attention to the safety of schoolchildren, as all schools would be on the other side of a 6-lane highway, meaning that every child will need to cross this road by some means to travel to and from schools in Town or further afield.

MAIN ISSUE 8 – AMENITY

Key policies and guidance

321. BIP policy GD1 states that all development proposals must be considered in relation to their potential health, well-being and wider amenity impacts. It continues by stating that new development will only be supported where it will not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents. It then lists a number of factors to be considered which are: overbearing or oppressive enclosure; privacy; levels of sunlight and daylight; and adverse effects of emissions of light, noise, vibration, dust, odour, fumes, electro-magnetic fields, effluent or other emissions.
322. GD1 carries forward from the last Island Plan the similar benchmark that a new development must not have 'unreasonable' impacts on existing amenities that owners and occupiers 'might expect to enjoy'. It is important to recognise that the required policy assessments are context specific and are mediated by reasonable expectation in that context. Mr Nicholson drew my attention to caselaw in this regard.
323. Policy H1 addresses 'Housing quality and design'. It says that a proposal for new homes, should provide good quality accommodation and that it will only be supported where: 1. it provides easy to use and adaptable internal space; as well as private amenity space which meets or exceeds adopted standards; 2. it safeguards privacy and minimises exposure to noise; 3. it maximises opportunities for daylight, sunlight and natural ventilation to internal spaces, avoiding single aspect plan forms; and 4. where relevant, it provides shared internal and external spaces that contribute to the creation of sustainable communities, where people can meet their neighbours. The supporting narrative on pages 190 – 192 of the BIP explains policy H1 considerations.
324. The Minister has now published the Residential Space Standards Draft SPG (March 2023) and this is expected to be adopted soon.

Key documents and evidence

325. EIS chapter 16 and its appendices (CD4.3, CD4.32, CD4.33) covers daylight, sunlight and overshadowing (chapter 16). There is a separate report on daylight/sunlight effects within the scheme (CD3.14). Also relevant are the EIS content on noise and vibration (chapter 12) and wind (chapter 17). These are further supported by the evidence of Messrs McKenna (APP/16), Maclagan (APP/12a and b) and Symes (APP/15), along with Mr Nicholson (APP/1).
326. Ms Johnston (PA/1) covers amenity matters for the planning authority, with contributions from Mr Jones.

Assessment

327. There are neighbouring buildings to the north, east and south of the application site which include residential flats, commercial properties and hotels. The amenity protections set out in policy GD1 apply to both existing neighbouring occupants, residential and other uses, and to future occupiers, with policy H1 now adding additional consideration in that regard.

Amenity – occupants and uses outside the site

328. Residential properties on the north-east side of Victoria Avenue, along with the Grand Jersey hotel, are opposite the open part of the site. Whilst accepting that occupants may experience some amenity loss in the construction phases, the operational outcome will introduce expanded and high-quality public realm in their outlook and open views to the sea would remain. As no notable buildings are proposed, there are no shadowing or overbearing impacts to consider.
329. On the north-east side of Esplanade, occupants of the residential tower block, Marina Court, would experience some change in outlook, but the closest buildings (blocks G1 and C1) would be a comfortable distance away and, similarly, the largely commercially occupied office buildings along Esplanade would not be unreasonably harmed in terms of outlook, privacy or physical impact.
330. Occupants of the Victoria Place and Albert Place apartments to the east, Castle Quay to the south, and the 3 Horizon blocks to the south-west of the site, will all experience change through the introduction of large buildings in relatively close proximity, albeit across public streets, La Route du Port Elizabeth and Rue de L'Étau respectively. The separation distances, subject to careful design, should enable unreasonable privacy effects from window relationships to be avoided.
331. Mr McKenna's evidence (APP/16) on sunlight/daylight, with regard to all of these adjacent buildings, concludes that the vast majority of windows and rooms in these buildings would continue to achieve recommended targets for daylight and sunlight amenity and that, where the targets are not met, the majority of windows were found to experience minor effects.

Amenity – future residents

332. The Outline proposal involves a very significant number of new homes. The BIP narrative that accompanies policy H1 explains that the design of new homes has a significant impact on our mental and physical health, which has been highlighted by the experience of the pandemic. It further sets out that most of the new homes will be in the built-up area, where higher density of development will be encouraged to make best use of land, but

that this needs to be balanced by creating places where people can live healthy lives.

333. Given that this is an Outline application with all matters reserved, the assessment of future living conditions needs to be proportionate and relatively strategic. There are actually quite a number of different components of living conditions to consider, and some are easier than others to assess with the application type put forward.
334. A useful starting point is to consider the Residential Space Standards Draft SPG (March 2023). The standards are set out in a table which gives minimum gross internal areas (GIA) for different sizes/occupancy of dwellings and other standards for living spaces, bedrooms, bathrooms and storage to be achieved within the minimum GIA. There is a similar standard in England which is widely applied and such standards ensure that new homes are not unduly cramped and that they contain the space to be liveable. Inquiry document INQ6 demonstrates that the indicative mix could be comfortably accommodated within the residential block parameters if the standards are applied.
335. I next turn to private amenity space, which is a further consideration under policy H1(1). As a flatted scheme, there would be no individual private gardens, but amenity space would be provided in the form of balconies, rooftop amenity spaces and semi-private amenity spaces within blocks. There would also be easy resident access to the more public protected open spaces at Marina Gardens and Le Jardins de la Mer, both of which will be enhanced and the latter expanded. The DAS⁴⁴ states that 13,392 square metres of private amenity spaces and private community spaces are defined and separated from the public realm. I do not believe that I have seen a calculation using the private open space standard stated in the draft SPG, which ranges from 5 square metres to 11 square metres for flats, but the 13,392 square metre figure would comfortably exceed it. However, there are some practical and qualitative factors to consider here and these include the likelihood that balconies may not be feasible or desirable in some locations, that certain courtyard garden areas will be heavily shaded at times⁴⁵, and that rooftop gardens may be less appealing in windy conditions, albeit that some mitigation measures could be included, as set out in the DCS.
336. Policy H1(2) requires safeguards in respect of privacy and noise. With regard to privacy, I have to record that I have some real concerns about possible window to window relationships between flats in different blocks, many of which appear likely to be single aspect. The plot dimensions and

⁴⁴ Design and Access Statement Volume 2 (December 2022) page 189 (CD3.18).

⁴⁵ CD3.14 identifies a number of amenity spaces that will not achieve the BRE target of 2 hours sunshine over 50% of their areas on 21 March.

edges' parameter plan (CD2.6) records spaces between tall buildings being 8 metres in multiple locations, and 10, 12 and 14 metres in other locations. These are very close spacings and whilst some privacy concerns can be designed out or finessed, such as offsetting windows and controlling balconies as indicated in the DCS⁴⁶, there are too many instances for me to be certain that acceptable living conditions with regard to privacy can be achieved. I listened carefully to Mr Nicholson's submissions about context, but even in the most densely developed city environment, these unduly close relationships are generally avoided. At such limited distance, even applying the DCS measures, would mean that occupants of one flat would have very clear views of occupants in a flat in another block and conversations on inset balconies are likely to be audible through open windows or from other balconies. This would not amount to acceptable living conditions and more work is required to demonstrate that these concerns can be addressed in the vast majority of instances.

337. With regard to noise, I address this evidence under main issue 14, but generally, noise conditions for most future residents will be acceptable. However, the flats facing La Route de la Libération will be exposed to significant road noise; this can be mitigated by window and building design to achieve a satisfactory internal environment, but this will require windows to be kept shut and it does limit the useability and enjoyment of any balconies, most of which would also be facing north-east and receive limited sun for much of the day and evening.
338. H3(3) requires housing schemes to maximise opportunities for daylight, sunlight and natural ventilation to internal spaces, avoiding single aspect plan forms. The narrative accompanying the policy does introduce some helpful interpretation; it says that single aspect homes should be minimised, especially those that are north-facing, or those exposed to noise levels which may prejudice health. It adds that if single aspect dwellings are unavoidable, the design will need to demonstrate that all habitable rooms and the kitchen are provided with adequate ventilation, privacy and daylight, and that the orientation enhances amenity, including views.
339. There are no detailed floorplans to assess, but the building parameter plans and the indicative masterplans, indicate a preponderance of single aspect units. The blocks are typically served by central corridors with single aspect units either side, with multiple aspect flats located in corner and inset positions and some full span units in the middle of blocks at the ends of corridors. I do appreciate that this is not an unusual approach to modern apartment block design, but this is a large and relatively open site, as

⁴⁶ Design Codes Summary Volume 1 page 139.

opposed to a tightly constrained town centre site surrounded by existing buildings, and other indicative designs could have been considered.

340. The sunlight/daylight study (CD3.14) and the evidence of Mr McKenna (APP/16) is based on a recognised methodology to test likely daylight and sunlight availability for future flat occupants. In terms of daylight amenity, it uses a Vertical Sky Component (VSC) measure with a 27% VSC being the target. It assesses that adequate daylight (27% VSC or more) should be attainable in the 'vast majority of the scheme' but it does identify that in some localised areas (at lower levels on the inward facing courtyard elevations in Plots D1 and E1) daylight would be below 15%. I recognise that there are some design responses that can improve matters in these locations, including larger windows and larger floorspaces, but there is no escaping that there will be units that estates agents will never be able to describe as 'light and airy'.
341. With regard to H1(4), I am satisfied that internal and external spaces within the scheme could be designed and provided to contribute to social meeting and facilitating a sustainable community.

Main issue 8 – conclusions

342. The scheme will not cause unreasonable harm to the amenities of neighbouring occupants and uses, and satisfies policy GD1 in this regard.
343. The Outline scheme cannot currently satisfy policy H1's requirements to achieve good quality housing and living conditions across the scheme. There is no doubt in my mind that, for many of the homes, living conditions will be good, and for some, especially those enjoying panoramic bay views, quite enviable. However, whilst internal and external space standards can be met throughout the development, the indicative scheme suggests that there are a range of issues that would compromise living conditions.
344. Most flats are likely to be single aspect, and a significant number would appear to have northerly aspects or be fronting a noisy road, and some would have poor aspects facing tall buildings at close quarters. There are also privacy concerns and certain units will be exposed to significant road noise unless windows are kept shut.
345. I have taken into account the fact that this is an Outline scheme and that some of these matters have design solutions, but I assess that there are too many concerns and instances of likely compromised living conditions to enable me to conclude that policy H1 (and GD1) would be satisfied in the vast majority of cases.

MAIN ISSUE 9 – TRANSPORT

346. The application site is an existing generator of trips primarily in respect of movements to and from the leisure uses, the surface and underground car parks, Le Jardin de la Mer, the seafront and the walking/cycling routes. The site also includes the 6 lane La Route de la Libération from the Gloucester Street junction to, and including, the Castle Street roundabout, which is the widest and busiest stretch of road in Jersey and carries significant volumes of town traffic, through traffic, and port related freight traffic.
347. The Outline application proposal is of a very major scale and it will introduce new land uses and new trip generation patterns, which raise a host of transport related issues requiring assessment.
348. It is important to remember that the application is made in Outline with all matters, including access, reserved. However, the assessment of transport matters has to be based on the proposal as defined in the development description, the type and quantum of land uses and floorspace established in the EIS, and informed by the accompanying illustrative material.
349. All of this assumes that access for motor vehicles for most of the site (parcels A – E) will be via Rue de L'Étau via a revised (Radisson) roundabout, with a smaller part (parcel F) using the Waterfront Gardens access and underground car park, and the mainly office uses (parcel G) accessing via Esplanade⁴⁷. It further assumes that the scheme will include the vehicle and cycle space numbers and types as set out in the application documentation. It also assumes that certain highways works, including a new single phase pedestrian crossing of La Route de la Libération, would be put in place and that a travel plan would be implemented.
350. The transport experts representing the applicant and the highway authority had clearly worked well together ahead of the Inquiry. They had established a significant amount of common ground on many of the technical aspects of the proposal. This agreement is captured in the transport Statement of Common Ground (SCG5), and it appears that the highway authority has no objection to the proposal, subject to satisfactory conditions, obligations and further details on various matters⁴⁸.
351. Whilst I attach weight to this agreed position, there is a raft of complex issues to consider and a number of representations on transport matters, including the planning authority's objection concerning the approach to connecting the site to the town centre. As a result, I review all of the key issues under self-explanatory subheadings.

⁴⁷ As explained in paragraph 5.2.13 of the Transport Assessment CD4.18).

⁴⁸ These matters are set out in Tables 2 and 3 of Inquiry document SCG5.

Key policies, SPG and related documents

BIP

352. Policy SP1 sets out the approach to responding to climate change, which includes directing growth to areas of previously developed land, or locations which minimise the need to travel by private vehicle and which secure improvements to walking, cycling, public transport and active travel networks, and promote the use of sustainable forms of transport.
353. Policy SP3 (placemaking) includes requirements to make provision for all modes of transport in a way that prioritises and supports active travel choices, and where such provision is well integrated.
354. Policy GD6(4) includes design requirements to achieve high standards of accessibility, including for those with disabilities, and provision for safe access, movement, and parking.
355. Policy TT1 addresses 'integrated safe and inclusive travel' and says that the contribution to safe and integrated travel will be a consideration in all development proposals. It sets out criteria to be met by proposals which include demonstrating that the development is safe, inclusive and accessible to all users and modes of transport. It must also be demonstrated that consideration has been given to the provision for the travel needs of children, elderly people and people with sensory or mobility impairments and other forms of disability, and the promotion of walking and cycling in the design and use of the proposed development. It further states that development which compromises the physical integrity and/or proper functioning of the Island's highway network will not be supported. It also requires development which has the potential to generate significant amounts of movement to be supported by a transport assessment and a travel plan.
356. Policy TT2 addresses 'active travel' and seeks to make walking and cycling more attractive, especially for travelling to school and commuting, and requires development proposals to demonstrate that provision for walking and cycling has been prioritised in the design of proposals.
357. Policy TT3 addresses bus service improvement. It encourages development likely to generate significant movement within 400 metres of a bus route. It says that new development should provide appropriate infrastructure to support public transport and bus use, including the provision of direct and safe routes to bus stops that are accessible for all, and the provision of bus shelters and any associated infrastructure and technology.
358. Policy TT4 addresses the provision of off-street parking. It states that development that has the potential to generate vehicular movements, and a requirement for car and other forms of parking, will be supported only

where it provides an appropriate level of accessible, secure and convenient off-street motor vehicle parking, that is well-integrated with the development, and which accords with adopted parking standards in terms of number, type, quality, security and accessibility, to meet all users' needs, with priority given to parking for people with mobility impairments. It also states that permanent new off-street parking in 'Town' will not be supported and the redevelopment of off-street parking provision will be encouraged and supported.

Adopted SPG – The SWSHPF (December 2019)

359. The SWSHPF includes a section on connectivity and movement and sets out the community expectation of the framework delivering a reconnection between the town and the sea and people being enabled and encouraged to move freely between town, the Waterfront and the ports by foot, cycle, or other means of sustainable personal transport, and with friends and family of all ages and levels of mobility without feeling threatened or disturbed by vehicular traffic.
360. The SPG explores the issues relating to the barrier created by La Route de la Libération and identifies it as a key opportunity site (KOS7) and discusses crossing improvements, the potential for a pedestrian bridge, and a longer-term exploration of the future of the road.

Draft SPG – Parking Standards

361. The draft Residential Parking Standards (March 2023) SPG is a material consideration. It will replace the outdated 'predict and provide' SPG and introduces new and more flexible standards linked to the sustainable transport objectives of the BIP.

St Helier Public Realm and Movement Strategy Stage 3 Report (March 2021) (the PRMS)

362. The PRMS is a framework that seeks to deliver a transformational change to movement patterns within St Helier. It identifies 'significant pedestrian corridors' along La Rue de la Liberation, Castle Street and Esplanade, along with cycle and vehicle routes. It signals required interventions including reallocating road space on busier routes, such as La Rue de la Liberation and Castle Street. Its ambitions include developing '*a realistic plan to unite the Old Harbours and New Waterfront areas with the civic and retail centre by mitigating the divisive effects of La Route de la Libération.*'⁴⁹

⁴⁹ Page 49 - St Helier Public Realm and Movement Strategy Stage 3 Report (March 2021).

Key documents and evidence

363. Chapter 10 of the EIS (CD4.3) deals with Traffic and Access matters and its appendices include a Transport Assessment (the TA) (CD4.18a and CD4.18b) and a Framework Travel Plan (CD4.19). There is also coverage in the DAS (CD3.18) which includes a section on existing 'connections and movements' and, within its Framework, sections on access and movement, pedestrian movement, and cycle movement and strategy.
364. Inquiry evidence was provided by Mr Hyde (APP/5a and APP/5b) for the applicant and by Mr Hayward (PA/7) for the highway authority and their common ground recorded in SCG5. I have also considered the submission of the Parish of St Helier Roads Committee (CR4a and CR4b) and all of the interested party representations that raise transport and parking related matters.

Baseline conditions

365. Chapter 3 of the TA includes a thorough analysis of the site and existing conditions to provide a baseline for the study. It records the existing site uses, the local highway network, bus stops and services, ferry services, the location of local services and amenities, existing pedestrian facilities and crossings, and cycle parking facilities.
366. It also records accident data in and around the site in the 3-year period 2015 – 2018. It showed 40 collisions, 12 being serious, with a concentration along La Route de la Libération corridor and notable clusters at the Castle Street roundabout and the Gloucester Street signalised junction. A post Inquiry technical note (INQ15) produced by the applicant's transport consultant, states that the Castle Street roundabout accident figures 'would not be regarded as excessively high when compared to urban grade separated junctions of a similar layout and flow in the UK' but it goes on to note the high number of collisions involving cyclists.
367. The TA further notes existing car parking capacity at the site on the 3 car parks at Esplanade (195)⁵⁰, Les Jardins (580) and Waterfront Gardens (500), and records arrivals and departures in peak hours. It identifies 289 existing motor cycle parking spaces and a high (84%) occupancy rate for these facilities. Traffic data was collected from a comprehensive range of manual and automatic traffic counts; the automatic traffic counts include data from the underpass stretch of La Route de la Libération in the period 2016 – 2021.
368. It also records peak hour congestion patterns, which will be familiar to many residents and workers in St Helier. In the morning peak, it finds that

⁵⁰ Since the TA was conducted the Esplanade car park has been displaced by a construction compound for an office development.

the local highway network surrounding the site is slower moving than free flow on La Route de La Libération eastbound, with only a slight reduction in speeds on La Route du Port Elizabeth. To the north, Gloucester Street and St Aubin's Road are slower moving than free flow. To the east, more significant congestion is present on the westbound carriageway of La Route Du Fort, on approach to the Fort Regent Tunnel. In the evening peak, it records that La Route de la Libération eastbound is heavily congested towards the tunnel, whilst westbound traffic is slower moving than free flow. La Route du Port Elizabeth is slower moving than free flow in both directions. To the north, St. Aubin's Road is heavily congested, whilst Gloucester Street is slower moving than free flow. East of the site and to the east of Fort Regent Tunnel, there is heavy congestion on La Route du Fort eastbound and at Green Street southbound.

369. SCG5 records that the TA's assessment of existing conditions, the definition of the study area and traffic data are all 'agreed'. I also agree that it is a good and thorough baseline assessment. However, there are a few shortfalls and omissions in my views.
370. First, the accident data is now a little dated, the last collision record being over 3 years ago. It would be useful to have more up to date figures, particularly concerning the apparent clustering of accidents.
371. Second, the traffic data is also the subject of a lag, the last automatic counter data in the A1 underpass being the first 2 months of 2021 (January and February). This means that the settled traffic effects following the Covid-19 pandemic, lockdown and changes in working and commuting patterns, have not been fully captured in the application evidence, although I understand the data is available and published.
372. Third, there is a missing qualitative assessment of harshness and severance created by La Route de la Libération and its current traffic volumes, speeds and (certain) driver behaviours. I explore these matters further below.

Parking – cars and motor cycles

373. When the application was submitted, the site contained 3 car parking areas with a combined total of circa 1275 spaces. Only one of the car parks is a permanent use, this being the 500-space underground car park at Waterfront Gardens, which is of a high standard in my view in terms of appearance, management and its relatively discrete ingress and egress arrangements. The 2 temporary surface car parks are at Les Jardins (580) and Esplanade (195), although the latter is now decommissioned and in use as a construction compound.

374. The Outline proposal assumes a total of 825 car parking spaces and 283 motor cycle spaces.
375. The car parking would comprise 384 residential spaces (equating to 0.39 spaces/apartment), 21 car club spaces, 85 spaces for commercial/operational purposes, and the re-provision of 335 public parking spaces. The public parking spaces would comprise 140 existing underground spaces at Waterfront Gardens and 195 new spaces in the proposed main basement, accessed from the Radisson roundabout.
376. The Draft SPG: Residential Parking Standards, which is expected to be adopted soon, adopts a maximum standard of 1 car parking space per unit in St Helier Town Centre (the site falls within the centre) and sets no minimum. In the wider Town, it sets a 0.25 car parking spaces/dwelling minimum standard. The proposed ratio of 0.39 car parking spaces/dwelling, supported by a range of other sustainable transport initiatives discussed below, appears to strike the right balance for this sustainable location.
377. The indicative motor cycle parking levels proposed is comparable with existing spaces on the site and in excess of the draft SPG's minimum level of 1 motor cycle space for each 10 dwellings.
378. Subject to reinforcement by other measures, the car parking arrangements indicated would support and drive modal shift to more sustainable and active travel and, at the same time, be realistic in terms of the wide spectrum of residents' personal mobility needs and demands. However, it is important that residents parking is actively managed to promote sustainable travel. Mr Hyde's proof (APP5) makes an unfortunate reference to the allocation of spaces being on a 'first come first served'⁵¹. This should be avoided in my view, and replaced with sensible criteria and limits. For example, there should be priority for those with mobility needs and for those with essential car driver occupational needs (such as visiting medics) and block buying of car parking spaces for a single apartment should be precluded. All of this can be addressed through a parking management plan.
379. The re-provision of public parking spaces is somewhat less than the 520-space figure indicated in the SWSHPF, but I give weight to the assessments undertaken and Mr Hayward's view that this would be acceptable and I am mindful that BIP policy TT4 adopts a presumption against new off-street parking in town and that it encourages redevelopment on existing parking sites.

⁵¹ Paragraph 6.3.5 of Inquiry document APP/5.

380. Subject to a robust parking management plan and travel plan, which could be secured by planning conditions and obligations, I consider that the Outline proposal's approach to parking is acceptable and is 'appropriate' as required by policy TT4.

Car club

381. The inclusion of a 21 parking spaces to enable the operation of a car club is an important sustainable travel component of the Outline proposal and it will facilitate future lifestyles which are not dependent on car ownership. Its delivery and operation could be secured by planning conditions and/or a POA.

Cycle parking and facilities

382. The indicative scheme would include circa 2,460 cycle parking spaces which would comprise 1704 residents cycle parking spaces with lockers in the basement areas; a 388 space 'cycle hub' with shower and locker facilities for commuters/ visitors; 314 short stay cycle spaces along secondary streets; and 54 spaces at parcel P1, replacing and exceeding spaces lost by the ferry ticket office and La Frégate. The scheme also intends to include e-bike hire provision (58 spaces). The applicant has indicated that a financial contribution towards the development of the Eastern Cycle Network will be secured by a POA.
383. The indicative cycle parking provision accords with BIP policy TT2 requirements a) and b) and is broadly in line with the indicative cycle parking standards set out in the Draft SPG: Residential Parking Standards. The approach to cycle parking and related provision is acceptable and a very positive feature of the Outline proposal.

Walking

384. There is a network of footways and pedestrian routes running through and across the application site. Esplanade, La Route du Port Elizabeth, Rue de L'Etai and La Route de la Libération all have footways on both sides of the carriageway. There are routes through the site to the seafront and Les Jardins de la Mer, which are popular destinations for pedestrians.
385. La Route de la Libération is a major barrier to pedestrian movement within the site. There are signalised two phase crossing points at Kensington Place and Gloucester Street and mini zebra crossings on one side of the Castle Street roundabout. The underpass from the former Esplanade shopper car park to the cinema included a footway, but it is currently closed off by construction fencing and not in use.
386. The indicative scheme would introduce a single phase 'at grade' pedestrian crossing of La Route de la Libération at a point which would be about 100

metres south of the Gloucester Street junction. It is also proposed to upgrade the Castle Street roundabout into a Dutch style arrangement, to improve safety and accessibility for pedestrians and cyclists. The DCS⁵² shows an intention to introduce tree planting and landscaping in a widened central reservation of the road and along its edges.

387. The key issue of severance arising from La Route de la Libération and the connection proposals is explored later.

Public transport

388. The site enjoys good existing public transport accessibility, with the bus station nearby and existing bus stops on the Esplanade, Century Buildings (eastbound) and West Park Slipway (westbound).
389. Due to the scale of the development proposed and the recognised additional demand for bus services that it will generate, a new bus service is proposed. The applicant explained that this would be on a demand-driven basis, as the phased delivery of development progressed. It is envisaged that the new service would utilise a smaller (17 seat) vehicle and will offer a service to and from the town centre. A new bus stop is proposed on the eastern side of Rue de L'Étau, adjacent to the Radisson roundabout.
390. The applicant's approach to public transport is endorsed by the highway authority, subject to the agreement of a Bus Strategy and technical details of facilities, all of which could be secured by planning conditions/POA.

Network impacts and capacity/congestion

391. The TA assesses the effects of the proposal on highway capacity, using a combination of junction software modelling and supplementary local junction modelling. This modelling includes trip generation assumptions drawn from industry standard databases (TRICS) and finessed with local relevant data. The modelling approach, assumptions and methodology are all agreed by the highway authority and considered robust.
392. This is a complex field, but the headline findings are relatively straightforward. Mr Hyde explained that the development would result in more traffic, with 121 extra vehicle trips in the morning peak and 141 in the evening peak. Cycle trips were estimated to be an additional 1,000 in the morning peak and 1,600 in the evening peak. In essence, the modelling indicates no significant network impacts and no significant additional congestion points. End to end journey times moving along La Route de la Libération/Esplanade/Victoria Avenue corridor would increase slightly, as a consequence of the additional traffic and the interruptions

⁵² Design Codes Summary (December 2022) – section 4.8.6.

caused by the proposed new pedestrian crossing. However, the delay is only circa 1 minute during peak times.

393. Subject to mitigation measures, there are no highway capacity reasons to withhold planning permission.

Emergency access and safety issues

394. Whilst the application is submitted in Outline, its parametric design does enable some early consideration of emergency access issues. There were very useful contributions from Mr Gavey (CR18 and CR18a) the chief ambulance officer, and Mr Hall from Jersey Fire and Rescue (CR1 and CR1a). They highlighted a range of issues concerning patient access and emergency situations, including fire incidents in the large basement area. Mr Hall drew particular attention to the hazards of electric car fires which can burn for a protracted period. These are not matters that are determinative in respect of the Outline planning application, but they are wisely flagged at this early stage for detailed consideration and subsequent design responses.
395. In that same light, I have to say that I am troubled by the indicative masterplan approach of a single ingress/egress to serve most of the development; a major incident within the basement, or a significant blockage at the ramped entrance could be very disruptive and raise safety issues. The access is also very close to the existing accesses to the Horizon flats basement parking and the hotel, and the modified roundabout may be very busy and less than ideal for cyclists and pedestrians moving through the area.
396. I also must record that the main indicative access and highway alterations that the Outline proposal seeks to rely upon are not, at this stage, supported by road safety audits. Working up the conceptual designs for the main access, the new pedestrian crossing of La Route de la Libération, and the 'Dutch' style Castle Street roundabout, to enable the initial stages of road safety auditing to be undertaken, would have been very useful. Without that evidence, I cannot be sure that the development, as defined by the parameter plans, can be safely accessed for all users. This is one of the difficulties that arises when all matters, including access, are reserved on a very major Outline application proposal.

Framework Travel Plan

397. The application includes a Framework Travel Plan (FTP) (CD4.19), which is aimed at promoting sustainable transport. It includes a high-level implementation plan to maximise the opportunity to influence the behaviour of shoppers, visitors and residents. It states that a travel plan coordinator (TPC) would be appointed six months prior to first occupation

and would oversee the overall management of the Travel Plan, including liaison between all interested parties overseeing implementation, and reviewing of targets following each monitoring stage.

398. Whilst the FTP is a useful starting point, it is somewhat generic in its approach and lacks clear and measurable targets, which are left to be defined in a more detailed travel plan stage. However, the requirement for a detailed and robust travel plan and its implementation could be secured by a combination of planning conditions and a POA.

Severance/Connectivity

Background and observations

399. In many ways, severance/connectivity is a main issue in its own right. It is a significant matter in this case and carries considerable weight. As a consequence, I explore this issue at some length below.
400. The severance effect of La Route de la Libération, and the objective of reconnecting the town to the Waterfront and harbours, are longstanding recognised planning matters. It is a widely held view that, whilst land reclamation projects south of the historic seawall have provided St Helier with valuable new land and opportunities, the 'motorway', as many termed La Route de la Libération at the Inquiry, that cuts through the area, creates a significant and undesirable severance.
401. Not only has the town centre lost some of its intimate connection to the sea, but the new land areas are physically divorced from the historic town centre, which is otherwise very pedestrian friendly, welcoming and walkable.
402. The route for a pedestrian moving from the historic town centre towards the water is hostile, noisy and intimidating. This is not only the case at the 2 crossing points within the application site (Castle Street roundabout and adjacent to Gloucester Street), but also to the west by Victoria Park and to the east by Liberation Square, although conditions at the latter are a little less harsh, but still far from ideal. Over the years, I have watched pedestrians, particularly visitors and older people, hesitating at the crossings within the site area, even when the green signal is lit; they are not confident that the traffic will stop.
403. The scale of the road through the site is of UK motorway proportions, with 6 lanes of traffic, a grade separated roundabout, extensive pedestrian guard rails, and it is dominated by unrelieved tarmac surfacing and concrete structures. It carries considerable volumes of traffic and a figure of 37,000 vehicle movements per day was cited at the Inquiry, with much of this being through traffic, evidenced by a figure of 26,000 movements per day through the tunnel.

404. Traffic on La Route de la Libération through the site, and alongside the site on Victoria Avenue, is often travelling at speed, and seemingly often in excess of the signed speed limits. The interruptions to flow along this corridor created by junctions, crossings and the Castle Street roundabout, result in stop start movements and the sounds and sights of rapid acceleration and braking are commonplace.
405. At the Inquiry there were some insightful contributions about certain Jersey trends and idiosyncrasies that contribute to the hostile pedestrian environment along the road corridor. Mr Young observed that driving in Jersey is generally very constrained, but this short stretch of 'motorway' is the one place where drivers can put their foot down and enjoy the power of their vehicles. It is an accurate and astute observation and everything about the road, other than the small circular speed limit signs⁵³, signals high speed to the road user.
406. Mr Vibert contributed by explaining the very high number of vehicles on the Island and a figure of circa 68,000 was later confirmed; this is reflected in high figures for households having access to a car (when compared to England). There is also the contributory issue of the absence of an MOT system and noisy vehicles, mopeds and motorcycles. Whilst I understand there may be some legal limits in place, noisy vehicles are commonplace.
407. After the Inquiry session on transport, I wandered down to the application site and witnessed a rider on a powerful motorbike doing a racing start and haring off westwards onto Victoria Avenue at breakneck speed, the noise filling the air and sounding like a racetrack. Jersey people reading this report will know that this noise and speed effect is not an isolated occurrence.

Evolving policy

408. The 2008 Esplanade Quarter Masterplan represented a bold attempt to address the recognised disconnection, primarily by 'sinking' La Route de la Libération and seeking to provide an opportunity to develop this new quarter of the town for prime office space, housing, hotel, car parking and a winter garden. Whilst judged to be financially unviable, it does serve to remind that the issue of severance is not a new found problem, but one that has been recognised as requiring a solution for many years.
409. This policy approach was replaced by the adoption of the SWSHPF in 2019, which covered a much wider area and identified key opportunity sites, one of which is the road (KOS 7). Whilst the SPSHPF has moved away from the super engineering tunnel concept, it remains committed to a transformational approach to address the issue of severance and

⁵³ The official signed speed limits are 30mph on La Route de la Libération and 40mph on Victoria Avenue.

connection in line with stated community objectives. This is further reflected in the PRMS (2021) which supported the BIP and is adopted in its own right; it seeks to deliver a transformational change to movement patterns within St Helier.

410. SWSHPF paragraph 3.11 states that: *This new framework, therefore, is based upon the assumption that the road will not be lowered and covered, but that interventions should be fully considered to make the crossing of the road a viable, safer and easier experience.* It includes some possible options to improve crossing points in an appendix. Paragraph 3.12 states that *'studies and architectural/engineering competitions will be encouraged in order to find an innovative and elegant bridging solution to the road.'*
411. SWSHPF includes a specific section dealing with the road as a key opportunity site. It⁵⁴ identifies that the road is one of the main barriers to creating a successful reconnection between the town and the Waterfront and ports. It states that, without prejudicing the long-term future of the road, improvements can be made to existing crossing points, especially at its junction with Gloucester Street, the roundabout and between the Steam Clock site and Liberation Square/Weighbridge Place and that these improvements could be made in the 'short term', which is defined elsewhere in the document as 1 – 4 years, i.e., presumably the period, 2020 – 2024.
412. It then addresses the 'longer term'⁵⁵ which is 10+ years and states that the future of La Route de la Libération will be explored in greater detail as the expectations of the planning framework come to fruition. It says that consideration should be given to the transformation of this arterial road into a place in its own right – through changes to its vertical and lateral alignment, the reduction of traffic volumes and speeds and the relationship of buildings to it – to create more of a street. It adds that the feasibility, or desirability, of such an option has not been considered in any significant detail but should remain open if the community is to realise its aspiration and objective of 'place-making' in southwest St Helier.
413. The 'medium term' period in between (4 – 10 years) is not addressed in the KOS7 section, but earlier in the document, paragraph 5.7 states: *Developments within Key Opportunity Sites will be expected to deliver the provision of community facilities, public realm enhancements and/or infrastructure improvements in accordance with the provisions of the framework either on-site and/or off-site where identified as being necessary and appropriate. Working in close liaison with developers and the community, the Department will use Planning Obligation Agreements in*

⁵⁴ Paragraph A1.34 of the Southwest St Helier Planning Framework (2019).

⁵⁵ Paragraph A1.35 of the Southwest St Helier Planning Framework (2019).

order to meet the framework objectives where these cannot be secured by planning condition. Developers will be encouraged to use imagination and innovation in meeting the objectives on their particular site and, more importantly, will be required to engage with the community in the identification and design of facilities, improvements and enhancements.

The Outline scheme's response

414. What is actually put forward in this application to seek to address the severance issue, is focused on introducing a new pedestrian crossing and improvements to existing crossing points, including upgrading the Castle Street roundabout to a 'Dutch' style arrangement, to improve safety and accessibility for pedestrians and cyclists and improvements. Mr Hyde explained that it was likely that a pedestrian would wait 'up to a minute' after pressing the button at the new crossing for the lights to change.
415. The adopted approach sits at the other end of the scale to the super engineered 'put the road in a tunnel' solution, which was policy until 2019. In my view it is a relatively minimalist and low-cost 'business as usual' approach and a long way short of delivering the transformation ambition set out in the SWSHPF and the PRMS.
416. I do not for a moment consider that the single phase at grade crossing will not be an improvement, or that the Castle Street upgrade and other measures, will not deliver some benefits for pedestrians and cyclists. The landscaping may also be beneficial, although I have some doubts about its practicalities and ease of maintenance. However, the outcome will be that the road corridor will remain hostile to pedestrians and create a less than ideal outlook and environment for new dwellings proposed near to it. The EIS headline findings could be a little misleading in this regard, as it assesses⁵⁶ 'negligible' effects in terms of pedestrian and cyclist 'severance', 'amenity' and 'fear and intimidation'; what this actually means in practice is that a bad existing situation is not made much worse by the extra traffic generated by the development.
417. Looking at the existing baseline conditions, including the clusters of road accidents and the hostile environment presented to pedestrians and cyclists, there seems to be a good case for implementing such, or similar, measures now and before contemplating building an entirely new community of several thousand people, including the accessibility needs of children, the elderly and the disabled. Indeed, the type of interventions proposed would fall under the SWSHPF 'short term' (by 2024) measures that are not directly linked to new development proposals and appear to be

⁵⁶ Table 10.15 of EIS (Inquiry document CD4.3).

an intended public sector endeavour, albeit subject to funding, some of which is indicated may come from POAs.

418. The key issue with this Outline application is that it incorporates more than half of the KOS7 area, promotes a very major development on KOS1, KOS2 and KOS3 which will be delivered over the medium and into the longer term, but it fails to address the road issues other than through short term measures. It does not deliver the required reduction in severance and better integration of the site into the town.
419. I asked what steps had been taken to explore 'taming' the road and Mr Hyde explained that work had been undertaken. Curiously, none of this had been submitted in evidence to the Inquiry, but he subsequently submitted a Technical Note from May 2021 (INQ11) which reviewed opportunities for KOS7 (the road). As I read it, the note tests one option only, which would be the downgrading of the A1 to 2 lanes each way and removing the grade separated Castle Street roundabout, whilst assuming no change in traffic volumes. Unsurprisingly, it predicts significant increased congestion and estimates that traffic would need to be reduced by 30% to make it work and that initiatives to achieve that would be *'highly controversial, have significant lead times to realisation, and come with many challenges.'*⁵⁷ I do not doubt the findings, but it does not feel like an exhaustive exploration or that it alone evidences 'imagination and innovation'⁵⁸ as set out in the SWSHPF, or that it embraces the transformational approach set out in the PRMS and the States adopted Framework for a Sustainable Transport System 2020 – 2030.
420. There is a plethora of road design options and permutations, speed reduction, camera enforcement, lane priorities, and demand reduction measures that could be explored. I don't for a moment claim that any of this is easy, but it is also not novel and there are examples of UK and European towns and cities that have tamed urban arterial routes, whilst maintaining their transport and economic functions. I noted that JAC referred⁵⁹ to the example of Rue Garibaldi Street in Lyon, which I understand has been transformed from a 6-lane expressway into a green boulevard. The notion of taming the road is signalled in the PRMS and the SWSHPF, the former promoting reallocating road space and the latter encouraging the concept of 'Slow Town St Helier' where quality of life and environment is key.
421. At the Inquiry, a number of representors described the road as completely out of scale with the town. It reminded me of the first time I visited St Helier. As I approached from the west, the road felt city scale and akin to

⁵⁷ Inquiry document INQ11 – page 28.

⁵⁸ Paragraph 5.7 of the Southwest St Helier Planning Framework (2019).

⁵⁹ Jersey Architectural Committee, 27 November 2020 – Inquiry Document CR15e.

an urban freeway leading to a large metropolitan centre. When I walked around the town and got a feel for its size and character, the road felt out of kilter. There is always a danger of making comparisons with other places, but main towns I have visited in other islands, such as St Peter Port in Guernsey and Douglas in the Isle of Man, seem to function perfectly well with more human scale arterial road networks, including routes with a ports traffic role.

422. It is also a known phenomenon that wider roads do not solve urban congestion, and that reducing road space and giving it over to greenspace can reduce car demand and increase active travel. This chimes with Mr Hayward's evidence⁶⁰, which highlights the Sustainable Transport Policy adopted by the States assembly in March 2020, which formally establishes the principle of a demand management approach to Jersey's transport network by recognising that *fewer vehicle journeys will be good for Jersey*.
423. I also asked about a pedestrian bridge option, as this is a matter specifically promoted in the SWSHPF, with the possibility of an international design competition. However, the applicant and the highway authority expressed concerns about the size of the bridge, given the need for it to be 6 metres above the carriageway and the requirement for 1:20 ramps to allow disabled access. Whilst noting these challenges, a design competition type exploration, which might lead to more innovative solutions involving lifts rather than ramps or other measures, has not been conducted.
424. I also asked why the existing subway was not being utilised and was advised through a post Inquiry note (INQ15) that subways are considered undesirable in terms of personal safety implications, the maintenance burden, and that retaining it would require 50 metre ramps either side and this would have a significant impact on the public realm. However, this is currently the only route that could avoid traffic conflicts entirely, and there are no compelling reasons to suggest that the high-quality public realm, along with security measures, could not provide a valuable and safe connection.
425. I have noted Mr Nicholson's submission that the proposal does not prevent future changes to the road and that the applicant's latest response (INQ17b) to the JAC feedback, makes a reference, albeit fleeting, to 'opportunities for the Authorities to slow traffic speeds to 20mph'. However, it must also be recognised that the proposed development is of a strategic scale and the biggest single catalyst for change in the Waterfront area. The site and the development would also be one of the main beneficiaries of a successful transformational approach, particularly if that

⁶⁰ Section 4.8 of Inquiry document PA/7.

entailed a planned reallocation of road space to allow a calmer, greener and more attractive boulevard approach, whilst maintaining the strategic arterial function of the road.

426. Whilst it would be unrealistic to expect the applicant to deliver all of the changes required, and other parts of the government will need to contribute, it needs to do significantly more to facilitate and deliver transformational change over the medium and longer term, which are the periods within which the development would be delivered and populated by new residential, employee and visitor communities. I consider it unacceptable in planning terms to defer the resolution of this fundamental constraint issue in the potentially vain hope that government will sort it out at some point in the future. It is critical to the success of the Waterfront and the solution has a direct bearing on the correct urban design approach to the wider development.

Main issue 9 – conclusions

427. The applicant has undertaken appropriate assessments of baseline transport conditions, traffic demand and modelling of highway impacts. In transport and accessibility terms, the site represents a highly sustainable location for a major housing led mixed use regeneration scheme. It would place a substantial amount of new housing, employment and leisure uses in a location where residents and employees would have a genuine choice of sustainable modes of travel.
428. The proposal adopts a well evidenced and proportionate approach to public and private parking for cars, motorcycles and cycling. Its approach to cycling facilities, including the commuter hub and electric bike charging points, is a particularly strong and positive feature.
429. I do have some concerns about emergency access and road safety matters, but access is a reserved matter and these issues could be addressed by conditions and subsequent reserved matters submissions and through road safety audits.
430. Due to its location, its approach to sustainable travel modes and its proposed travel plan implementation, the evidence indicates that the proposal will not result in any undue highway capacity or congestion issues.
431. However, the significant transport weakness in the application proposal is its failure to address the severance issues presented by La Route de la Libération. The applicant has provided a proposal that is not without some merit in this regard. The measures suggested will deliver some improved connectivity and aesthetics, but that improvement is limited and falls into the category of short-term improvements outlined in the SWSHPF, which

are anticipated to be delivered to improve the current situation (unrelated to the KOS development).

432. The Outline application development proposal would be delivered over the medium and longer terms, but fails to address connectivity other than through minimal short-term measures. The development represents a major potential catalyst for change but the application, as currently submitted, will deliver very limited connectivity improvements and will not significantly reduce severance, which is a stated planning and community objective attracting significant weight. This means that the proposed new community of several thousand people, including schoolchildren, the elderly and disabled people, would still be located on the other side a very wide and hostile 6 lane highway.
433. Overall, the proposal adopts a minimalist 'business as usual' approach to the connection/severance issue, rather than the transformational approach required. This results in significant policy conflicts, as the proposal fails to achieve the fundamental policy requirements set out in BIP policies TT1, TT2, SP3, GD6(4) and the guidance set out in the SWSHPF and the PRMS. This weighs very heavily against the proposal in its current form.

MAIN ISSUE 10 – COMMUNITY INFRASTRUCTURE AND RETAIL

434. In this session, the Inquiry explored the issues concerning the scheme's performance against the BIP's community infrastructure (CI) themes and suite of policies.

Swimming pool

435. The proposal entails the demolition of the AquaSplash facility. The EIS states⁶¹ that it has a floorspace of 3,573 square metres. The proposed development would include 6,568 square metres of leisure building floorspace which the EIS lists⁶² as including the following uses: *roller disco/ ice rink indoor skating/bouldering centre, gym facilities, relocated ticket office (Elizabeth Castle), leisure centre with pool including flumes, lido*. The leisure centre is indicated as being within a similar location (Block F to the south-west of Castle Street roundabout) and the lido would be in the vicinity of the current Les Jardin de la Mer. There are 2 policy issues to consider: CI5 which addresses sports, leisure and cultural facilities and GD5 which addresses building demolition.

436. Policy CI5 says that: *The redevelopment of the public swimming pool and/or cinema on the St Helier Waterfront will be supported where the prior provision of alternative facilities in Town can be assured, which may be secured through the use of planning obligation agreement, as required.* The supporting text explains that the existing pool is one of the Island's two public swimming pools and is within KOS3 in the Southwest St Helier Planning Framework. It says that plans for the development of KOS1–3 are being prepared and *'...any proposals for the redevelopment of these key island facilities will need to demonstrate that the provision of alternative facilities in St Helier can be assured. This is required to maintain the provision of adequate sports and leisure infrastructure for town residents, islanders and visitors, and to ensure the vitality of St Helier as the island's cultural and leisure hub.'*

437. The applicant is prepared to enter a POA and agree terms which would ensure that this requirement would be met. However, the practicalities and adequacy of the likely facilities has been challenged and, given the large number of representations on this matter, it is clearly a live and important issue. At the Inquiry, the applicant explained that it was exploring the temporary repurposing of the proposed lido, which would be developed early on, by providing a cover to enable it to function as an indoor facility for the period prior to the new leisure centre being opened. Ms Johnston expressed concerns about its small size and considered that it would not

⁶¹ EIS Volume 1 Table 3.1.

⁶² EIS Volume 1 Table 5.4.

provide the continuity of facility required and therefore failed to meet the policy CI5 requirement.

438. The difficulty here is that the proposed new indoor pool will be constructed in a similar location to the existing facility. This is in my view the best location for the leisure centre within the application site, being closest to the town centre and bus station. It means that there will be a temporary period between the old pool closing and the new pool opening. Public pools are costly to build and operate and the applicant's idea of utilising a covered lido as a stopgap is not without merit. However, the practicalities would need working through, user groups consulted with, and a strict delivery timetable provided. It may also require some assistance for users to be able to access the other Island public pool facility at Les Quennevais.
439. Policy GD5 makes a general presumption against demolition of buildings for reasons of sustainability. However, it does allow exceptions where it is demonstrated that: *1. it is not appropriate in sustainability terms, and/or economically viable, to repair or refurbish it; 2. the proposed replacement building or part of a building represents a more sustainable use of land having regard to the density of existing and proposed development, overall carbon impact, waste generation, and the use and performance of materials and services; or 3. there exists a demonstrable aesthetic and practical benefit to replace over refurbishment.*
440. There can be little doubt that the demolition of large modern buildings that have barely been in place for 20 years is less than ideal in sustainability terms. However, in this case, the BIP contemplates the redevelopment of the buildings through CI5 and the SWSHPF, the latter defining the buildings as a 'key opportunity site' (for redevelopment) and condemning the AquaSplash/Cineworld complex as 'a brutal, visual barrier separating town from the Waterfront' and stating that 'the buildings have turned their backs onto town'. There is no doubt in my mind that demolition of the existing buildings, as part of a broader comprehensive regeneration of KOS1/2/3/7 would satisfy all 3 of the GD5 exceptions. I also note that the buildings are likely to have a significant amount of recyclable fabric.
441. I consider that subject to a POA, the terms of which would need to be carefully crafted, the proposal would comply with policy CI5. I find no conflict with policy GD5, as the demolition would meet the allowable exceptions.

Cinema

442. The proposal would involve the demolition of the Cineworld building, which is a 10-screen cinema with a floorspace of 3,505 square metres. The existing operator is the subject of bankruptcy protection proceedings, the business having been severely impacted by the global pandemic. The

Outline application proposal includes 2,478 square metres for 'arthouse cinema, other cultural venues and community space.' A floorspace breakdown contained in the Transport Assessment⁶³ indicates that the arthouse cinema would be 495 square metres and is expected to include 3 screens and up to 225 seats.

443. The same policies apply as with the pool. I reach the same conclusion with regard to demolition and GD5 and do not repeat the reasoning.
444. With regard to CI5, the applicant has again indicated a willingness to enter a POA to commit to delivering alternative provision in line with the policy. However, the planning authority raises concerns about (i) continuity of cinema facilities and (ii) their adequacy. The applicant has indicated a potential rephrasing to address the first issue, but the second issue remains disputed by the main parties. Whilst I recognise that the cinema market is the subject of considerable change, with the growth of streaming services and that it would be quite unrealistic to expect the re-provision of a large multi-plex cinema, the concept of a small 'arthouse' cinema, does not feel like it would meet the Island's general cinema needs.
445. I can conclude that, subject to a suitably worded POA, policy CI5 can be complied with, but I am unconvinced that the current proposal encompasses an appropriate and adequate re-provision and, to satisfy the POA, some scheme amendment may be necessary, or the matter addressed on another site in Town, as required by CI5.

Protected open space

446. The BIP identifies area of 'protected open space' and the site includes 2 such areas, these being at Waterfront Gardens and Les Jardins de la Mer. Policy CI7 protects these spaces against loss other than in exceptional circumstances. Both of the spaces would be retained in the scheme and the DCS documentation indicates a planned enhancement of these areas.
447. The proposed lido and its attendant pavilion structures would fall within the Les Jardins de la Mer protected area, but I do not consider that this would amount to a 'loss' in policy terms as the lido is appropriate to the seaside park and likely to be very popular and an integral component of how the wider space is used and enjoyed. Moreover, I agree with Mr Nicholson's submission that the proposal will deliver new open space that, in future Island Plan iterations, is highly likely to be covered by a CI7 type protection. This is particularly so for the proposed public realm space to the north west of Les Jardins de la Mer.
448. The Outline proposal is acceptable with regard to policy CI7.

⁶³ 4.1.10

Retail

449. The Outline proposal includes a retail content of 1,296 square metres. There is a detailed breakdown of this in Appendix 10.1⁶⁴ of the EIS which indicates that it would include a 'large convenience store' (454 square metres), a 'niche store' (272 square metres), 3 'general' retail stores (80, 110 and 260 square metres), along with a gift shop (70 square metres) and a kiosk (50 square metres).
450. In policy terms, the application site is within the defined town centre but outside the Core Retail Area (CRA), the nearest point being the western end of King Street, which is about 350 metres walked distance from Castle Street roundabout.
451. Policy ER1 provides support for new retail and town centre development in the St Helier town centre, on the condition that retail floorspace over 200 sqm (gross internal floor area) demonstrates that it does not harm the primary retail function of the CRA.
452. Policy ER2 requires retail proposals of 200 sqm and above to demonstrate that they satisfy 6 criteria. These include the requirement for a sequential approach to site selection to be demonstrated and the anticipated retail impact to be assessed to demonstrate it will not have a detrimental effect on the vitality or viability of the CRA.
453. The application was submitted without a retail statement and one only appeared a few days before the Inquiry which was not ideal. Whilst it has been added to the Core Documents list (CD3.23), its late arrival means that other parties, including the planning authority, have had limited opportunity to review it.
454. The retail statement sets out that the proposed retail floorspace is location specific, being intended to serve residents of the scheme, existing residents in the immediate area, those working in the immediate area, and visitors to the Waterfront and nearby attractions. It then assesses the need for the location, scale and type of retail proposed by reference to the likely population and retail spending estimates, to give figures of in the order of £9.96m of convenience goods expenditure and £11.43m of comparison goods expenditure (in 2021 prices).
455. It then makes assumptions about how much of this spend could be retained within the site (about 30% for convenience shopping and 15% for comparison) and uses industry sourced sales data to compute a localised net floorspace requirement. This gives a gross floorspace figure of 474 square metres for convenience and 407 square metres for comparison

⁶⁴ EIS Appendix 10.1 – pages 42-43 (CD4.18a).

shopping. It assesses that 68% of the proposed retail space within the scheme would be supported by scheme residents. It concludes that, being 'location specific', it could not function in the same way and meet local needs as conveniently if it were located away from the application site and closer to St Helier's CRA, that it would not compete for the same commercial market as operators in the CRA, and that it is therefore compliant with the requirements of the sequential test.

456. The retail statement then goes on to explore the suitability and availability of alternative sites within and closely related to the CRA that could accommodate the proposed 1,296 square metres of retail space. It identifies 4 available units ranging from 49 – 256 square metres, none of which would be large enough to accommodate the convenience store. It found 2 units outside the CRA that were in sequentially preferable locations but the larger one (590 square metres) would be 800 metres from the site, which it says is too far to serve the site's convenience shopping needs.
457. The retail statement then assesses retail impact and estimates that if all of the retail turnover of the application proposal were diverted from existing retailers in St Helier town centre, the impact would be 1.3% of operators' turnover. The report says that would not cause detriment to the vitality and viability of St Helier town centre. It also says that, in practice, the scheme will bring new spend into the area.
458. I have reviewed the retail assessment and agree with some, but not all, of its findings.
459. I agree that the case for a convenience store (454 square metres or thereabouts) within the site is well made. The scheme will have a large population and the evidence indicates that its retail spend would support this scale of convenience shopping provision. I also agree that there are no sequentially preferable sites that could accommodate the convenience store size and format needed, and remain within a reasonable walking distance. Ironically, my assessment here is bolstered by the proposal's failure to appropriately address severance/connectivity (under main issue 9), which makes convenience shopping trips to existing stores less attractive.
460. At the other end of the spectrum, I am also satisfied that the smaller units comprising a kiosk and gift shop are appropriate, and indeed necessary, to the Waterfront's success, and accord with the SWSHPF community expectation⁶⁵. Individually, these units would be below the ER1/ER2 threshold that requires closer scrutiny.

⁶⁵ South West St Helier Planning Framework (2019) – paragraph 3.25.

461. However, the case for the 'niche' (272 square metres) and 'general' retail units (450 square metres combined) is not well made. The evidence does not convince me that these are necessary or justified in this location, or that they could not be accommodated in sequentially preferable CRA locations. Whilst the assessed impact on the CRA of allowing the proposed retail elements is limited, it is nonetheless negative. Policy ER2 is not premised on allowing a certain amount of harm to the CRA, but on not causing any detriment to its vitality and viability.
462. I conclude that whilst retail provision within the Outline proposal is a desirable and acceptable land use, and that the case for a convenience store and smaller outlets is well made, the applicant has not provided a convincing evidential justification for all of the retail space proposed. This unjustified retail content conflicts with policies ER1 and ER2.

MAIN ISSUE 11 – DRAINAGE, FLOOD RISK AND THE COASTAL DEFENCE

463. A key component of the proposal is a new coastal defence designed to increase protection from seawater flooding. The application is for a very major proposal, with substantial building floorspace and hard surfaces, and includes areas with a history of flooding.

Relevant BIP policies

464. The relevant BIP policies are WER2 (managing flood risk), WER6 (surface water drainage) and WER7 (foul sewerage).

Key documents and evidence

465. Chapter 14 of the EIS (CD4.3) addresses 'flood risk and drainage' and its appendices include a Flood Risk Assessment (CD4.30) and a Drainage Strategy (CD2.29a and CD2.29b). The application also includes a Coastal Defence Concept Design Report (CD3.7).

466. The applicant's Inquiry evidence was provided by Ms Judd (APP/10) on flood risk and Mr Short (APP/11) on the coastal defence. The drainage authority's evidence was provided by Mr Downie (PA/4 and CR19).

467. Ahead of the Inquiry there had been some very helpful engagement between the regulatory authorities and the applicant, such that the former has no in principle objections to the proposal. This has been captured in SCG4. As a result, I will confine my assessment to a brief review, and record the requirement for planning conditions and obligations, should the Minister be minded to grant permission for the scheme.

Coastal defence

468. Mr Short's evidence explains that the concept design of the new coastal defences required to support the development has been carried out in accordance with industry recognised models, methods, codes and standards.

469. It demonstrates that the new coastal defence infrastructure will provide the development with a 1:200 year standard of protection against coastal flood risk. The Coastal Defence Concept Design Report (CD3.7) evidences that matters such as the slipway design, disabled access and technical construction matters have been appropriately addressed at this Outline stage.

Flood risk and drainage.

470. SCG4 records the following agreed position:

I&E have confirmed that the proposals in principle in the Drainage Strategy are sufficient for the Drainage Authority to support the planning application but will need further development at detailed design stage. These proposals include:

- *Provision of an additional large diameter surface water sewer parallel to the existing Gloucester Street sewer which will run under the basement of Plot C*
- *Surface Water disposal by a combination of direct discharge and attenuated discharge to existing public surface water sewer infrastructure*
- *Foul Sewage disposal by a combination of direct gravity discharge and attenuated and pumped discharge to existing foul sewer infrastructure*
- *Diversion of an existing 300mm foul sewer plus new connections to that sewer*

Drainage Impact Assessment (DIA) and Flood Impact Assessments (FIA) have been prepared to assess the impact on the public and surface water sewer infrastructure respectively. Drafts of these documents have been jointly reviewed prior to issue of the final versions, which will inform the detailed design. They suggest that mitigation will be needed for the development's proposed foul and surface water flows to manage the impact on the existing network and the environment.

As a result of the DIA and FIA recommendations, it is agreed that additional surface water attenuation can be provided at the podium level if required, which will be confirmed at detailed design stage. Similarly, it is agreed that the detailed design of the SuDS proposals in the reclaimed landscaped area north of Gloucester Street can be included at detailed design stage.

It is agreed that mitigation for foul sewer flows may incorporate additional storage in the private foul pumping stations if required to allow flows to be managed, such that modelling demonstrates that there is a negligible risk of either increased combined sewer overflows, or untreated foul sewage flow being discharged to sea. IHE have agreed to this in principle with the final proposals to be agreed at the detailed design stage.

Detailed design of the foul and surface water drainage will be subject to a suitable planning condition.

471. I have no reason to depart from this agreed position of the technical experts.

Main issue 11 – conclusions

472. The evidence confirms that the coastal defence concept proposal is well evidenced and will provide 1:200 year protection from coastal flood risk. The evidence further confirms that flood risks from other sources and drainage matters (foul and surface water) have been appropriately addressed and that, subject to planning conditions and obligations, the proposal would comply with BIP policies WER2, WER6 and WER7.

MAIN ISSUE 12 – SUSTAINABILITY AND BREEAM

Key BIP policies

473. Policy ME1 sets a 20% reduction in the target energy rate for new development. It says that this should be demonstrated using the existing Jersey Standard Assessment Procedure (JSAP) calculator, or the Simplified Building Energy Model (SBEM) tool. It states that the reduction in the target energy rate will be secured by a planning condition and will be tested for compliance at the point of the building bye-laws application being made.
474. Policy ME2 requires new major development to meet a BREEAM rating of 'very good' as a minimum. BREEAM stands for the Building Research Establishment's Environmental Assessment Method. It is a widely recognised sustainability rating scheme for the built environment and has contributed much to the strong focus in the UK on sustainability in building design, construction and use. BREEAM schemes are holistic and drive performance across a range of sustainability aspects, including climate resilience, energy performance and the embodied impacts of materials. Buildings are certified on a five-point scale of Pass, Good, Very Good, Excellent and Outstanding.
475. Other relevant policies are SP1 which addresses 'responding to climate change'; SP3(2) which requires development be environmentally responsible and sustainable; and GD6(8) which requires the sustainable use of resources.
476. It should be noted that many other BIP policies, including those relating to transport and waste, have strong links to this main issue. However, for reasons of clarity, those are addressed in their respective main issue sections and are not repeated here.

Other linked policies and strategies

477. In addition to the BIP policies, this main issue links to a number of other policy documents. These include the Paris Agreement which was extended to Jersey in May 2022, the Carbon Neutral Roadmap approved by the States Assembly on 29 April 2022, the Jersey Energy Plan (Pathway 2050) and the Sustainable Transport Policy 2020 – 2030.

Key evidence

478. The application is supported by a Sustainability Statement (CD3.4). The proof of Dr Singh (APP/14) addresses this subject and he was supported by contributions from Mr Henry and Mr Nicholson at the Inquiry.

479. The proofs of Ms Jones (PA/6) and Ms Johnston (PA/1) address sustainability matters for the planning authority. A number of representors raise matters related to sustainability in their submissions.

Assessment

480. The applicant has committed to the requirements for energy reduction under policy ME1 and this could be formally secured by a planning condition and/or POA. At the Inquiry, Ms Jones welcomed the approach of the scheme which would be all electric and avoiding burning any fossil fuels on site. She also advised that the single supply of electricity in Jersey was clean sourced from Europe.
481. The applicant has also committed to meeting the policy ME2 BREEAM requirements and, at the session discussions Mr Henry was receptive of agreeing to exceed the minimum requirement and committing to BREEAM 'excellent' for the office buildings. He explained how JDC is experienced in provide high efficiency commercial buildings, with all office blocks at the nearby IFC achieving at least the 'excellent' rating. Mr Henry also explained how similar principles would apply to the residential development and how JDC is seeking to work with passivhaus principles.
482. There were queries and challenges on these matters. Ms Johnston queried where the air source heat pumps would be located, as the plant did not appear on all of the drawings. Mr McCarthy challenged the sustainability credentials, energy supply arrangements, and questioned whether utility costs to support the scheme were being fully covered by the development.
483. The JAC notes also question the commitment to sustainability, pointing to the DCS use of the passive voice in the codes rather active 'should/will', and whether the indicative scheme is overglazed. It also raises queries over management, including whether drying washing outside is allowed, or whether the population will all have to dry clothes using energy.
484. From a policy perspective, whilst there is a great amount of detail to be worked through and agreed, I am satisfied that the Outline proposal would, subject to the imposition of suitable planning conditions, meet the BIP requirements in terms of energy use reduction and sustainability, as measured by BREEAM. As a result, policies ME1 and ME2 are satisfied.
485. Subject to appropriate planning conditions, including a requirement for a whole life cycle carbon assessment to a recognised industry methodology, I consider that the proposal would also address the sustainability requirements of policies SP1, SP3(2) and GD6(8).

MAIN ISSUE 13 – GROUND CONDITIONS, EXCAVATION, WASTE ARISING AND DISPOSAL, AND POLLUTION RISKS

486. It would be fair to say that matters concerning ground conditions and waste management are often some way down the running order in planning inquiries concerning major developments. They usually end up with a discussion on how waste can be minimised, how waste arisings can be processed for re-use and how any residual waste, including contaminated material, can be managed and disposed of. These matters are then typically rounded up and controlled through planning conditions requiring Site Waste Management Plans (SWMP) and related measures.
487. However, in this case, these matters are elevated to a more fundamental and weightier level due to an extraordinary combination of factors concerning the nature of the development proposed, the landfill history of the site and, as has become apparent in recent months, the fact that Jersey currently has no operational lawful landfill void capacity to receive residual waste from this, or indeed any other, major development project. There are some complex issues to explore.

The BIP strategy and policies

488. The BIP adopts a concentrated development strategy which seeks to focus new development within the defined built-up area and strictly limit the spread of urban development into the countryside. It also sets out planned quantum and type of planned new developments, which include an ambitious supply of up to 4,300 new homes by 2025, and the delivery of a new hospital. It hardly needs stating that such a strategy, being highly reliant on recycling and making better use of existing brownfield sites, will inevitably be a generator of waste from demolished buildings, structures and groundworks. That will comprise inert and contaminated waste.
489. Policy WER1 addresses 'waste minimisation'. It says that to minimise the waste arisings from demolition and construction activity, and to recycle, re-use and recover as much as possible of the generated waste materials in accordance with the waste hierarchy, development involving the demolition of substantial structures, or with the potential to generate significant quantities of waste material through construction activity, will only be supported where a satisfactory SWMP has been provided.
490. WER1 adds that the SWMP must include details of opportunities that have been taken to maximise on-site management of waste and that, on commencement of development, all waste transactions must be clearly recorded and be available for inspection. There is a supplementary

planning advice note⁶⁶ which provides guidance on the purpose and content of SWMPs.

491. Policy MW2 safeguards 4 'inert waste management or disposal sites' which are identified on the proposals map. These include La Collette and La Gigoulande Quarry, both for 'management and disposal'.
492. Policy MW3 addresses 'new, extended and existing waste management sites' and, as well as protecting against the loss of existing needed facilities, offers support for new or extended waste management sites subject to compliance with a set of criteria which include there being a proven need, location, and site after use restoration.
493. Other relevant policies are: SP1 in terms of responding to climate change; SP3(2) in respect of the requirement to be environmentally responsible and sustainable through the optimisation of the use of resources; and GD1 concerning managing the health and wellbeing impact of new development, including the appropriate treatment, remedy or removal of contamination, at the appropriate time.

The key evidence documents

494. Chapter 13 of the EIS (CD4.3) addresses 'ground conditions and excavation waste'. EIS appendices include a Preliminary Geo-Environmental Risk Assessment (CD4.26), SWMP (CD4.27), a Pre-contract Data Review and Technical Waste Assessment (CD4.28) and an Outline Construction Environmental Management Plan (CD4.10). The applicant's expert, Mr Slater, provided a proof (APP/7a and APP/7b) and gave evidence in person at the Inquiry. Mr Nicholson and Mr Henry's evidence and submissions also cover aspects of this main issue.
495. The planning authority's evidence is set out in the proofs of Ms Johnston (PA/1), Mr Monks (PA/3), Mr Rive (PA/5) and Mr Ruddlesden (PA/8). Mr Jones, who is the case officer for a live planning application at La Collette, which is relevant to this main issue, provided helpful evidence in person at the Inquiry.
496. There are also two SCGs. The first covers Contaminated Land and Hydrogeology (SCG1) and the second addresses Waste Regulation Matters (SCG3).

Ground conditions

497. The site is essentially an existing landfill site of relatively recent development. The evidence⁶⁷ indicates that it was reclaimed from the sea

⁶⁶ Supplementary Planning Guidance: Advice Note Site Waste Management Plans September 2013.

⁶⁷ Paragraph 13.79 - Environmental Impact Statement.

and infilled in phases between 1985 and 1995. Fill materials comprise mainly general landfill rubbish, demolition waste, and incinerator ash. There is quite a detailed body of evidence from ground testing and borehole sampling which confirms the depth and nature of the fill. The evidence confirms that there are contaminants in terms of metals, hydrocarbons and asbestos, and gases across the site. I am aware that building construction in Jersey in the past involved the widespread use of asbestos materials.

498. At the Inquiry, Mr Young shared his personal recollections of the landfilling activities at the site and indicated that it did not seem properly controlled, it was toxic, and he referred to 'filthy black material' and a buried concrete shed.
499. Mr Monks confirmed to me that the mix and type of materials making up the ground would not be permitted as landfill today. That is not necessarily a matter for alarm, and simply reflects the fact that waste management laws, regulations and practices in Jersey, the UK and Europe, have become more rigorous over the intervening period. It does though present some challenges in terms of digging up the buried material and moving it somewhere else, either for reuse or disposal.

The development and excavation arisings

500. The Outline development proposal is premised on large scale excavation of the existing landfill. This is largely driven by the inclusion of large basement areas, which not only provide public and private car parking, but also includes cycle parking, private storage facilities, refuse stores and other services. It means that, at ground level, the development would be largely vehicle free. It is important to appreciate that this is not a design detail that may or may not form part of subsequent reserved matters submissions. It is a fundamental and inextricable part of the development proposal for which permission is sought, i.e., without the basement areas as defined on the parameter plans, the development proposal cannot occur.
501. The applicant and the planning authority have discussed the estimated volume and type of waste arisings. This is set out in a table SCG2, and it was confirmed that this table supersedes earlier estimates and categorisations that appeared in Mr Slater's proof.
502. The estimated total amount of excavated material is 240,000 cubic metres, with a footnote indicating that volumes may be 5 – 10% higher. That total volume is estimated to comprise about 72,000 cubic metres of 'oversize hard' (rock, stone, concrete, rubble etc.) and 168,000 cubic metres of 'soils'. A footnote indicates that soils could be inert or contaminated and

that "...although unlikely, provision should be made for all soils being classified as contaminated."

503. It is agreed that all of the inert 'oversize hard' material can be reused, with the majority (55,000 cubic metres) being used for land reclamation within the application site (behind the proposed coastal defence), and a lesser amount (17,000 cubic metres) being for reuse off-site on other projects in Jersey.
504. Of the 168,000 cubic metres of soils, it is agreed that an estimated 55,000 cubic metres could be re-used on site for land raising and pile mats. This leaves a residual soil waste volume of 113,000 cubic metres that requires disposal off site.

La Collette Waste Management Site and Planning Application reference P/2016/1647

505. La Collette is the only operational landfill site in Jersey. In recent years, it has been a matter of record that it was reaching the end of its lifespan and that landfill void capacity was limited. It is a matter that is noted in the BIP narrative⁶⁸ and it has arisen in a number of Inquiries that I have conducted over the years, including the 2022 Inquiry into the planning application⁶⁹ for the new hospital proposal at the Overdale site.
506. What has not been apparent until recent months, is that the landfilling of the site above the seawall to create the large eastern headland has been continuing for many years, seemingly without any planning permission. At the Inquiry, I made clear that my terms of reference did not extend to assessing how this situation had arisen, but I did need to understand the factual position to inform my assessment of the waste implications of the Waterfront application.
507. Based on Mr Jones' account and my review of the documents before me, my understanding of the background is as follows:
- The La Collette Waste Management Site occupies the reclaimed land within La Collette Reclamation Phase II. The site is the location of the majority of the Island's solid waste management facilities.
 - Development commenced following the 1993 planning permission⁷⁰ for the construction of the rock armour revetment (the breakwater around the site).

⁶⁸ Bridging Island Plan pages 319 - 320

⁶⁹ Ref P/2021/1670

⁷⁰ Ref 17742

- Further planning applications⁷¹ enabled filling the reclamation site up to the level of the breakwater for inert waste soils, hazardous waste, and tipping to create a mound, up to 10 metres above the breakwater level, in part of the site (the North Mound).
- In 2000, the States Assembly approved Proposition P.96/2000 which was a framework for the future development of La Collette Site Phase II. This recognised the difficulties of finding sites for the disposal of waste and considered it to be in the Island's best interests to maximise the lifetime of La Collette as a tip site and to incorporate superfilling.
- A 2015 permission⁷² authorised the construction and filling of a cell with asbestos waste.

508. Mr Jones explained the situation with regard to a planning application (P/2016/1647) which sought retrospective planning permission for a substantial amount of landfilling that has been undertaken above the breakwater, and further sought approval to add more landfill. It appears that the application was subject to changes and additional information, although I do not fully understand its very long determination period.
509. Mr Jones showed a photograph image (INQ14) taken from Greve D'Azette, which shows the breakwater level at 14 metres above admiralty datum (AAD), the existing (unauthorised) current east mound height of 30 metres AAD, and a line showing the proposed full mound height at 41 metres AAD, as proposed in the application.
510. At the March 2023 Planning Committee, members resolved to refuse the application for reasons relating to adverse impact on the skyline, strategic views and key landmarks, and insufficient information on an afteruse restoration plan.
511. Following the 'cool off' protocol, the April 2023 Planning Committee considered the matter again. It resolved not to confirm its refusal decision at that point in time, but deferred making a decision for a period of 6 months. Although the minutes of that meeting are not before me, Mr Jones explained that the committee requested that the applicant submit 2 separate applications to specified timescales:
- 1) A retrospective application for the unconsented landfill and related works carried out to date, to be submitted in sufficient time to allow it to be considered at the September 2023 Planning Committee.

⁷¹ Refs 17742/A, 17742/B, and 17742/C

⁷² P/2015/1461

- 2) An application for a short/medium term proposal to be submitted prior to the September Planning Committee date (for determination at a later date).
512. On 6 April 2023, the Minister for Infrastructure lodged Proposition P.17/2023. This seeks the States Assembly's support for a short/medium term plan, which would include the proposals covered by application P/2016/1647 in terms of landfilling and landscaping.
513. The situation summarised above is extraordinary. There seems to be no dispute that substantial landfilling activity has taken place at La Collette without planning permission. It is also clear that there is currently no planning approval in place that allows further landfilling at the site. There is also considerable uncertainty about whether there will be future landfilling capacity at La Collette and, if so, the volume of that capacity. It will depend upon the States Assembly decision on P.17/2023, and Planning Committee decisions on applications that have not yet been made. Indeed, the requested short/medium term application, if submitted to the envisaged timetable, may not be decided until sometime in 2024.
514. For the purposes of the Waterfront Outline application assessment today, I have to conclude that there is no lawful landfill capacity at La Collette that could accept the development's estimated residual soil waste volume of 113,000 cubic metres, which, as noted earlier, has to be assumed to be contaminated.

La Gigoulande Quarry

515. La Gigoulande Quarry is located to the south of La Rue de la Vallee which straddles the parish boundaries of St Peter and St Mary. It is a large site and an active granite quarry. In 2016, planning permission was granted⁷³ for a proposal that included an inert waste recycling facility and the restoration of the western part of the quarry to agriculture and woodland using inert infill. The reason for approval included the Minister's view that 'following the cessation of La Collette as the Island's major inert waste recycling facility in 2017/18, there would be no other sites appropriate for this use...'
516. The permission requires commencement within 10 years, i.e., by September 2026. I understand that some reprocessing activity does take place but inert waste disposal has not yet commenced at the site, and it is unclear whether it will be and, if so, when. Mr Young offered his view that without expansion of the quarry, which was rejected by the States Assembly through the BIP approval process, it would be difficult for the site owners to implement the landfilling element. Whilst noting these views, in

⁷³ Ref P/2012/0121

the absence of evidence from the operator, I am unable to confirm whether this would be the case.

Waste streams from other projects

517. Mr Rive provided the Inquiry with a note (INQ13) which identified other projects with known contaminated waste streams that may require landfilling capacity. However, a number of the larger projects have volumes which are 'undeclared' or not confirmed.

Exportation

518. Mr Slater, for the applicant, states in his proof⁷⁴ that *'If La Collette does not secure planning permission prior to commencement of the works, there is the option to send the excavation waste off-Island for recovery to the UK or continental Europe.'* Mr Henry also confirmed that trade enquiries had been made and, whilst more costly, export to the UK was an option.
519. However, the export of waste arisings is not something that appears to have been assessed in the EIA. It bases its assessment on landfilling on-island, and assesses that the development would have a permanent, adverse effect of major significance in respect of landfill void capacity. Moreover, the evidence of Mr Monks (PA/3) indicates that waste exports for disposal are effectively excluded, and exports for recovery difficult and reliant on agreement of the receiving country, with previous attempts being rejected. He pointed out the underpinning legislative principles of dealing with waste close to source (proximity), the priority of recovery, and the importance of self-sufficiency.
520. Mr Slater suggested that asbestos could be carefully handpicked from soils and the remaining material exported for soil washing and recovery in England. He indicated that a sample volume could be extracted and sent for testing. However, I noted Mr Monks' contributions, where he indicated that it would be *'testing the water a bit'* to be *'exporting soils contaminated with asbestos'* and his counsel that, ultimately, it would not be Jersey's decision, but that of the UK Environment Agency.

Pollution risks during construction

521. There is a risk of ground contaminants being released into the marine environment during construction. A number of representors made reference to a pollution event associated with the Horizon apartments development which led to a prosecution in 2019.
522. However, Mr Henry explained that there were unique one-off circumstances that led to that unfortunate event. Mr Slater's evidence

⁷⁴ Paragraph 7.6 of APP/7a

indicates that these matters have been properly considered and that subject to a combination of further investigations and 'dewatering' during construction, pollution risk could be mitigated. Mr Ruddlesden, for the planning authority, agreed.

Grampian planning condition

523. At the Inquiry, the possibility of a 'Grampian' style planning condition was discussed. This type of condition prevents the development commencing until a specified action has been taken or achieved, often on land outside the applicant's control. It might, for example, require an access road across a third party's land.
524. Mr Nicholson explained that the basement approach is justified in urban design terms and the applicant has taken the issue of waste arisings very seriously, including minimising basement heights to limit waste. He explained that the situation with waste is not unique to this scheme and the Government has to make choices which are outside the applicant's gift. In the light of this, he suggested that a Grampian condition could prevent any excavation prior to La Collette being approved (for more superfilling).
525. Mr Jones opposed the idea of such a condition, due to the uncertainties involved.
526. I have reached the view that the uncertainties are so significant, and inescapably political, that a Grampian condition is not appropriate in this case. Indeed, the granting of an Outline permission with such a condition in place, could place the Planning Committee in an invidious position when considering future applications at La Collette, or other waste disposal sites that may come forward. Mr Nicholson is correct in stating that the Government has to make choices, and it must decide what waste strategy and infrastructure it intends to put in place to support future development in Jersey.

Main issue 13 – findings and conclusions

527. Gathering together the above evidence leads me to the following findings. First, the Outline development proposal will generate a substantial quantity of waste which is known to contain contaminants. Second, about 53% of that waste can be reused on site, but the remaining 47%, which equates to circa 113,000 cubic metres, requires removal from the site and this material should be assumed to be contaminated. Third, La Collette currently has no landfill capacity to accept the waste and political and planning decisions on whether to allow more waste to be deposited at the site are some way off. Fourth, La Gigoulande Quarry is a site with permission to accept landfill waste, but there is considerable uncertainty as to when, and if, the site will be in a position to accept inert waste for

disposal. Fifth, export of waste arisings for disposal and/or recovery, seems highly uncertain, reliant on other administrations, questionable in terms of sustainability, and has not been assessed under the EIS. Sixth, a satisfactory SWMP cannot be provided, as there is nowhere to send the residual waste that is certain, lawful and sustainable. Seventh, given the considerable uncertainties and political implications, the use of a Grampian planning condition would not be appropriate in this case.

528. It leads me to the conclusion that Jersey is facing a waste management crisis. Until that crisis is resolved and certainty provided through a clear strategy and its implementation, I cannot see how the Waterfront application, and indeed other developments generating waste requiring landfill disposal, can be permitted.
529. Unlike many other planning issues, this is not a matter that can be weighed in the Planning balance. It is fundamental and the current lack of lawful operational waste management infrastructure in Jersey, to accept the arisings from the development, means that the scheme simply cannot proceed.
530. It would be folly to grant Outline permission in these circumstances.

MAIN ISSUE 14 – OTHER PLANNING MATTERS

Demolition and construction impacts

531. Should the proposal be permitted, its implementation would represent a very large and protracted building project in a very prominent location. Demolition and construction activities, including the extensive ground excavation works, processing and removal of that material (should acceptable disposal facilities become available), will all be felt by residents, users and visitors in the locality and beyond. There can be no doubt that the protracted construction period, the scale of the project, and the close proximity of some homes, hotel accommodation and businesses, will result in disruption and inconvenience.
532. The EIS (CD4.3) includes a comprehensive set of assessments of construction impacts under each of the topic chapters which assess the impacts and point to appropriate mitigations. Any major construction project in an urban area will cause disruption, inconvenience, and impacts. In planning terms, these are not matters that would normally be pivotal to any decision to grant planning permission. Indeed, if that were to be the case, major projects would be forever frustrated.
533. The planning system's response to these issues can only ever be to require the developer to manage the implementation process in a responsible manner and to take steps to minimise and mitigate the impacts. These provisions must be complemented by the work of other agencies and regulatory bodies, including the environmental health and the highway authority functions.
534. Appropriate planning conditions could be imposed to secure the necessary management regimes.

Air quality

535. Chapter 11 of the EIS (CD4.3) addresses air quality and the proof of Mr Fowler (APP/13) covers the topic for the applicant. This evidence explains how assessments have been undertaken of air quality impacts during construction phases and post development, taking into account the changes in traffic arising from the development itself.
536. In terms of construction phases Mr Fowler submits that, with mitigation measures in place, dust and noise effects could be managed to be 'negligible'. In a post development scenario, he says that the 'a detailed modelling exercise was undertaken' and it indicated that levels of nitrogen dioxide and particulates would not exceed nationally accepted limits at any of the nearby residential properties or at future residential receptors within the proposed development at completion in 2034. He therefore submits that the BIP policy ME3 requirements concerning air quality are satisfied.

537. However, Mr Fowler's evidence was subjected to some challenge by Mr Cragg for the Government of Jersey's environmental health service. He pointed out that the baseline data had been drawn from two locations which may not be directly comparable with the application site. The fixed air quality monitoring stations are at Beresford Street in St Helier and in Howard Davis Park. To be fair to Mr Fowler, this challenge had not been made in consultation responses, but I have to say that, extrapolating air quality data from the 2 locations and applying it to a site lying next to a very busy multi-lane carriageway, does feel more than a little approximate.
538. Further challenge was made by Messrs Young, Vibert and McCarthy, all stressing the importance of air quality, the need for accurate data, and questioning the canyon effect that may arise from the proposed large buildings.
539. I noted that Messrs Fowler and Cragg were in agreement that Jersey has generally very good air quality. However, based on the evidence before me, and the exchanges at the Inquiry, I do not consider that it provides certainty on air quality matters, or that I could comfortably conclude compliance with policy ME3. More work is needed, and there are some links between this topic and my concerns expressed under main issue 9, regarding the levels and nature of traffic patterns along the A1/A2 corridor.

Noise

540. Chapter 12 of the EIS (CD4.3) addresses noise and vibration and the proof of Mr Maclagan (APP/12a and APP/12b) covers the topic on behalf of the applicant.
541. During construction phases there would be some unavoidable short term adverse effects arising from construction noise and vibration and through the effects of demolition and construction traffic. These could be mitigated as far as possible and managed through a Construction Environmental Management Plan (CEMP) and a Construction Logistics Plan (CLP).
542. In the post development scenario, the EIS assesses 'negligible' noise impacts arising from the operation of plant, the commercial uses, services and deliveries and operational traffic. I don't doubt this assessment but the latter needs careful handling, as what it is saying is that the additional traffic from the development won't make a noisy A1/A2 road corridor much noisier.
543. Mr Maclagan's does appear to recognise that there are some issues concerning the noise climate and the suitability of certain elements of the proposed residential development. The final paragraph of his proof states: *With regards to the suitability of the Site for residential development, although localised areas of high noise levels were identified such noise*

levels could be controlled through careful design as the design of the Development progresses. Suitable controls and mitigation measures could be secured by way of an appropriately worded planning condition.

544. This suggests that the design solutions will be about keeping the noise out of internal spaces, through appropriate glazing and building fabric. There are again links to the main issue 9, (traffic noise from the road corridor) and main issue 8, concerning amenity for future residents.

Wind

545. Jersey can be a very windy place and the application site is particularly exposed. Introducing large buildings into such an area affects the natural wind flow and can result in some safety and comfort issues.
546. This is assessed using an accepted methodology (Lawson's comfort and safety criteria) in chapter 17 of the EIS (CD4.3), along with appendices (CD4.34 and CD4.35) and is also covered in the proof of Mr Symes (APP/15). Mr Symes explains how wind effects were modelled, assessed and how mitigation measures were identified and incorporated into the DCS, to guide future reserved matters designs. His proof concludes that: *'With the proposed development in place the majority of locations would have conditions suitable for the intended use and there would be only two locations with occurrences of strong winds with the potential to be a safety concern for pedestrians and cyclists. As noted above due to the outline nature of the application the scheme was assessed based on the max parameters, as the various blocks come forward in detail further assessments will be undertaken as part of the Reserved Matter Applications in order to confirm the effectiveness of the mitigation in the context of the final massing and identify any remaining comfort exceedance or strong winds. If any additional mitigation measures are required these will be developed and will be subject to further mitigation testing at this stage.'*
547. Whilst I have noted reservations expressed by Ms Johnston about the nature of mitigation measures and the practical useability of rooftop amenity spaces, this is an Outline application with all matters reserved. Should permission be granted, reserved matters submissions are the appropriate vehicle to address detailed wind assessments and design responses. The applicant's evidence provides a useful foundation for that future design process.

Crime

548. The application includes a Crime Impact Statement (CD3.8). It is a high-level document, but it does explain that through detailed design and subsequent management, measures will be incorporated to combat crime and anti-social behaviour, that greater activity in the area will have a

positive effect, and that Secured by Design principles will be followed for reserved matters schemes. Subject to such measures, there is no reason to suggest that the proposal would not be able to satisfy BIP policies GD6 (5) and SP7 (sixth bullet point).

MAIN ISSUE 15 – PLANNING CONDITIONS AND OBLIGATIONS

549. At the Inquiry, I explained to all parties that it is customary to hold a 'without prejudice' session on planning conditions and planning obligations. This ensures that, should the Minister decide to grant planning permission, there is a draft set of conditions and heads of terms for a Planning Obligations Agreement.

Draft Planning Conditions

550. The planning authority officers and the applicant have worked together to produce a draft conditions document (CPOA1). Following the Inquiry, this has continued on a refined second draft document, but it did not reach me in time to be reviewed for inclusion in this report, so my comments are made on the basis of CPOA1.

551. The conditions are presented in shorthand form without the full wording, but are sufficiently clear to enable an assessment of their scope and compliance with the established rules and principles⁷⁵ covering planning conditions. I have considered the set of conditions set out in this document. It represents a good working draft, although I offer 2 sets of comments.

552. First, I must record that, for reasons explained under main issue 13, I do not consider that planning conditions could, at the present time, satisfactorily address matters relating to excavation, contaminants and waste management.

553. Second, some refinement and additional conditions would be necessary. Refinements would include updating the plans list to include the revisions addressing errata and extending the standard time limit for reserved matters submissions, given the envisaged long duration period of the development implementation. Additional conditions would include those relating to: phasing; control over housing mix; detailed schemes of works for the casemate, La Frégate and the Esplanade Promenade and seawall works; an archaeological watching brief; seagull control measures; biodiversity net gain; water conservation

554. In the light of my recommendation at the end of this report, I do not consider it necessary to produce a final draft list at this stage.

Planning Obligations Agreement

555. CPOA1 also sets out the heads of terms of a POA which are agreed in principle between the planning authority and the applicant. These are:

⁷⁵ Planning conditions are required to be necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.

Affordable housing

Bus Access Strategy

Car Parking Strategy

Highway Works

Travel Plan

Eastern Cycle Route

Castle Street roundabout improvements

Flood defence works

Landscape Ecology Management Plan

Site Waste Management Plan

Le Frégate relocation

Delivering – cinema, swimming pool complex

556. I consider that all these 'heads of terms' are appropriate and would be justified, should the Minister be minded to grant Outline planning permission at the current time. I also consider that a requirement for a sustainable management plan for the housing, in accordance with the Density draft SPG (October 2022), should be added. Mr Young suggested that landscape management should be a POA item, rather than a planning condition.

INSPECTOR'S CONCLUSIONS AND RECOMMENDATIONS

557. The Inquiry proved to be an extremely valuable and informative process to examine one of the most significant planning applications in Jersey in modern times. The Waterfront is a large publicly prominent site and its future development is strategically important in planning terms and equally important in a wider sense to all of those who live in and visit Jersey. The stakes are high in terms of getting it right and striking the difficult balance of density, building heights, public realm, high quality living conditions, motorised travel and active travel, along with the never easy process of defining a new character area and achieving successful placemaking.
558. A somewhat unexpected twist in this Inquiry has been the unfolding crisis concerning waste management and disposal in Jersey. It is extraordinary that the Island seemingly finds itself in a situation where it currently has no existing lawful operational facility to receive waste arisings, including contaminated waste, from this, or any similar waste producing development project. This has had a bearing on my findings and my recommendation, which I will explain later. However, I will begin by recording a summary of my findings under the 15 main issues.

Main issue findings

559. First, the application is submitted in Outline, with all matters reserved. The reserved matters relate to 'scale and massing', 'siting', 'means of access', 'external appearance and materials', and 'landscaping'. This is a legally valid form of planning application under the Law, but it brings with it some complications and limitations. The types and quantum of development proposed are as set out in the revised description and in the EIS. The parameter plans form a substantive part of the application, as they define the maximum 3-dimensional envelope required to accommodate the development and they form the basis of the EIS assessment. Should Outline permission be granted, all reserved matters detailed submissions would need to fall within these parameters, i.e., those limits are fixed and not flexible. The parameter plans defining plot limits have the effect, if approved, of largely pre-determining siting (a reserved matter), but some flexibility remains. The illustrative plans and the DAS are useful in explaining the applicant's design intentions at the reserved matters stage, but must be treated as illustrative material at this stage. The design codes documentation is also useful in explaining the applicant's detailed design intentions, but I do not agree with the applicant that the DCS can be 'for approval' at this stage. It jumps ahead and strays well beyond the level of design code detail that is appropriate for an all matters reserved Outline application. It must therefore be treated as illustrative material at this stage. My assessment has been made on this basis.

560. Second, the evidence confirms that the applicant has conducted a wide range of community engagement and that policy GD2 is complied with. However, should the Minister grant Outline planning permission, there remains more work for the applicant to do to ensure that the wider Jersey community is meaningfully engaged on this large and complex mixed-use development, over what will be a protracted delivery period. The issues concerning continuity of appropriate leisure facilities requires particularly close attention and effective communication.
561. Third, in terms of the high-level planning principle, the proposal accords with the thrust of the BIP strategy, as set out in policies SP1 concerning responding to climate change, and the spatial strategy set out in policy SP2. It would deliver a substantial number of new homes, employment generating floorspace, other uses and public realm, in a highly sustainable location, utilising previously developed land. In many ways, the broad principle of the development proposal is established by the SWSHPF (2019) which promotes new developments in its identified key opportunity areas, with a mix of uses to strengthen the sense of community and vibrancy in this quarter of St Helier.
562. Fourth, there are reservations and uncertainties about the urban design implications of this Outline proposal. It would amount to the Island's single biggest cluster of tall buildings in a highly prominent location. It is a very dense scheme and is heavily constrained by an untamed 6 lane expressway running through the middle of the site. The likely design would manifest itself in a very solid and massive form and runs the risk of further blocking and separating the town centre from its seafront, thereby failing to achieve the SWSHPF community expectation of reconnection and framed views of the sea and key landmarks. Weight must be attached to JAC's reservations and concerns which appear to have been consistently expressed over many review meetings, and whilst some changes have been made, these are not sufficient. I share the most recent JAC conclusion that the plans require further work. Without that further work I would not be able to conclude that the Outline proposal would be capable of satisfying the BIP's design requirements, as set out in policies SP3, SP4, GD6, GD7 and GD9.
563. Fifth, there would be some harm to on-site heritage in terms of a cut through of the Listed Esplanade Promenade and works around the Listed casemate which would remove its direct connection with the seafront, but I consider that these effects are acceptable in the public interest, subject to agreeing details. I also consider that the relocation of the Listed La Frégate to an appropriate new setting would be justified. I find that the proposal would cause some, but limited, harm to the wider settings of heritage assets, most of which are some distance from the site. However, any limited harm is outweighed by the substantial public benefits that would

arise from the planned regeneration of the Waterfront area. I consider that policy HE1 would be complied with.

564. Sixth, the proposal will result in the loss of some existing trees, most of which are of limited size and amenity value, but it will more than mitigate this loss with the planting of at least 500 trees, many of which will be planted as medium and large specimens. The site has limited existing terrestrial ecology value and there is good potential for enhancement and biodiversity net gain, by measures that could be secured by a planning condition. The evidence indicates that marine ecology will be protected, subject to measures that could be secured by planning condition. In terms of these aspects of the natural environment, the proposal would accord with the relevant provisions of policies NE1, NE2, NE3, SP1(8), SP3(3), SP5 and GD6(6).
565. Seventh, on housing matters, the proposal's delivery of needed new market and affordable housing attracts significant planning weight and accords with the thrust and objective of policy H3, although new home delivery will actually take place in a new plan period. The scheme would be developed at a density well above the minimum required by the Density draft SPG and comfortably below the maximum allowed, but it would fall into the superdensity category and require evidence of sustainable long-term management measures. The scheme would include an element of affordable housing but, given the strategic scale of the proposal, this appears to represent an unduly low level of provision on finite State owned land and would not lead to a sustainable balanced community; this creates conflicts with policies H3, H4 and H5. On employment matters, the scheme's predicted employment generation attracts significant positive weight and accords with policy EO1 concerning existing and new offices, and ER4 in respect of daytime and evening economy uses. Health impacts arising from the scheme have the potential to be positive. The evidence indicates that there will be sufficient school capacity to accommodate the pupil yield for the development, although concerns were expressed about the safety of children having to cross the busy 6 lane road to access schools.
566. Eighth, with regard to amenity considerations, the scheme will not cause unreasonable harm to the amenities of neighbouring occupants and uses and satisfies policy GD1 in this regard. However, the Outline proposal has not demonstrated that it can satisfy policy H1's requirements to achieve good quality housing and living conditions across the scheme. Whilst internal and external space standards can be met throughout the development, the indicative scheme suggests that there will be a range of issues that would compromise living conditions. Most flats are likely to be single aspect, and a significant number would appear to have northerly aspects or be fronting a noisy road, and some would have poor aspects

facing tall buildings at close quarters. There are also privacy concerns and certain units will be exposed to significant road noise unless windows are kept shut. There are too many concerns and instances of likely compromised living conditions to enable me to conclude that policy H1 (and GD1) would be sufficiently satisfied.

567. Ninth, the applicant has undertaken appropriate assessments of baseline transport conditions, traffic demand and modelling of highway impacts. In transport and accessibility terms, the site represents a highly sustainable location for a major housing led mixed-use regeneration scheme. The proposal adopts a well evidenced and proportionate approach to public and private parking and measures for cars, motorcycles and cycling, that will help to increase active travel. There are some concerns about emergency access and road safety, but access is a reserved matter and these issues could be addressed through reserved matters submissions and through road safety audits. Due to its location, its approach to sustainable travel modes and its proposed travel plan implementation, the evidence indicates that the proposal will not result in any undue highway capacity or congestion issues. However, the significant transport weakness in the application proposal is its failure to appropriately address the severance issues presented by La Route de la Libération. The new crossing and other measures suggested will deliver some improved connectivity, but these would be short-term improvements, when the development proposal would be delivered over the medium and longer terms. The development represents a major potential catalyst for change, but the application, as submitted, adopts a relatively minimalist 'business as usual' approach to the connection/severance issue, rather than the transformational approach required. This results in significant policy conflicts, as the proposal fails to achieve the fundamental requirements set out in the BIP policies TT1, TT2, SP3, GD6(4) and the guidance set out in the SWSHPF and the PRMS. This weighs very heavily against the proposal in its current form.
568. Tenth, with regard to community facilities, the scheme would necessitate the loss of the existing swimming pool and cinema. The scheme would deliver a new indoor pool, a new lido pool and an arthouse cinema. Policy CI5 requires alternative facilities to be made available and the applicant is willing to enter a POA to secure these requirements. There may be temporary difficulties in terms of indoor pool provision, and the arthouse cinema would not appear to meet the needs for general cinema demand, but the policy does not require the alternative to be on site. The scheme would maintain and enhance areas of protected open space in line with policy CI7 and new public open spaces will be created. Subject to a suitable POA, policy CI5 would be satisfied. With regard to the scheme's retail content, the case is made for a convenience store to serve the resident population of the development and for some smaller units, but the case for niche and general retail units is not justified in this location and

could be accommodated in the sequentially preferable St Helier core retail area.

569. Eleventh, the scheme will deliver a new coastal defence that will provide 1:200 year protection from coastal flood risk. The evidence further confirms that flood risks from other sources and drainage matters (foul and surface water) have been appropriately addressed and that, subject to planning conditions and obligations, the proposal would comply with BIP policies WER2, WER6 and WER7.
570. Twelfth, the Outline proposal would meet the BIP requirements in terms of energy use reduction and sustainability, as measured by BREEAM, and so policies ME1 and ME2 are satisfied. Subject to appropriate planning conditions, including a requirement for a whole life cycle carbon assessment to a recognised industry methodology, I consider that, the proposal would also address the sustainability requirements of policies SP1, SP3(2) and GD6(8).
571. Thirteenth, the proposal, which includes extensive basement areas to provide parking and servicing, will generate a substantial quantity of waste which is known to contain contaminants. About 113,000 cubic metres of this waste would require removal from the site and should be assumed to be contaminated. La Collette currently has no landfill capacity to accept the waste, and political and planning decisions on whether to allow more waste to be deposited at the site are some way off. Other options, including La Gigoulande Quarry or the export of waste, seem highly uncertain, reliant on other parties and administrations, and questionable in terms of sustainability. A satisfactory site waste management plan cannot be provided, as there is nowhere to send the residual waste that is certain, lawful and sustainable. Due to the considerable uncertainties and implications, the use of a Grampian style planning condition would not be appropriate in this case. Jersey is facing a waste management crisis and, until that crisis is resolved and certainty provided through a clear strategy and its implementation, I cannot see how the Waterfront application, and indeed other similar scale developments generating waste requiring landfill disposal, can be permitted under planning legislation. Unlike many other planning issues, this is not a matter that can be weighed in the planning balance.
572. Fourteenth, on 'other matters' the Inquiry explored a number of issues. It was recognised that demolition and construction impacts would need to be carefully and sensitively managed and planning conditions could be imposed to secure appropriate plans. Air quality assessments have been made, but more work is needed to demonstrate that satisfactory air quality will be achieved, particularly for any flats close to the busy road. Noise assessments have been undertaken and indicate that noise conditions will

be acceptable across most of the site, but there are localised areas of concern along the road corridor. Wind effects have been assessed and areas of the development requiring mitigation measures have been identified. Crime impacts have been assessed at an appropriate level for this Outline application.

573. Fifteenth, should the Minister be minded to grant Outline planning permission, the Inquiry has produced a draft list of conditions and heads of terms for a POA.

Conclusions

574. Bringing all of the above findings together leads me to 3 high level conclusions:
- A. The waste crisis prevents the granting of planning permission at this point in time, as there is no certainty that the substantial amount of waste, including contaminated waste, which arises directly from the specific type and amount of development proposed, can be satisfactorily treated and/or disposed of. The waste implications are fundamental to a sound planning decision at the current time and not a matter that can be weighed in the planning balance against scheme benefits.
 - B. The Outline application proposal, as currently presented, contains shortcomings and policy tensions which relate to: the failure to adequately address the severance/connectivity issues concerning La Route de la Libération; urban design issues; concerns and uncertainty about future living conditions for residents in certain flats with regard to outlook, noise, privacy, sunlight and daylight; affordable housing content; and the amount of justifiable retail content, given the site's location.
 - C. The shortcomings and policy tensions identified under B. would, in my assessment, normally lead to a refusal of planning permission. They are matters that, individually and collectively, represent significant planning objections and conflicts with the BIP and related guidance. I assess that these conflicts outweigh the positive elements of the scheme, including the delivery of a substantial number of new homes, new employment space, the coastal defence and public realm. In reaching that view, there is nothing before me to evidence these public benefits could not be delivered by a different Waterfront development scheme, that avoided the planning objections I have identified.
575. These high-level conclusions lead to the next step of considering my recommendation to the Minister. The procedurally easy response is to follow my evidence-based analysis and refuse the application for the

reasons identified; it would be a straightforward matter to draft those reasons and cite the policy conflicts, all of which are identified in the report.

576. However, the situation concerning waste disposal is unprecedented and extraordinary. The current absence of waste facility to enable the development to happen amounts to a refusal reason in its own right and in my view, it is a development 'showstopper'. Notwithstanding other issues, the applicant is unable to solve this problem and, until there is an agreed way forward, this scheme and indeed others reliant on landfill void capacity are placed in limbo.
577. That leads me to reach the view that a refusal recommendation at this point in time, based on the waste crisis and the identified shortcomings, would not serve a particularly positive public interest purpose.
578. The solution to the waste crisis will be dependent on political and planning decisions that will take time to unfold and implement. It could be well into 2024 before the Minister for Infrastructure's anticipated planning application to further superfill La Collette headland is determined by the Planning Committee, or for other proposals and facilities to come forward.
579. There is a potential alternative to a refusal decision at this point in time. The application has already been submitted for some time, and has been the subject of amendment, with the revised parameter plans and updated other plans and documentation submitted in December 2022. With the exception of the waste issue, all of the other matters identified are potentially capable of resolution, or at least considerable improvement, by further studies, amendment and effort.
580. Some of the matters are capable of being addressed quickly and easily, other matters will require reworking of the parameter plans and may have knock on implications for the development quantum and the form of the application. The 'big issue' concerning severance/connectivity will require more complex, imaginative and future looking effort; it will not be easy to address and any solution will need political support, but doing so is critically important to the success of the Waterfront quarter, its connection to and integration with the town centre, and to the lives of all those that will live in, work at, and visit the Waterfront area.
581. I therefore recommend that the Minister resolves not to determine the application for the time being and invites the applicant to work with the planning authority, the highway authorities and JAC to address the matters identified, should the Minister endorse my findings. If the applicant accepts that opportunity and challenge, and the background uncertainty arising from the waste situation, this could be achieved procedurally by leaving the Inquiry open. It could then reconvene for a focused 'mini-Inquiry', and

the production of a final report and recommendation, followed by a formal decision by the Minister and Determining Panel.

582. If the applicant does not wish to accept that invitation, or to withdraw the application, I recommend that permission be refused for the reasons identified in this report, and summarised in conclusions A and B above. I do consider that would be unfortunate, as the development proposal has the potential to be revised and enhanced to achieve a successful planning outcome, and to deliver very considerable and wide-ranging public benefits.

Formal recommendations

583. RECOMMENDATION A: That the Minister defers the determination of application PP/2021/1969 and invites the applicant to work with the planning authority, the highway authorities and Jersey Architecture Commission, to explore and consider revisions and enhancements to the proposal to address the matters identified in this report and, specifically, matters relating to severance/connectivity issues concerning La Route de la Libération, urban design issues, living conditions for residents, affordable housing content, and the retail content of the scheme.
584. RECOMMENDATION B: Subject to the applicant accepting the Minister's invitation, to leave this Inquiry open, with a view to reconvening it at a later date to review any revised proposals and measures and receive an update on waste management issues, prior to a final report being produced to inform the Minister's decision on the application.
585. RECOMMENDATION C: In the event that the applicant elects not to accept the Minister's invitation pursuant to recommendation A, or to withdraw the application, that Outline planning permission be refused for the reasons identified in this report, and summarised in conclusions A and B above (paragraph 574).

P. Staddon

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29 June 2023