

<u>No:</u>	BH2019/00964	<u>Ward:</u>	Rottingdean Central
<u>App Type:</u>	Part Full, Part Outline Planning Application		
<u>Address:</u>	Land At Brighton Marina Comprising Outer Harbour, Western Breakwater And Adjoining Land Brighton Marina, Brighton		
<u>Proposal:</u>	Hybrid planning application for the phased residential-led mixed-use development of Brighton Marina Outer Harbour. Full Planning Permission for Phase Two of the development comprises: 480no. residential units (C3) in 3 buildings ranging from 9-28 storeys plus plant levels, 761 sqm of flexible commercial floor space (A1-A4, B1, C3 Ancillary, D1/D2), works to existing cofferdam, undercroft car and cycle parking, servicing, landscaping, public realm works and infrastructure (harbour wall) works. Outline Planning Permission (all matters reserved apart from access) for Phase Three of the development comprises: up to 520no residential units (C3) in 6 buildings ranging from 8-19 storeys, up to 800 sqm of flexible commercial floor space (A1-A4, B1, C3 Ancillary, D1/D2), construction of engineered basement structure to create a raised podium deck over Spending Beach, installation of Navigation Piles, undercroft car and cycle parking, servicing, landscaping and public realm works. Land At Brighton Marina Comprising Outer Harbour, Western Breakwater And Adjoining Land Brighton Marina Brighton		
<u>Officer:</u>	Carl Griffiths	<u>Valid Date:</u>	05.04.2019
<u>Con Area:</u>		<u>Expiry Date:</u>	05.07.2019
<u>Listed Building Grade:</u>		<u>EOT:</u>	NA
<u>Agent:</u>	Avison Young, 65 Gresham Street, London, EC2V 7NQ		
<u>Applicant:</u>	The Outer Harbour Development Company		

PREAMBLE:

An appeal against the non-determination of this application was submitted by the applicant on 17 September 2020. The decision on the application therefore now sits with the Planning Inspectorate. The following report seeks a view on the decision the Committee would have made, had the decision remained with them.

1. RECOMMENDATION

1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves that had the planning application come before the Committee for determination it would have **REFUSED** planning permission for the following reasons:

- 1) Phase 2 of the development and the parameters sought under Phase 3 of the development, by virtue of the density, massing, inadequate spacing between buildings, rigid layout and the lack of definition between public and private spaces, would result in a cramped, impermeable, illegible and homogeneous form of development that would represent an unacceptable quality of building design, layout and public realm; and the cumulative views of both phases would not protect or positively enhance the Marina environment, would harm the surrounding townscape, heritage features and the setting of the South Downs National Park, and would thereby be contrary to Policies CP12, CP13, CP14, CP15, DA2, and SA5 of City Plan Part One, Planning Advice Note 04 (Brighton Marina Masterplan), the National Design Guide, and paragraphs 127 and 130 of the National Planning Policy Framework.
- 2) Insufficient information has been submitted to justify why a non-policy compliant level of affordable housing being provided as part of the proposal, contrary to Policy CP20 of City Plan Part One.
- 3) Phase 2 of the development, combined with the parameters sought under Phase 3 of the development, by virtue of the zero provision of private amenity space, the lack of sunlight penetration to the communal amenity spaces and the inadequate level of children's playspace, would result in unacceptable residential amenity for future occupiers, contrary to Policies CP12, CP13, CP14 and CP16 of City Plan Part One, Planning Advice Note 04, and Saved Policy HO5 of the Brighton & Hove Local Plan.
- 4) The development, by virtue of the inadequate separation distances between Blocks 1 and 2, and Blocks 2 and 3 (Phase 2), would result in an unacceptable level of daylight, sunlight, outlook and privacy to future occupiers, failing to provide an adequate standard of accommodation, contrary to Policies DA2 and CP12 of City Plan Part 1, paragraph 127 of the NPPF, and Saved Policy QD27 of the Brighton & Hove Local Plan.
- 5) The development by virtue of the inadequate levels of cycle parking within Phase 2 and the lack of dedicated accessibility for cyclists across the breakwater would fail to promote safe, sustainable modes of transport, contrary to Policies DA2 and CP9 of City Plan Part 1, Saved Policies TR7 and TR14 of the Brighton & Hove Local Plan, SPD14: Parking Standards, and paragraphs 108 and 110 of the National Planning Policy Framework.

1.2. That the Head of Planning be authorised to agree a s106 planning obligation in terms acceptable to her, should the appeal be allowed.

2. SITE LOCATION

- 2.1. The site comprises an area within the operational Outer Harbour of Brighton Marina, and the Western Breakwater. The site has an area of 3.54Ha, comprising of 1.56Ha within Phase Two to the west and 1.97Ha within Phase Three to the east.
- 2.2. The Outer Harbour site is located beyond the southern wave wall, with the development proposed to be located atop and adjacent to the existing Cofferdam (dry area from which water is pumped), and atop a new platform which is to be constructed over the Spending Beach. The Spending Beach is a man-made beach that absorbs and dissipates wave energy to ensure calm and safe conditions within the Marina's entrance channel.
- 2.3. The Western Breakwater runs along the west of the site. The Western Breakwater is made up of a series of caissons (retaining walls) which reduce the intensity of wave action, and prevent longshore drift, to create a safe and functioning marina. Vehicular access (for emergencies and maintenance only) and pedestrian access is provided along the Western Breakwater, linking with from the Black Rock Site to the north and west.

3. APPLICATION DESCRIPTION

- 3.1. The application seeks permission for the following description of development:
“Hybrid planning application for the phased residential-led mixed-use development of Brighton Marina Outer Harbour. Full Planning Permission is sought for Phase Two of the development and comprises: 480 residential units (Use Class C3) in 3 buildings ranging from 9 – 28 storeys; 761 sqm (GIA) of flexible commercial floor space (Use Class A1-A4, B1, C3 Ancillary, D1/D2); works to existing cofferdam; undercroft car and cycle parking; servicing; landscaping; public realm works; and infrastructure (harbour wall) works. Outline Planning Permission (all matters reserved apart from access) is sought for Phase Three of the development and comprises: up to 520 residential units (Use Class C3) in 6 buildings ranging from 8 – 19 storeys; up to 800 sqm (GIA) of flexible commercial floor space (Use Class A1-A4, B1, C3 Ancillary, D1/D2); construction of engineered basement structure to create a raised podium deck over Spending Beach; installation of Navigation Piles; undercroft car and cycle parking; servicing; landscaping; and public realm works. The application is accompanied by an Environmental Statement”.

- 3.2. As is set out above, this is a hybrid application, submitted in part detailed form (Phase 2, seeking full planning permission) and part outline form (Phase 3, with all matters except access reserved with the exception of access). In line with statutory procedure for outline applications, all reserved matters, in this case appearance, landscaping, layout and scale, would be determined through subsequent Reserved Matter applications.

Phase 2

- 3.3. Phase 2 of the application, submitted in detailed form, seeks permission for 480 residential units (Use Class C3) in three buildings ranging from 9 – 28 storeys; 761 sqm (gross internal area (GIA)) of flexible commercial floor space (Use Classes A1-A4 (retail, professional/financial, restaurants/cafes, pubs/bars), B1 (business), C3 ancillary, and D1/D2 (non-residential institutions and assembly/leisure)).
- 3.4. Phase 2 of the development would be located to the east of the existing breakwater on land reclaimed using a cofferdam. Due to the proximity of the breakwater and the risk of wave overtopping, a lagoon has been incorporated into the proposed layout to accommodate the overtopping waves during such events.
- 3.5. Phase 2, as with the wider development, would be built at podium level, above an undercroft parking area at natural ground level. Vehicular access to the undercroft parking area would be provided from the existing access running parallel to the north of the site adjacent to the premises to the north. Pedestrian access to the Phase 2 development area would be provided from a number of points, with ramped access from the breakwater to the north of the site, stepped access from the breakwater at the southern extremity of the site, stepped access from the road to the north of the site as well as access being provided through the undercroft area. In addition, an access lift capable of accommodating bikes would be provided to the north west corner of the site.
- 3.6. The tallest element of Phase 2, and the development overall, would be Block 3, located at the southern end of the site at 28 storeys in height. The building would have a square floorplate and would accommodate flexible use commercial units on the ground floor with residential units on the upper floors. A landscaped area would be provided immediately to the west of the building comprising of hard and soft landscaping.
- 3.7. To the north of Block 3 would be Block 2 which would have a rectangular floorplate and would rise to 16 storeys in height. The building would accommodate a mix of residential and commercial uses to the ground floor, along with residential on all of the upper floors.

- 3.8. Adjacent to the northern boundary of the site and positioned to the north of Block 2 would be Block 1 which would be part twelve- and part nine-storey height. The building would be laid out in an inverted 'c' shape with a central courtyard area which would be landscaped, providing a mix of public and private amenity space. The building would provide a mix of commercial and residential uses at ground floor level with residential to all of the upper floors.

Phase 3

- 3.9. Phase 3, submitted in outline form, seeks permission for up to 520 residential units (Use Class C3) in 6 buildings ranging from 8 – 19 storeys; up to 800 sqm (GIA) of flexible commercial floor space (Use Class A1-A4, B1, C3 Ancillary, D1/D2).
- 3.10. As with Phase 2 and the development as a whole, Phase 3 would be built at podium level with an undercroft parking area. Phase 3 would link into Phase 2 to the west at both basement and podium level whilst access from the north would be provided through a central stepped access along with a stepped and ramped access to the east of the Phase 3 development area. Phase 3 would also link into the extant Phase 1 to the east at both basement and podium level.
- 3.11. Whilst Phase 3 is submitted in outline, indicative parameter plans set out that development would come forward in six separate buildings with the following heights:
- Block 4 – 14 storeys
 - Block 5 – 19 storeys
 - Block 6 – 8 storeys
 - Block 7 – 17 storeys
 - Block 8 – 8 storeys
 - Block 9 – 8 storeys
- 3.12. Blocks 4, 5, 7 and 8 would be solely residential, and located adjacent to the northern boundary of the site. Each would have a square floorplate and would be spaced evenly in a linear fashion along the boundary, with areas of landscaping between the buildings.
- 3.13. Blocks 8 and 9 would have curved form fronting the seafront inside the marina and a curved boardwalk that would run along the frontage, providing pedestrian access across the site, and linking to Phase 1 to the east and Phase 2 to the west. Blocks 8 and 9 would accommodate commercial uses at ground floor level, with residential uses above.

Post Submission Revisions

- 3.14. Since the submission of the original application, revisions were made to the application in respect of the elevational treatment of the buildings within Phase 2 including the colour tones.

4. RELEVANT HISTORY

Design Reviews

- 4.1. The current application was subject to an extensive pre-application process with the LPA and as part of the process was subject to three Design Reviews.
- 4.2. The first Design Review was undertaken in October 2018 and the main points issued in response to the applicant can be summarised as follows:
- There is architectural merit to the proposal, but there is concern that it does not sit comfortably in this specific environment. The site is relatively cut off from the surrounding city and it will be essential to address connectivity issues in any future proposals;
 - The way the proposal relates to the recently completed phase 1 scheme and any potential future developments to the north should be improved;
 - A relatively high-density approach on this site is supported, but the lack of private amenity provision and the level of overshadowing is a fundamental problem with the current scheme;
 - Public and communal spaces that are designed to mitigate challenging environmental conditions and accommodate a greater variety of activities are required.
- 4.3. Subsequent to the initial Design Review, revisions were made to the scheme and a second Review was undertaken in December 2018. The key points arising from the review can be summarised as follows:
- Some advances have been made since the previous review, the increased focus on the quality of the landscape has benefitted proposals, and the architectural treatment is now more appropriate for the context.
 - Clarity on the number and form of building types is still required and some concerns remain over issues such as the lack of information on the retail strategy, the reduced scale of the boardwalk, and the deliverability of the ambitious landscape proposals;
 - The increase in height of some blocks will make the scheme appear bulkier in long distance views and decrease the legibility of the main tower as a singular object. On balance, improvements elsewhere in the scheme currently seem to justify this, but the impact on key views should be continually investigated as the scheme develops and may inform adjustments to the form and mass.
- 4.4. Following some revision to the scheme pursuant to the initial reviews, a final Design Review was undertaken in February 2019. The key points from the response can be summarised as follows:

- The scheme retains many of the successful qualities seen in the previous review, though some of the clarity has been lost, particularly in the differentiation of the tower from the surrounding blocks;
- While the relationship between the crescent and the main tower is successful, the remaining blocks do not fit into this clear hierarchy and the panel is less comfortable with the approach to create a 'family of towers' in its current form, and believe further work is required to resolve these issues;
- The 'playful rigour' underpinning the scheme should be strengthened, and there are concerns that the more corporate style seen previously has returned to some extent. This should be reflected both in the architectural treatment and the way public spaces are used;
- The quality of the street elevation and landscape of the northern boundary also requires further focus. This will be one of the most prominent areas of the site, and it is vital that it is perceived as an integrated city street rather than a service road. Measures to activate the parking frontages currently proposed should be explored to address this, linking to a wider strategy to improve the connection to Madeira Drive.

Members' Pre-Application Presentation

4.5. In addition to the Design Reviews set out above, the scheme was presented to Members in November 2018. The key feedback from Members can be summarised as follows:

- Councillors welcomed the amendments to the footprint of the scheme which now incorporates both curved and square forms of development and queried whether rounded corners could be introduced to the squares?
- Councillors queried the introduction of the higher 15 and 17 storey towers to the north part of the development, as their form and height and those of lower 6, 10 and 12 storey towers would increase the bulk of the development in short and long-distance views;
- The scheme needs to be carefully designed in relation to views from Sussex Square. Given the change from the slender sculptured form of the buildings in the approved scheme, strong justification for this change to the development;
- Councillors would welcome the provision of improved access into the scheme from Marine Drive;
- Councillors welcomed the introduction of the boardwalk. Uses that provide active frontages should be provided to the curved boardwalk overlooking the harbour entrance. Councillors queried whether other uses in addition to residential, such as offices, could be introduced to the development;
- Consideration should be given to the extension of the boardwalk around the southern end of the completed Phase 1 to improve pedestrian connectivity with the rest of the marina;
- Councillors would like to see the bridge over the harbour entrance included within the scheme, as in the approved development. If not, the applicant will need to demonstrate why this is not achievable;
- Councillors welcomed the fluting to the elevations of the proposed scheme;
- Samples and product specifications of the external materials should be submitted with the planning application. Given the location of the

development, marine grade materials should be used and render and concrete avoided;

- The scheme should provide clarity about the parking provision for the development and how it relates to the parking provision in Phase 1;
- The scheme should provide 40% affordable housing and any lower provision will require justification through a Financial Viability Appraisal submitted with the application.

Pre-Application PRE2018/00328

4.6. A final comprehensive pre-application response was issued to the applicant in March 2019, the key points of the response can be summarised as follows

- Officers had concerns over the density and rigidity of Phase 2. The overall design approach needs to be made clearer as due to the rise in height of other blocks, Block 3 is no longer as prominent, therefore the development appears more as a single, high density mass;
- The design and landscaping should reflect and celebrate the coastal/marina environment, but this isn't coming through clearly in the submissions to date;
- The removal of sections of deck to account for wave overtopping is a concern due to the reduction in public realm in Phase 2;
- There are still concerns that the proposals do not go far enough to satisfy policy objectives of improving connectivity of the site and wider marina;
- The Transport Officer seeks the reinstatement of the bridge over Black Rock Beach or the equivalent financial contribution to be made;
- No proposals for improving Breakwater Approach have been made. The cycle/pedestrian link between the site and Breakwater Approach is narrow and could be improved by reinstating the deck in the NW corner and extending the deck further north to widen the ramp;
- The location of bin stores and cycle stores needs to be shown;
- The vehicular and emergency vehicular access to the Waterfront Promenade appears to be no longer viable. Tracking drawings are required to show emergency vehicles traversing this area, which is expected to accommodate moderate pedestrian flows;
- The development should include community uses at ground floor in every block, unless it can be fully justified within the submissions why this would not be possible;
- The retail assessment should justify the case for A1 Use Classes within the site;
- The non-residential uses should be spread across Phases 2 and 3.

Planning Applications

4.7. The following applications are considered to be relevant to the consideration of the current scheme. It should be noted that, in addition to the history outlined, there have been numerous applications for non-material-amendments and discharge of conditions of the extant consent. For the sake of brevity, these submissions are not listed.

- 4.8. BH2004/03673/FP - Construction of a structural platform over the Spending Beach and West Quay and associated engineering works. Development of residential accommodation comprising 988 flats in 11 buildings ranging from 5 to 40 storeys above the structural deck including associated plant accommodation; high level viewing gallery, Class A use and associated plant; Class D1 use and associated plant; Class D2 use and associated plant; Class B1 use and associated plant; free-standing lifeboat station including relocation of floating lifeboat house; single storey covered car park providing up to 171 car parking spaces, 12 motorcycle spaces and 990 cycle parking spaces. Alterations to existing vehicular, pedestrian and cycle access arrangements and creation of new routes for access and servicing to include pedestrian/cycle/vehicular access along the western breakwater with associated engineering works. Alteration to existing pontoons and creation of replacement moorings and installation of navigation piles. Construction of an openable foot and cycle bridge between West Quay and eastern breakwater and associated works. Construction of a foot and cycle bridge between Madeira Drive and western breakwater and associated works. New areas of hard and soft landscaping and public realm. Engineering and structural works and alterations to the Marina and adjoining land associated with the above.
- 4.9. The application was refused in December 2005 for the following reasons:
1. The proposed development by reason of siting, layout and height, would be overly dominant and would not relate satisfactorily to existing development within the Marina and would fail to preserve the setting of views of strategic importance, in particular views into and out of the Kemp Town Conservation Area and the Sussex Downs AONB.
 2. The proposed development, by reason of excessive scale, height, bulk and site coverage, would represent over-development of the site and would be out of character with surrounding development.
 3. The proposed development fails to incorporate sufficient public and private amenity space and outdoor recreation space to meet the demands of the development.
 4. The proposed development fails to incorporate sufficient on-site car parking spaces to meet the demands of the development and would lead to overspill parking in the vicinity of the site and would result in significant traffic generation.
- 4.10. The refusal of the application was appealed however the appeal was subsequently withdrawn.
- 4.11. BH2006/01124 - Construction of engineered basement structure to create platform on Spending Beach and West Quay and associated engineering works, including formation of reinforced wave dissipation chambers. Development of residential accommodation comprising 853 flats in 11 buildings ranging from 6 to 40 storeys above structural deck including associated plant accommodation; high level viewing gallery; Class A, D1, D2 and B1 uses and associated plant;

lifeboat station including relocation of floating lifeboat house and installation of communication aerials; three storey covered car parking providing up to 491 parking spaces, 32 motorcycle spaces and 876 bicycle parking spaces; 5 visitor disabled parking spaces along proposed promenade. Alterations to vehicular, pedestrian and cycle access arrangements and creation of new routes for access and servicing to include pedestrian/cycle/vehicular access along western breakwater with associated engineering works. Alterations to pontoons and creation of replacement moorings and installation of navigation piles. Construction of openable foot and cycle bridge between West Quay and eastern breakwater and associated works. New areas of hard and soft landscaping and public real, including children's playground and formal and informal areas of amenity space. Solar panels at roof level and wind and tidal turbines. Engineering and structural works and alterations to marina and adjoining land associated. Revised application to BH2004/0373/FP

- 4.12. The application was approved in April 2006 subject to a S106 Agreement,
- 4.13. BH2006/04307 - Amendment to planning permission for mixed use development BH2006/01124 to allow revisions to basement structures over Spending Beach and West Quay and associated engineering works to accommodate revised car parking layout. Total no. of car parking spaces and main access point to remain unchanged.
- 4.14. The application was approved in March 2007 subject to a S106 Deed of Variation (DoV).
- 4.15. BH2012/04048 - Minor Material Amendment for variation of condition 70 of application BH2006/01124 as amended by BH2012/00042 (Major mixed use development comprising new engineered basement structure to create platform on Spending Beach and West Quay, 853 residential units in 11 buildings ranging from 6-40 storeys, Class A, D1, D2 and B1 uses, Lifeboat Station, 496 parking spaces, alterations to pontoons and moorings, new bridges, informal and formal recreation space and alterations to access arrangements) to allow revisions to basement structures over Spending Beach and West Quay with associated landscaping and engineering works to accommodate revised car parking layout. Total number of car parking spaces and main access point to remain unchanged.
- 4.16. The application was approved in May 2013 subject to a S106 DoV
- 4.17. BH2014/02883 - Application for variation of condition 1 of application BH2012/04048, as amended by applications BH2013/00799, BH2013/03432 and BH2014/01970 (original permission – major mixed use development comprising new engineered basement structure to create platform on Spending Beach and West Quay, 853 residential units in 11 buildings ranging from 6 to 40

storeys, Class A, S1, D2 and B1 uses, Lifeboat Station, 496 parking spaces, alterations to pontoons and moorings, new bridges, informal and formal recreation space and alterations to access arrangements) to allow for revisions to the approved scheme including reconfiguring the type and quantum of uses within blocks F1 and F2 incorporating alterations to shopfronts, revised landscaping, relocation of the bus waiting room and changes to the RNLI station. Total number of residential units and car parking spaces to remain unchanged (amended description).

- 4.18. The application was approved in June 2015 subject to a S106 DoV.
- 4.19. BH2015/04435 - Application for variation of conditions 15 and 30 of BH2014/022883 to amend the wording of each condition as follows: Condition 15 to read "The premises for Use Class A (A1, A2, A3, A4 and A5) hereby permitted shall not open for trade except between the hours of 07.00 and 23.30 hours Mondays to Thursdays, and between 07.30 and 00.30 hours on Fridays and Saturdays and between 08.00 and 23.00 hours on Sundays or Bank Holidays". Condition 30 to read "Occupation of the Class A floorspace within the development hereby permitted shall not include more than 600 sqm of floorspace used for Class A4 use".
- 4.20. The application was approved in April 2016 subject to a S106 DoV.
- 4.21. In addition to the planning history outlined above, the application has been subject to extensive pre-application discussions with the LPA. The various pre-application responses are set out within the appendix of this report.

5. REPRESENTATIONS

- 5.1. In response to consultation, 93 responses were received, of which 81 objected to the application, ten were in support and two made observations.
- 5.2. The material planning considerations raised within the objections can be summarised as follows:
- Architecture/design of the scheme is inadequate
 - The scheme represents overdevelopment
 - The height of the development is excessive
 - Development would harm views from listed terrace and Kemp Town Conservation Area
 - Homes will not be affordable for local people
 - The height of the development would exceed cliff height, contrary to Brighton Marina Act

- Additional traffic generation exacerbating existing issues, particularly at weekends.
- Inadequate levels of residential parking.
- Inadequate levels of affordable housing being provided
- Flooding of basement car parks
- Development could result in additional ASBO, through unlawful moped access, drug dealing etc
- The construction of the development would result in excessive noise, dust and pollution; prolonged over several years.
- The development would suffer from adverse microclimatic conditions in terms of wind, wave over-topping. Conditions would be worsened due to climate change
- The development makes no provision for services such as GP/Dentist/Schools.
- The development would compromise the safety of navigation within the harbour.
- The development would provide inadequate access for emergency vehicles
- The proposed commercial units are likely to be unattractive to prospective occupiers as is the case within Phase 1.

5.3. The main material planning considerations raised in support and observations were:

- The development would increase housing and reinvigorate the Marina;
- The development would increase business, improve pedestrian and waterfront access and create jobs;
- This development will further improve local career opportunities, as well as provide much needed homes for local residents, including affordable housing. It will also help bring in a further community to help self-generate the commercial areas of the Brighton Marina and help reduce the costs associated with current residents that live in Brighton Marina.
- The tower and crescent buildings would be of a high design quality and the scheme incorporates landscaped garden space;
- The development would enhance selective local views, and draw the eye away from the Asda rooftop;
- The development would provide much needed homes for local people;
- The redevelopment of this part of the Marina would act as a catalyst for development on the neglected eastern side of the city.

6. CONSULTATIONS

6.1. The following comments were received from internal and external consultees.

6.2. External
Building Research Establishment (BRE)

The Building Research Establishment (BRE) were consulted on the application in respect of the daylight/sunlight and microclimate impacts. Comments received from BRE can be summarised as follows.

Daylight / Sunlight

- 6.3. The nearest existing dwellings are flats in Phase 1 of the Outer Harbour development. There would be a moderate adverse impact on daylight to these flats. Although there are big relative losses of light to a large number of rooms, these are partly due to the design of Phase 1, in particular the balconies above many of the windows.
- 6.4. The main windows in Phase 1 that would face the new development all face north of due west. They would therefore not be covered by the BRE sunlight guidelines. There are some secondary windows with a southerly orientation; loss of sunlight to all these windows would be within the BRE guidelines. The impact on sunlight would be assessed as minor adverse because the flats, particularly those in the northern part of Phase 1, would still lose sun.
- 6.5. Avison Young have analysed daylight provision in the whole development. They predict that 92% of the living/kitchen/diners would meet the recommended 2% ADF for a kitchen, and 97% the recommended 1.5% ADF for a living room. 92.5% of the bedrooms would meet the recommended 1% for a bedroom. These figures are likely to be overestimates, because they assumed an unusually high wall reflectance and, in some areas, glass transmission.
- 6.6. Daylight provision is not uniform and there are some problem areas in the development. Within the detailed Phase 2 scheme these are mainly in the gaps around Block 2, a tall building awkwardly situated in the relatively narrow gap between Blocks 1 and 3. In the illustrative Phase 3 scheme the north sides of blocks 6 and 9 are heavily obstructed by the other blocks.
- 6.7. Most of the development would be reasonably well sunlit; this is to be expected, given the complete lack of obstructions to the south. There are some areas of poor sunlight provision, especially Block 1; the proximity of Block 2 limits the sunlight received by its south façade. Block 8 would also be shadowed by Block 9 and by the existing Phase 1 development.
- 6.8. For Phase 3 only an illustrative scheme has been analysed and it is possible that the final development might have quite different daylight and sunlight provision. If planning permission is given for the outline scheme, one possibility would be to impose a condition about this.
- 6.9. The Environmental Statement has analysed one existing open space to the north of Phase 1, which would meet the BRE guidelines, retaining two hours

sunlight on March 21st over more than half its area. There are no other existing open spaces that should have been analysed.

- 6.10. Sunlight provision in the proposed open spaces is mixed. Areas near the sea would be well sunlit. The courtyard garden to Block A, and the areas in between the blocks in the Phase 3 illustrative scheme, would not meet the guidelines. These spaces would be seen as inadequately sunlit.

Microclimate (Submission Scheme)

- 6.11. The wind microclimate assessment carried out by Arup was for the Brighton Marina Outer Harbour Development. The wind microclimate assessment carried out by Arup was included within the wind microclimate chapter of the Environment Statement. The chapter reviewed has the following reference: “BH2019 00964 ENVIRONMENTAL STATEMENT VOLUME I CHAPTER 15 WIND MICROCLIMATE 15376416”
- 6.12. Arup is a reputable company within the wind engineering community and their wind microclimate assessments are generally undertaken with appropriate practices and methodology. The Arup wind microclimate assessment for this project has been carried out in the form of a wind tunnel study, which is widely considered the best practice approach. The Arup wind microclimate assessment also utilises the Lawson Criteria, which are routinely adopted criteria for assessing the wind microclimate in the built environment of the United Kingdom.
- 6.13. Notwithstanding the opinions provided above, there are several areas of concern within the Arup wind microclimate assessment that require attention. The main body of this report identifies these areas of concern and provides specific examples.
- 6.14. The primary area of concern is that the Arup report shows locations around the proposed development where the wind conditions exceed the distress/safety criteria despite the implementation of mitigation measures. There are also locations around the proposed development where the wind conditions are shown to be unsuitable for the intended usage despite the implementation of mitigation measures.
- 6.15. The Arup wind microclimate assessment states that further mitigation measures will be incorporated into the final design and then tested in a final wind tunnel test, subject to a planning condition. The wind microclimate assessment also states that following the implementation of further mitigation measures, “all residual effects are predicted to be negligible and not significant”. The wind microclimate assessment classified the significance of the wind effects around the proposed development as being major adverse.

- 6.16. Considering the major adverse classification and having reviewed the results from the wind tunnel study with mitigation measures in place, it seems an unrealistic expectation that all the residual effects will be “negligible and not significant” following the implementation of further mitigation.
- 6.17. To amplify further this concern, it is stated in the Arup wind microclimate assessment that the “likely mitigation required” for a major adverse effect is “substantial mitigation, for example possibly including alteration of building massing, may be required to reduce levels of windiness within acceptable limits”.
- 6.18. The extent of the issues with the wind microclimate suggests that the desired wind microclimate may not be achievable with the current massing of the proposed development. This seems likely to be the case particularly when many areas around the proposed development are intended for wind sensitive usage, such as outdoor seating areas and play areas for children.

Microclimate (Further Submission)

- 6.19. Following the aforementioned response from BRE, the applicant provided additional detail, clarification and carried out additional testing in line with the comments. BRE were commissioned to do a further review and subsequently provided the following response (summarised).
- 6.20. As explained in the initial BRE peer review, the information presented in the ES Chapter raised particular wind-related issues that were of immediate concern. Many of those issues are being resolved by the implementation of a closure management strategy. In this second peer review, I have drawn your attention to secondary matters of concern which were not detailed in the first BRE review, because they were regarded then as being less critical.
- 6.21. Bearing in mind the likelihood that further wind tunnel testing will be undertaken by the applicant, I feel it is now important to highlight the secondary issues of concern, so that they might be addressed by RWDI and Arup, and be taken into account within subsequent information provided by the applicant to BHCC. At this point I would like it to be recorded that many of Arup’s responses to the secondary concerns raised by BRE are neither adequate nor satisfactory.
- 6.22. To repeat a point earlier, given the findings of the ES Chapter and the responses in the Arup Response, I believe that that a planning condition should be imposed. This condition will require the applicant to undertake a further wind tunnel testing to demonstrate the suitability of the test locations for their intended pedestrian activities.
(NB – in respect of the “secondary issues of concern” outlined in the response, these are addressed within the main body of the report)

- 6.23. DVS (Viability) – Comment
Given that the application is accompanied by a financial viability review (FVA), DVS were instructed by the Council to undertake a review of the FVA. The conclusion of the DVS is as follows:
- 6.24. (based on the initial review of 15% Shared Ownership) - my opinion of the proposed mixed use residential and commercial development scheme is that it is not viable as at the date of this report taking into account the Benchmark Land Value and developers profit allowance.
- 6.25. In accordance with my instructions from Brighton and Hove City Council I have also undertaken sensitivity analysis and testing on the following bases;
- Basis A
 - Proposed development scheme taking into account all the S106 Contributions and 10% affordable housing (comprising 48% shared ownership units, and 52% social rented tenure units).
 - The scheme tested is viable taking into account the Benchmark Land Value and a developer’s profit allowance as a surplus of approximately £12,611,722 is available when land acquisition and finance costs are taken into account.
 - Basis B
 - Proposed development scheme taking into account all the S106 Contributions and 10% affordable housing/shared ownership units (Phase 2), and 15% affordable housing/social rent tenure units (Phase 3).
 - The scheme tested is viable taking into account the Benchmark Land Value and a developer’s profit allowance as a surplus of approximately £3,051,057 is available when land acquisition and finance costs are taken into account.
- 6.26. The subject land is situated adjacent to Brighton Marina and comprises part of the operational outer harbour of Brighton Marina and the Western Breakwater. The Outer Harbour is situated beyond the southern wave wall, and the proposed development is to be constructed on top of land adjacent to the existing cofferdam.
- 6.27. Since my initial draft report dated 1 October 2019 was issued, the outbreak of the Novel Coronavirus (COVID-19) has been declared by the World Health Organisation as a “Global Pandemic” on 11 March 2020, and has impacted global financial markets. Travel restrictions have been implemented by many countries.
- 6.28. Market activity is being impacted in many sectors. As at the viability assessment date, we consider that we can attach less weight to previous market evidence

for comparison purposes, to inform opinions of value. Indeed the current response to COVID-19 means that we are faced with an unprecedented set of circumstances on which to base a judgement.

- 6.29. Our viability assessment is therefore reported on the basis of 'material valuation uncertainty' as per VPS 3 and VPGA 10 of the RICS Red Book Global. Consequently, less certainty – and a higher degree of caution – should be attached to our viability assessment that would normally be the case. Given the unknown future impact that COVID-19 might have on the real estate market, we recommend that you keep the viability of the proposed mixed use residential and commercial development scheme under frequent review.
- 6.30. Brighton and Hove City Council should be aware that we have been provided with a number of abnormal and development costs by the planning applicant.
- 6.31. It should be noted that some of these abnormal and development costs are based on estimates and could change. Accordingly, the local authority is strongly advised to monitor the costs, as cost savings could be made, which could help achieve a viable development scheme.
- 6.32. In accordance with my instructions from Brighton and Hove City Council the affordable housing is based on a 60% social rent tenure and 40% shared ownership tenure basis. The Local Authority should be aware that if the affordable housing units and tenure split were to change then my conclusions would be different to those currently stated in this report.
- 6.33. It should be noted that when the Basis B mixed use scheme is tested it is viable taking into account the Benchmark Land Value and a developer's profit allowance as a surplus of approximately £3,051,057 is available when land acquisition and finance costs are taken into account.
- 6.34. However the Local Authority should be aware that if leasehold reform legislation is introduced by the Government in the future, and ground rents are abolished, then this surplus will not be available.
- 6.35. It is my understanding that the Local Authority is minded to proceed under the Basis B mixed use scheme as tested above (Option 1 as proposed by the planning applicant) and therefore the Council is strongly advised to take into account the following matters:
- Agree a 40% target maximum affordable housing provision under Option 1 when retesting development viability;
 - Ensure that the Benchmark Land Value (BLV) is apportioned between the Phase 2 and 3 schemes and incorporated into the S106 agreement for benchmarking purposes when the scheme is retested. Whilst the BLV can

be fixed in the S106 Agreement, any relevant future proposed abnormal scheme costs should also be deductible from the BLV.

- Obtain the planning applicants agreement that on any reassessment of the Phase 2 / 3 scheme that ground rents are taken into account, subject to any leasehold reform legislation that may / may not be in place as the relevant time.

- 6.36. The Local Authority is strongly recommended to agree regular development viability reviews and appropriate trigger points in addition to ensuring that it takes legal advice prior to proceeding in this matter.
- 6.37. The planning applicant has previously confirmed that there will not be any car parking spaces available for purchase or rent to the purchasers of the residential flats. Accordingly no car parking rents or sales values have been taken into account. If it is subsequently agreed with the Local Authority that car parking spaces are to be provided the matter should be referred back to me for further consideration.
- 6.38. In relation to the Phase 3 development scheme I have assumed that construction of this phase will not commence until the Phase 2 construction program has completed based on the development scheme information provided by the planning applicant's agent.
- 6.39. The local authority is advised to monitor the development programme, because if the Phases 2 and 3 development schemes were to be developed consecutively then there would be cost / finance savings that could help achieve a viable scheme.
- 6.40. As stated above allowances for service charge payments of £700,000 and loan interest for the breakwater at £104,500 have been adopted based on information provided by the planning applicant's agents. If these costs are not required to be paid then the matter should be referred back to me for further consideration
- 6.41. The assessment has been made by comparing the residual land value of the proposed mixed-use development scheme with an appropriate benchmark figure having regard to the National Planning Policy Framework and the published RICS Guidance Note Financial Viability in Planning.
- 6.42. The government announced in late 2017 that they would crackdown on unfair leasehold practices in respect of ground rents. However since no legislation has been enacted the policy of DVS is to include ground rents at this stage. If this changes it could affect this assessment.

- 6.43. It should be noted that the sales values / construction costs for Phase 3 are based on average unit sizes, as no detailed information has been provided by the planning applicant. If the adopted mix, number and type of units were to change in the future then the matter should be referred back to me for further consideration.
- 6.44. This viability assessment has been carried out in a period where residential and commercial property values have fallen and where there are consequential effects on development viability. It is likely that the current market conditions/downturn in the residential and commercial property market and economy will change over a reasonable period of time, and I would recommend that this assessment should be reviewed, if any planning consent has not been substantially commenced within one year of being granted, or if the development was to be constructed in phases.
- 6.45. The Local Authority is also advised that consideration should also be had to adopting an out-turn approach. The Local Authority is also strongly advised that a review mechanism or overage provision should be incorporated into the S106 agreement.
- 6.46. At the present time, the planning applicant appears willing to proceed with the proposed development scheme, obviously subject to the Section 106 contributions and affordable housing provision.
- 6.47. Whilst I cannot provide any professional advice to the planning applicant, it is ultimately up to them to decide how they wish to proceed in this matter. I have had regard to comparable evidence in the surrounding Brighton and East Sussex areas. The transactions have been considered adjusting for date, state of the market and location.
- 6.48. East Sussex County Archaeology – Comment
Although this application is situated within an Archaeological Notification Area, based on the information supplied, I do not believe that any significant archaeological remains are likely to be affected by these proposals. For this reason I have no further recommendations to make in this instance.
- Natural England
- 6.49. **Nature Conservation** - No Objection
Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on marine designations and has no objection.
- 6.50. **Landscape** – No Comment

Natural England does not wish to provide detailed comment on impacts on the South Downs National Park, however, this should not be taken as implying that there are no impacts. We recommend taking the advice of the South Downs National Park Authority as they will have more detailed knowledge of the site and its wider setting. Natural England's advice on other natural environment issues is set out below.

- 6.51. Parks. For major development proposals paragraph 172 sets out criteria to determine whether the development should exceptionally be permitted within the designated landscape.
- 6.52. Alongside national policy you should also apply landscape policies set out in your development plan, or appropriate saved policies.
- 6.53. The landscape advisor/planner for the National Park will be best placed to provide you with detailed advice about this development proposal. Their knowledge of the site and its wider landscape setting, together with the aims and objectives of the park's management plan, will be a valuable contribution to the planning decision. Where available, a local Landscape Character Assessment can also be a helpful guide to the landscape's sensitivity to this type of development and its capacity to accommodate the proposed development.
- 6.54. The statutory purposes of the National Park are to conserve and enhance the natural beauty, wildlife and cultural heritage of the park; and to promote opportunities for the understanding and enjoyment of the special qualities of the park by the public. You should assess the application carefully as to whether the proposed development would have a significant impact on or harm those statutory purposes. Relevant to this is the duty on public bodies to 'have regard' for those statutory purposes in carrying out their functions (section 11 A(2) of the National Parks and Access to the Countryside Act 1949 (as amended)). The Planning Practice Guidance confirms that this duty also applies to proposals outside the designated area but impacting on its natural beauty.
- 6.55. **Environment Agency – Comment**
Initial Response
From the plans submitted it appears the proposal will cause a direct loss of Intertidal Habitat (muddy shingle). There is currently no detailed information in relation to this and no proposal to compensate for this impact. Therefore we currently object to the proposed development as submitted.
- Reasons
- 6.56. This is in accordance with Paragraph 175 of the National Planning Policy Framework (NPPF) which states that if significant harm resulting from a

development cannot be avoided adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

- 6.57. Intertidal muddy gravels are a priority habitat in the Government's UK Biodiversity Action Plan (UK BAP). One of the main objectives is to maintain at least its present extent and regional distribution. Although the area of habitat to be affected by the proposed works is outside designated nature conservation areas, it is still considered to be a valued wildlife asset.
- 6.58. Foreshore and inter-tidal areas which exist between low and high water mark, represent ecologically rich habitats.
- 6.59. As set out in Paragraph 007 of the Planning Practice Guidance, Section 41 of the Natural Environment and Rural Communities Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of policy and decision making throughout the public sector, which should be seeking to make a significant contribution to the achievement of the commitments made by Government in its Biodiversity 2020 strategy.
- 6.60. We therefore recommend that planning permission be refused on this basis and will maintain our objection until the applicant has supplied information to demonstrate that the risks posed by the development can be satisfactorily addressed.

Subsequent Response

- 6.61. Following on from the response outlined above, the applicant submitted additional information addressing the points raised. The EA subsequently withdrew their objection subject to a suggested condition.
- 6.62. **Sussex Police** - Comment
The National Planning Policy Framework demonstrates the government's aim to achieve healthy, inclusive and safe places which are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion. With the level of crime and anti-social behaviour in Brighton & Hove district being below average when compared with the rest of Sussex, I have no major concerns with the proposals, however, additional measures to mitigate against any identified local crime trends should be considered.
- 6.63. This mixed use development will be constructed in an area which has a high footfall of visitors as well as the local residents, potential work force, and as such security will be an important factor for all.

(NB – the response goes on to make detailed comments in relation to the various aspects of the development which are not listed in the interests of brevity. Such matters would be addressed through condition if permission were to be granted. In addition to the response outlined, further representation was received requesting a S106 contribution be secured to mitigate the additional police resource required to accommodate the development)

6.64. **Southern Water – Comment**

Please find attached a plan of Southern Water records showing the approximate position of a surface water sewer and water main in the access of the site. The exact position of the surface water sewer and water main must be determined on site by the applicant before the layout of the proposed development is finalised.

- No development or new tree planting should be located within 3 metres either side of the external edge of the public sewer.
- No development or new tree planting should be located within 6 metres either side of the external edge of the water main without Southern Water consent.
- No new soakaways should be located within 5m of a public sewer.
- All existing infrastructure should be protected during the course of construction works.

6.65. Furthermore, due to changes in legislation that came in to force on 1st October 2011 regarding the future ownership of sewers it is possible that a sewer now deemed to be public could be crossing the above property. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site.

6.66. Our initial investigations indicate that Southern Water can provide foul sewage disposal to service the proposed development. Southern Water requires a formal application for a connection to the public sewer to be made by the applicant or developer.

6.67. We request that should this application receive planning approval, the following informative is attached to the consent:

Drainage Systems (SUDS)

6.68. We request that should this application receive planning approval, the following condition is attached to the consent: “Construction of the development shall not commence until details of the proposed means of foul and surface water sewerage disposal have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Southern Water.” Following initial investigations, Southern Water can provide a water supply to the site.

- 6.69. **Historic England** - Comment
Immediately to the east of the site sits the Kemp Town Conservation Area, which is predominantly formed of grade I listed buildings and the grade II listed registered park and garden, the Kemp Town Enclosures. The Conservation Area was designated in 1970 and is a fine example of elegant Regency architecture.
- 6.70. Commissioned by Thomas Read Kemp, a member of a wealthy and influential Lewes family and one of the lords of the manor, his vision was to create a planned separate 'town' from Brighton with larger houses for the fashionable upper-class society who were increasingly visiting Brighton. The area was designed by the local architectural partnership of Charles Augustin Busby and Amon Henry Wilds, their role being limited to the layout of the estate and the general design of the facades of buildings.
- 6.71. The Conservation Area is designated for having special architectural and historic interest as an impressive example of Regency town planning and speculative building, deriving its impact from its bold scale and proportions, with the vast span of Lewes Crescent being particularly striking.
- 6.72. The grade II registered park and garden, the Kemp Town Enclosures, is the land forming the gardens of the estate. This land was enclosed by Kemp with cast iron railings in 1823 and planted in 1828 to a scheme devised by local botanist and landscape gardener Henry Phillips. The gardens have since been replanted and reorganised in 1878 and were occupied by the War Department during the Second World War. The gardens form the focus of the Regency planned estate, and they provide aesthetic and communal qualities to the estate. Their immediate setting of significance is that of the enclosing Regency architecture and coastal location, their relationship to the sea and the topography.
- 6.73. Bordering Kemp Town Conservation Area to the east sits the 'at Risk' East Cliff Conservation Area, which contains many designated heritage assets. Beyond this Brighton boasts many other designated heritage assets that give the city its historic significance and identity.
- 6.74. In 1983 a wreck site was designated to the west of Brighton Marina under the Protection of Wrecks Act 1973 in recognition of its national importance. It was believed that the remains of a fifteenth or sixteenth century shipwreck lay here from which bronze and wrought-iron guns had been recovered. It was believed at this time that from reviewing the orientation of the debris that the ship was driven aground from west to east and the final resting place of the ship was likely to be within the area now occupied by the Marina.
- 6.75. The Brighton Marina Wreck was de-listed by DCMS on Historic England's advice on 18th August 2017. This decision was reached following further research by a

Historic England contractor who established that the remains at the protected location had all been removed by salvage and subsequent changes to the Marina frontage. It is believed there are no surviving remains related to the wreck on the seaward side and the restrictions of the Protections of Wrecks Act have therefore been removed.

- 6.76. We understand that this application is a hybrid planning application for the development of Brighton Marina Outer Harbour, Phases Two and Three. Full planning permission is being sought for Phase Two of the development which comprises 480 residential units in three buildings ranging from 9-28 storeys, as well as other works which include undercroft car and cycle parking and harbour wall works. Additionally outline planning permission is being sought for Phase Three of the development which comprises 520 residential units in six buildings ranging from 8-19 storeys, as well as works which include the construction of an engineered basement structure to create a raised podium deck over Spending Beach and installation of Navigation Piles.
- 6.77. The Outer Harbour lies immediately to the south of the principal leisure buildings, and to the west of the Outer Harbour Phase 1 development which was built following planning permission being granted to the 2006 scheme. The proposed development will be located adjacent to the existing cofferdam, on a new platform which is to be constructed over the Spending Beach.
- 6.78. There are no designated heritage assets located within the site's boundary or within the immediate surroundings. The Townscape, Landscape, Heritage and Visual Impact Assessment considers the setting of nearby designated heritage assets including those in Kemp Town and East Cliff Conservation Areas whose setting may potentially be affected. In our view the most sensitive listed buildings and structures are considered; namely those in close proximity to the site and those further afield whose setting is sensitive due to high grading or historic importance.
- 6.79. We agree with conclusions reached that the proposed development including tall buildings will be seen from surrounding listed buildings, registered park and gardens and conservation areas. The predominately horizontal coast line will be punctuated by new vertical elements which will be visible as part of the coastal panorama. In our view whilst the proposed development will be visible from nearby designated heritage assets and change their setting, this will only have a limited impact on their significance and will not prevent them from being understood and appreciated.
- 6.80. We note Brighton and Hove City Council's Supplementary Planning Guidance Note no.20: Brighton Marina and Planning Advice Note 04: Brighton Marina

Masterplan. Importantly we also note policy DA2 of the City Plan Part One (March 2016) and the allocation of 1,940 homes, 2,000 sq m of employment space and 5,000 sq m of retail space. We support the council in seeking to enhance the Marina and the long term aspiration to address the deficiencies of the Marina and the wider area to facilitate the creation of a mixed use area of the city. We note that this should be achieved through the generation of a sustainable high quality marina environment which creates easier and more attractive access for residents and visitors, extends the promenade environment up to and around the Marina and creates stronger pedestrian and visual links with the sea from the Marina. We note your advice that development should secure a high quality of building design that takes account of the cliff height issues in and around the Marina, townscape and public realm while recognising the potential for higher density mixed development in accordance with the aims of the Spatial Strategy to optimise development on brownfield sites.

- 6.81. We note the content and conclusions of the Environmental Statement (volume 3) appendix 2B: Archaeology desk based assessment. We recommend that you consult your Archaeology Officer or the County Archaeologist in relation to this.
- 6.82. Government policy as set out in the National Planning Policy Framework (NPPF) has a clear commitment to achieving sustainable development which in its environmental role includes contributing to protecting and enhancing the natural, built and historic environment (NPPF paragraph 8c). Heritage assets are an irreplaceable resource and the approach set out in the NPPF requires local planning authorities to take account of the particular significance of any heritage asset that may be affected by a proposal (including development affecting the setting). The NPPF advises that planning authorities should look to avoid or minimise any conflict between the conservation of a heritage asset and any aspect of a proposal (NPPF para 190).
- 6.83. The Townscape, Landscape, Heritage and Visual Impact Assessment is helpful in demonstrating the proposal's visual effects and it is clear that the scheme will create an imposing landmark to the eastern approaches. Despite the developments visibility, in our view this will not cause a high level of harm to the significance of the nearby listed buildings, conservation areas and registered park and garden through changes to their setting. In our view this scheme is likely to cause less than substantial harm.
- 6.84. The National Planning Policy Framework paragraph 196 advises that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing it optimum viable use. This weighing should only be carried out once you are satisfied that harm has been avoided or minimised to the greatest extent possible by the design of

the development. It is this remaining harm after such a process that should be weighed against the public benefits of the proposal. Local planning authorities should look for opportunities for new development within Conservation Areas and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably (NPPF para 200).

Recommendation

- 6.85. Historic England has no objection to the application on heritage grounds. In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess. Additionally section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.
- 6.86. **UK Power Network – Comment**
Plans were provided showing the location of extra high voltage equipment.
- 6.87. **South Downs National Park – Comment**
The response of the South Downs National Park Authority is given in the context of the following: 'The Environment Act 1995 sets out the two statutory purposes for National Parks in England and Wales: Conserve and enhance the natural beauty, wildlife and cultural heritage Promote opportunities for the understanding and enjoyment of the special qualities of National Parks by the Public which relevant authorities (which includes local authorities) must have regard to in exercising their functions. National Parks Authorities have the duty to: 'Seek to foster the economic and social well being of local communities within the National Parks'. in pursuit of the twin purposes above. Following is the formal consultation response of the South Downs National Park Authority (SDNPA) on the above application.
- 6.88. The site is located approximately 5 - 600m from the nearest boundary of the South Downs National Park, north east of the site. It is noted that the Environmental Statement submitted with the application includes a landscape and visual impact analysis in both daylight and also covering the night time effects. Having considered the impact of the proposed development on the setting of the designated National Park, the SDNPA recognise the visual receptors from which the assessment has taken place. Notwithstanding this work, the SDNPA have concerns about the 28 storey building element, in particular. It is clear that at approximately 94m high, the 28 storey element would be considerably visible from various key public view points within the National

Park. Notwithstanding the wider visual context and the visible 162m high i360 tower, as shown in views from some of these receptor points, the introduction of a 28 storey building would by nature of its height, scale and size, be intrusive on and above the skyline looking south, SE and SW from the receptor points.

- 6.89. In this marina location, the 28 story element would be somewhat detached from the main taller building and urban city context of Brighton, including the i360. Views looking south from the National Park would be interrupted by the proposed 28 storey urban structure. The SDNPA are not convinced that the visual impact of this tall building element would not be harmful to the setting and special qualities of the South Downs National Park. It would therefore be appropriate for a more detailed assessment be carried out, possibly in conjunction with the SDNPA to establish a more detailed landscape and visual impact assessment on the effects of the development, particularly the tall building element, on the National Park. In connection with the above, the internal, and any external lighting, required in connection with this proposal, including the elevational windows of the proposed buildings, and lighting for the requisite infrastructure of the overall development, has the potential (particularly the 28 storey element) to have significant effects on the dark skies of the National Park. In May 2016 the South Downs National Park became the world's newest International Dark Sky Reserve (IDSR). Therefore it would be appropriate that the development should include and be accompanied by a full appraisal of both internal and any external lighting, to consider what impact it may have on the dark skies reserve status and wildlife of the South Downs National Park and of Lighting Professionals (ILP) for this zone, given the setting of the nearby National Park.

Internal Responses

- 6.90. **Economic Development – Comment**
City Regeneration has some adverse comments and recommendations regarding this application. City Regeneration is aware that the application is a hybrid application, phasing the scheme. Phase 2 of the development comprises of 480 residential units (Use Class C3) in 3 buildings ranging from 9 – 28 storeys; 761 sqm (GIA) of flexible commercial floor space (Use Class A1-A4, B1, C3 Ancillary, D1/D2), and phase 3 of the development will include up to 520 residential units (Use Class C3) in 6 buildings ranging from 8 – 19 storeys; up to 800 sqm (GIA) of flexible commercial floor space (Use Class A1-A4, B1, C3 Ancillary, D1/D2). This will be a total of up to 1,561sqm (GIA) of flexible commercial space (Use Class A1-A4, B1, C3 Ancillary, D1/D2).
- 6.91. There are a number of concerns with the scheme from an economic development view, mainly that the commercial space could potentially be dead space if it is not marketed locally with affordable rents.

6.92. Both phase 2 and 3 mention C3 Ancillary use as part of the flexible commercial floor space. We would request that this be removed as potentially this space could be used for residential space only e.g. a private gym, which would not benefit the wider community.

6.93. Based on the 'anticipated' uses for each unit, the Unit Location Anticipated Potential Use GIA (sqm) outlines the following:

NW Corner of Block One (incl. First Floor) Flexible Office Workspace 236.5sqm:

6.94. According to OffPAT Employment Density Guide, based on 12/13 FTEs per square metre this space should provide 20 FTEs. There has been an influx of worker incubators within the city over the last 5 years, and whilst there has been a demand in the city centre, demand may not be replicated at the Marina. The incubator space appeals to those that prefer city centre locations for easy access, good travel links and are close to amenities. We would not recommend this use unless a clear plan is outlined showing that a sector has been identified and can be grown in this area. This could include using the SW corner of block one as an anchor to entice the growth in this sector.

SW Corner of Block One (incl. First Floor) Fixed Office 236.5sqm:

6.95. A fixed office will provide 20 FTEs. There is a concern that the office space could remain empty unless there is a proactive campaign promoting this area and that rents are reflective of the marina rather than city centre. Currently the number 7 bus services the link between the marina, city centre and train station. The lack of transport into the area may put employers off; we would urge the developers to work closely with Brighton & Hove buses to improve links.

Base of Block Three (Tower) Café and/or Cocktail Bar 288sqm:

6.96. As A3 space this should employ 19 FTEs.

Phase Three - Outline Component (Illustrative)

6.97. East of Block Six Independent High-Street Uses (A1-A4) or community/Leisure Uses (D1/D2) c. 200sqm; West of Block Six Café or Restaurant c. 200sqm; East of Block Nine Café or Restaurant c. 200 sqm; West of Block Nine Independent High-Street Uses (A1-A4) or Community/Leisure Uses (D1/D2) c. 200sqm:

6.98. At 800 sqm OffPAT employment density guide recommends that this should deliver 53 FTE. There are a number of retail units in the marina that are currently empty and this must be considered when looking at the retail offer in this development. Again there could be a risk that the development does not attract enough businesses into the area without a well thought out marketing strategy.

6.99. A viable mix of all uses will attract workers and offer a leisure use to the area. City Regeneration is encouraged to see that the flexibility of the units has been

taken into consideration as described in the Planning Application Spec Document 4.10 'The proposed development will deliver active commercial frontages along the western end of Block 1 (Phase Two), at the base of Block 3 (Phase Two), and at the east and western ends of both of the crescent blocks (Phase Three) with frontages onto the Waterfront Promenade. These units have the potential to be subdivided should the market demand, and are intended to be of such a size that attracts an independent end user'. There is the potential for independents but rents need to be affordable and footfall to the area is encouraged. The Planning App spec Document refers to 4.13 'The Full Permission relating to Phase Two the size and location of units will be controlled by the Development Schedule and plans, respectively. The end user of these units is not yet known at this stage, and will be determined following completion of the individual unit.

- 6.100. The Outline Permission relating to Phase Three overall quantum of commercial space (GIA) will be controlled by the description of development, and the Development Schedule. Final details will be agreed at Reserved Matters Stage'. City Regeneration would like to be kept informed of these developments.

S106 Agreement – Employment and Training

- 6.101. City Regeneration welcomes the prospect of construction-related employment and training opportunities during the life of the development.
- 6.102. As this proposal is categorised as a major development, the council will utilise the S106 agreement to include obligations with regards to construction-related employment and training opportunities for local people.
- 6.103. The S106 agreement will include a requirement for an Employment and Training Strategy to be submitted for approval no less than one month before site commencement. Where any substantial demolition is involved, a separate strategy will also be required.
- 6.104. The strategy should demonstrate how the Developer or the main contractor and / or their subcontractors will source local labour and provide training opportunities during the life of the project. How they will work with the Council's Local Employment Scheme Co-ordinator and organisations operating in the city to encourage employment of local construction workers during the demolition (if applicable) and construction phases of the Proposed Development, with a target that at least 20% of the temporary and permanent job opportunities created by the construction of the Proposed Development are provided for local people (residents living within the city postcodes).
- 6.105. Early contact with the council's Local Employment Scheme Co-ordinator is recommended in order to access advice, guidance and support with regards to

local partnerships and organisations that the contractor may wish to engage with; the production and submission of the strategy if required, to be informed of the monitoring process regarding the workforce and for early negotiation regarding training opportunities. Importantly to explore how the developer contributions may be utilised, for the purposes of upskilling the existing workforce and local residents wishing to enter the industry, where the opportunities are linked to the development.

- 6.106. As this is a phased development, the strategy would be expected to be reviewed and refreshed prior to commencement of Phase 3, if necessary, to reflect any best practice identified or other modifications to be negotiated with the Local Employment Scheme Coordinator on behalf of the Planning Authority.
- 6.107. The S106 agreement will also include a requirement for developer contributions to be made in line with the Planning Authority's Technical Guidance for Developer Contributions, which provides the tariff / formulae applied to all major developments, in respect of residential and non-residential elements of the development. The contribution is payable prior to formal site commencement.
- 6.108. Developer Contributions for this project will fall into 2 categories – residential (C3) non-residential / commercial (A1-A4, B1, D1/D2). Calculations for the residential element are based on the size and number of dwellings and a tariff is applied which is included in the Technical Guidance. The sum requested is in respect of the full hybrid application however, based on the information provided, the breakdown of the contributions have been presented for each phase, as follows :

Recommendation: Approve with adverse comments

- 6.109. The marina currently has a lot of empty/available retail outlets and restaurants. In order to ensure that this does not continue into the new development, a good marketing strategy to attract a growth sector into the area would be required.
- 6.110. Affordable rents to entice independent retailers and small medium enterprises (SMEs) would be encouraged in order to ensure that the units are not left empty leaving the area to feel like a ghost town.
- 6.111. Good signage within the marina, directing footfall to this area would be essential, especially from the car park and bus stops. City Regeneration would encourage the developers to work closely with the transport providers to increase public transport links.
- 6.112. Under the current application we strongly disagree that a proportion of the commercial space in phase 2 and 3 be C3 Ancillary.

6.113. **Education** – Comment

In this instance we will not be seeking a contribution in respect of primary education places as there are sufficient primary places in this part of the city and the city overall. The calculation of the developer contribution shows that we will be seeking a contribution of £790,599.20 towards the cost of secondary provision if this development was to proceed.

6.114. With regard to the secondary provision, the development is in the catchment area for Longhill High School. At the present time there is no surplus capacity in this catchment area. Secondary pupil numbers in the city are currently rising and it is anticipated that all secondary schools will be full in a few years' time, any funding secured for secondary education in the city will be spent at Longhill High School.

6.115. For the purposes of this calculation I have used the housing numbers within the application form for Phase 2. I have then assumed the same split of units by size and tenure for phase 3 which is submitted for outline consent as part of this application. This gives the total shown in the attached spreadsheets. In the event that the split of units for phase 3 is different to this the contribution will have to be re-visited as the actual contribution is a function of the type and size of unit.

6.116. **Sustainability** – Comment

Documents submitted include:

- Response to Sustainability – September 2019
- Environment Agency letter re abstraction of seawater for heat pump
- Energy Strategy
- Undercroft Plant Block Plan Layout
- Seawater Source Heat Pump Schematic
- Heating Zeroth running costs
- Brighton Marina BREEAM Note
- Brighton Marina Domestic Overheating report

6.117. Comments from May 2019 requested further information on the Salt water heat pump, the BREEAM requirements and Overheating.

Salt Water Heat Pump

6.118. Further information about the salt water heat pump is provided which satisfies our previous requests. The schematic for the heating distribution system is satisfactory and will provide both heating and hot water. The innovative low carbon technology is welcomed.

BREEAM

6.119. The BREEAM Note explains that the commercial parts of the development will target a 'Very Good' BREEAM standard, instead of the 'Excellent' standard laid down in Planning Policy CP8. This is considered acceptable, given that some

BREEAM credits cannot be achieved because of the flood risk, and because the commercial units will be built 'Shell only', while the eventual tenants will fit out the units. This again limits the BREEAM credits that are achievable.

- 6.120. The proposal to complete the shell to 'very good' standard and set targets for energy and water in line with the 'Excellent' criteria is considered acceptable.

Overheating

- 6.121. We are referred back to the March 2019 Energy Statement section 6 on Cooling and overheating and in addition a new Domestic Overheating report is supplied which is in line with CIBSE TM59 as requested in our May 2019 sustainability comments the results show that all living rooms and bedrooms pass the overheating design criteria. Additional measures to mitigate overheating of apartments include curtains. In addition, the communal corridors were at risk of overheating, as the heating pipes run along them. Additional ventilation will be provided to ensure overheating does not occur. This satisfies the overheating requirements and the proposed condition in our previous comments. Recommendation: I recommend this application for approval.

- 6.122. **Planning Policy** – Comment

The strategy for the development area is to secure the long term regeneration opportunities and create an attractive and sustainable residential led Marina development.

Housing Issues:

- 6.123. In the context of Brighton & Hove, this is a very large residential development proposal. The provision of 480 residential units in Phase 2 and 520 in Phase 3 (outline application at the moment) represents almost two years' annual housing supply based on the city's housing delivery target of 13,200 as set out in City Plan Policy CP1. In this respect the proposal could make a valuable contribution to the city's housing supply and this is welcomed in principle.
- 6.124. There is no objection to the proposed development given the principle has been established already with the 2006 application, which led to the delivery of Phase 1 of the scheme. This application relates to the Phase 2 and Phase 3 and represents a hybrid application with Phase 3 going for outline application. Both phases are intricately linked and can be read as one whole, although changes in the Phase 3 will be subject to assessments at reserved matters application.
- 6.125. The accommodation is significantly skewed towards smaller dwellings with studios and one bedroom and two bed apartments comprising 93% of the total, and only 9% of units being of three or more bedrooms across both phases. The high proportion of one and two bedroom apartments is a particular concern.

Ideally, the council would wish to see, as a minimum, a much better balance between the one and two bedroom units and larger family units.

- 6.126. The application proposes onsite provision of 15% affordable units. This offer is based on a viability appraisal which has been submitted alongside the application. As it stands, this level of affordable housing proposed falls well short of the requirements set in Policy CP20. In accordance with the Council's Viability Assessment Checklist, an independent review of viability should be sought from the District Valuer.
- 6.127. Local Plan Policy HO5 requires the provision of private useable amenity space in new residential development where appropriate to the scale of the development. It is considered that the provision is extremely low and has not been adequately justified. The applicant should consider incorporating a greater number of balconies where possible.
- 6.128. Retail The proposed scheme includes flexible retail floorspaces. The draft allocation through CPP2 Policy SSA4 has a requirement for ancillary retail and food and drink outlets and no concerns are therefore raised in this regard.

Community Facilities

- 6.129. Community facilities are limited and comprise flexible non-residential spaces that could be used either as retail or community facilities.
- 6.130. Open Space The proposed development would generate a significant demand for all public open space typologies. Some on-site provision has been made, in the form of some green areas and play areas however it is unclear what precise form these open spaces take. This should be clarified in order to better understand the usability of the provision and its contribution towards the overall requirement. At present there is significant concern regarding the size, and therefore the usability, of the areas provided.

Main Comment:

Context

- 6.131. The site is located within the Brighton Marina, Gas Works and Black Rock Development Area (DA2) (a strategic allocation in the City Plan Part 1), an area based policy.
- 6.132. The Marina Outer harbour is located within the DA2 Area in the adopted City Plan Part One. The aim of the Development Area policy is to revitalise the area by creating a sustainable high quality marina environment attractive for both residents and visitors. The Policy sets out wide ranging principles that will govern any redevelopment proposal coming forward. The policy DA2 sets out wide ranging requirements for the entire DA2 area within which this site falls. These

requirements range from housing, employment and retail floorspace and community uses. The expectation was that a majority of these requirements would be delivered through implementation of 2006 application. The Phase 1 from the 2006 application, which is now delivered, has achieved some of the policy requirements already. This needs to be taken into account when setting out requirements from the rest of the development.

- 6.133. There are significant aspirations attached to the redevelopment of the site, as especially, the implementation of the 2006 application is supported by the policy in City Plan Part 1.
- 6.134. *Policy DA2 Priorities:* The strategy for the development area is to facilitate the creation of Brighton Marina and the wider area as a sustainable mixed use area of the city, through the creation of a high quality marina environment. It is important that redevelopment proposals for such a large site are in broad conformity with the priorities for Brighton Marina, Gas Works and Black Rock Area set out in Policy DA2. The aim of this site in particular is to secure the creation of a high-quality housing around a marina and promote the efficient use of land through the creation of a destination along the seafront. A number of priorities have been listed in the policy, which apply to all sites within the DA2 area. Some of the priorities relevant to Outer Harbour site are:
- Protecting and enhancing areas of marine character and the role for marine-related leisure, recreation and employment opportunities. (priority 3)
 - Improvements of public realm and townscape and connectivity (priority 4).
 - Housing mix to cater for a range of housing requirements in the city (priority 7)
- 6.135. The principle of the development has already been established through the 2006 planning application (BH2006/01124). The policy DA2 supports the general mix of uses proposed through this. It recognises that residential uses assist with viability of and have positive impact on the regeneration of the wider area. However it is important to ensure that
- there are reliable commercial and financial viability evidences why the 2006 scheme is unlikely to be coming forward, and
 - there are strong planning benefits for changes proposed.

Residential Provision

- 6.136. *Scale of Development:* In the context of Brighton & Hove, this is a very large scale C3 residential development proposal. The provision of 480 C3 residential units in Phase 2 plus a further 520 units in the Phase 3. Each phase constitutes roughly an annual housing supply based on the city's housing delivery target of 13,200 as set out in City Plan Policy CP1. In this respect the proposal could make a valuable contribution to the city's housing supply and this is welcomed in principle. The proposed amount of C3 development exceeds the previously

approved figure, which is referenced in the Policy DA2 (at 843 units). Increase in the number of dwelling units from the previously approved application may be acceptable provided that other policies and priorities in the development plan can be satisfied.

- 6.137. The increase as such is in line with Criteria 8 of the policy DA2 which suggests maximising opportunities to ensure the efficient, effective and sustainable use of previously developed land. It is recognised that the emerging City Plan Part 2 does not identify sufficient sites to meet all the forecast demand for housing. The council therefore needs to ensure that housing allocation sites identified in City Plan Part 1 come forward and deliver.
- 6.138. The council gives high priority to the importance of achieving a good housing mix that responds to the city's assessed local housing needs and which will contribute to mixed and balanced communities. This is reflected in adopted CPP1 Policies SA6.8 and CP19.
- 6.139. City Plan Policy SA6 'Sustainable Neighbourhoods' sets out a requirement to "create and maintain sustainable neighbourhoods", with one of the priorities of the policy being to "deliver balanced communities through the requirement for new residential development to provide an appropriate amount of affordable housing, mix of dwelling sizes and tenure types". City Plan Policy CP19 (Housing Mix) states that proposals will be "required to demonstrate that proposals have had regard to housing mix considerations and have been informed by local assessments of housing demand and need." The policy includes size, type and tenure as housing mix considerations.
- 6.140. These policy objectives have been carried through to more detailed policies in the draft City Plan Part Two. Policy DM1 indicates that the Council "will seek the delivery of a wide choice of high quality homes which will contribute to the creation of mixed, balanced, inclusive and sustainable communities" through requiring proposals for residential development to "incorporate a range of dwelling types, tenures and sizes that reflect and respond to the city's identified housing needs" and to "make provision for a range and mix of housing /accommodation formats subject to the character, location and context of the site".
- 6.141. The housing mix of the proposed 480 C3 residential units for Phase 2 is as follows:
- Studios: 21 (2.1%)
 - One bed: 161 (16.1%)
 - Two bed: 268 (26.8%)
 - Three bed: 30 (3%)

- 6.142. Housing mix for Phase 3 although illustrative at this stage demonstrates 286 One Bedroom Units, 202 Two Bedroom Units and 32 Three Bedroom Units.
- One bed: 286 (28.6%)
 - Two bed: 202 (20.2%)
 - Three bed: 32 (6%)
- 6.143. It is clear that in both phases the accommodation is significantly skewed towards smaller dwellings with studios and one bedroom apartments comprising 61% of the total, and only 6% of units being of three or more bedrooms. This is against the thrust of Policy CP 19. Paragraph 4.213 gives an indication of demand/ need for homes in the city over the plan period. An estimated 65% of the overall need/demand (for both market and affordable homes) will be for two and three bedroom properties (34% and 31% respectively); 24% for 1 bedroom properties and 11% for four-plus bedroom properties. These are however citywide targets and some variations in individual sites will be accepted. In applying these to individual development sites, regard should be had to the nature of the development site and character of the area, and to up-to-date evidence of need as well as the existing mix and turnover of properties at the local level. The views of the Council's Housing Officers should be sought on the suitability of the proposed size mix.

Affordable Housing

- 6.144. Due to the substantial need for affordable housing in Brighton & Hove, draft the Council seeks a higher proportion of 40% in accordance with the requirements of City Plan Part 1 Policy CP20.
- 6.145. The application proposes onsite provision of 15% affordable units comprising intermediate (shared ownership) in Phase 2 which is repeated in Phase 3. This offer is based on a viability appraisal which has been submitted alongside the application. The Applicant is seeking an Affordable Housing Review Mechanism to be incorporated into the S106 Agreement to form part of a subsequent Reserved Matters Application at which point the final quantum of affordable housing would be agreed with the Council.
- 6.146. The site is subjected to Policy CP20 that sets affordable housing requirement for this site at 40%. In terms of housing mix the policy requires one and two bedroom homes (30% and 45% respectively), which is subject to site-based variations.
- 6.147. The affordable housing units are provided in Block 1 spread across different levels and a mix (studio – 8; 1 Bed -14 and 2 bed – 50) comprising 72 units (15% of total of 480 units in Phase 1). The provision shows studio and one bed (30%) and two bed (70%). No three bed affordable housing units have been provided. These provisions represent a significant departure from the Plan, although

unique characteristics of the site are recognised. Nonetheless, this mix should be assessed alongside the overall under provision through viability negotiations. Distribution in the Phase 3 is not available at this stage.

- 6.148. As it stands, this level of affordable housing proposed falls well short of the requirements set in Policy CP20. Applicant has submitted Financial Viability Assessment report. However, in accordance with the Council's Viability Assessment Checklist, an independent review of viability should be sought from the District Valuer, with the applicant required to pay the costs of this process. It would be appropriate to test the viability of a range of different scenarios in terms of the numbers, size applied. Input should be sought from the Council's Housing Officers on what scenarios should be tested.
- 6.149. If following independent assessment, it is accepted that the scheme cannot meet the Council's affordable housing requirements in full, should the scheme be approved, affordable housing will be a missed opportunity.

Space and Accessibility Standards

- 6.150. Dwelling sizes comply with Nationally Described space standards. Up to 10% of units (48 Units) within Phase 2 and 10% of units (up to 52) within Phase 3 will be provided as Wheelchair Accessible Homes and comply with Building Regulation M4(3) and is in accordance with Policy DM1 in the emerging City Plan Part 2. This is welcomed.

Dwelling Density

- 6.151. The proposals have a site wide residential density of 283 dph; based on a site area of 3.54Ha and up to 1,000 residential units. This can be broken down within phases; Phase 2 (Full Details) has a residential density of 307 dph (480 units within 1.56Ha), whilst Phase 3 (Outline) has a residential density of up to 263 dph (up to 520 Units within 1.97Ha). City Plan Policy CP14 relates to density and expects a minimum density level of 100 dwellings per hectare on major development sites within the identified Development Areas. The proposed development far exceeds this minimum level by a significant margin, and will need to be considered alongside detailed design considerations such as public realm, orientation, view etc including internal layout and movement and other policy considerations.

Private Amenity Space

- 6.152. Local Plan Policy HO5 requires the provision of private useable amenity space in new residential development where appropriate to the scale of the development. Planning Statement suggests all units have been provided with Juliet balconies of 250mm, with a reveal of between 350-700mm, accessed off a main living space. Apart from light and outlook, 'Juliet' balconies will not contribute to the provision for balconies, therefore lack of private amenity is

highlighted. In the applicant's own admission, balconies up to 2m could be provided in Phase 3. It is not clear if the ground floor units have any outdoor private amenity space.

- 6.153. The applicant's Planning Statement suggests private amenity space is compensated by the shared outdoor amenity in the form of 'Courtyard Gardens' comprising 2,129 sq m of usable communal space. Overall, it is considered that under provision private amenity space has not been adequately justified and the applicant should consider incorporating a greater number of balconies where possible.
- 6.154. In summary, development at the Marina presents a significant development opportunity in a city that is constrained and where there are limited opportunities for larger scale development to help meet city wide needs. It is acknowledged that the housing would make a significant contribution to housing supply. However, as set out above, there remain a number of policy concerns regarding the proposed housing mix specifically in terms of tenure, unit size mix and affordable housing provision and also the lack of private amenity space.

Non-Residential Floorspace

- 6.155. In total, the proposals will provide up to 1,561sqm (GIA) of flexible commercial floorspace with 761sqm within Phase 1 (Use Classes A1-A4, B1, C3 Ancillary, D1/D2), and up to 800sqm in outline within Phase 2 (Use Classes A1-A4, B1, C3 Ancillary, D1/D2). There is no specific requirement for commercial floorspace to be provided other than to cater for the demand arising from the occupiers of this development and the visitors.

Retail

- 6.156. One of the strategic aims of policy DA2 is to 'secure a more balanced mix of retail, including support for independent retailers, and non-retail uses such as leisure, tourism and commercial uses'. Up to 5,000 sq m of net A1-A5 floorspace is allocated for the inner harbour in policy DA2. Any retail/commercial space for the outer harbour would be considered ancillary to any residential units proposed.
- 6.157. Phase 2 is seeking full permission for 761 sqm of retail floorspace of which only Block 3 is likely to comprise retail uses. The precise commercial mix of Phase 3 will be determined at Reserved Matters stage. Whilst the proportion of retail space proposed appears to sit comfortably with the Marina's current status of being de-designated as a District Centre in the retail hierarchy, the provision appears low for the potential demand generated by the residents as well as retail needed to cater to the visitors including the retail that is needed to support the pedestrian activities.

Community Facilities

- 6.158. One of the strategic aims of Policy DA2 requires the wider Marina area to provide over 10,000 sq m of leisure provision. A significant part of it will be provided by Black Rock sites. This development presents opportunity to provide new leisure space in line with maritime character and become a visitor attraction. The flexible non-residential space would satisfy part of that aspiration, however, if the application is approved that will be a missed opportunity. In the approved scheme a number of community related uses such as a crèche, health centre and internal space for older children were incorporated. There is no justification as to why they have been excluded.

Open Space/Sports Provision

- 6.159. The Planning Statement suggests a total of 11,420sqm of Publicly Accessible Open Space is to be provided across the scheme, with 4,762sqm within Phase 2 and approximately 6,658sqm within Phase 3. The total quantum of Public Realm, which excludes Playspace and Communal Gardens, to be provided across the scheme is 8,849sqm with 3,600sqm in Phase 2 and approximately 5,249sqm within Phase 3.
- 6.160. Open Space provision can be found in the Design and Access Statement (BMOHD15).
- 6.161. City Plan Policy CP16 (part 2) states that “new development will be required to contribute to the provision of and improve the quality, quantity, variety and accessibility of public open space to meet the needs it generates”. Policy CP17 (part 5) sets a similar requirement for sport provision, stating that there is a requirement for new development to contribute to the provision and improvement of the quality, quantity and accessibility of sports services, facilities and spaces to meet the needs it generates.
- 6.162. The proposed development would generate a significant demand for all public open space typologies. The ready reckoner (attached) indicates a substantial requirement of 8.86ha of open space. The requirement is broken down as follows:
- Children and young people play space – 0.11ha
 - Amenity green space – 1.21 ha
 - Outdoor sports facilities – 0.97ha
 - Parks and gardens – 1.91ha
 - Natural and semi-natural open space – 5.83ha
 - Allotments – 0.47ha
- 6.163. Some on-site provision has been made, in the form of some green areas and play areas. The applicant has provided a breakdown on the on-site provision and the Design and Access Statement shows how some of these open spaces

are distributed on site. This should be clarified in order to better understand the usability of the provision and its contribution towards the overall requirement. Each open space typology needs to fulfil its functional purpose through a formal and organised provision. For example not all spaces between the buildings would be judged to fulfil the Parks and Gardens function. It would also be useful to understand the split between Phase 2 and Phase 3. There is an inconsistency in terms of quantum of Parks and Gardens (shows 10980 sq m in Open Space perimeter Plan).

- 6.164. The concern is regarding the size, and therefore the usability, of the areas provided. Phase 2 provides just one private play area and Phase 3 has a few more. It unclear what quality/quantity of equipment would be included and what their capacity would be – this should be clarified. For a development of this size consideration should be given to the inclusion a larger play area or Multi-Use Games Area. All areas that are outside the building footprint are shown as Parks and Gardens spaces (public and private). There needs to be more clarity in terms of how much of those spaces can be classed as Parks and Gardens. Most of these areas are shown with hard landscape.
- 6.165. It is understood that the reduction in the dwelling numbers in the approved scheme was done to allow increase in public and private amenity space within the development. With the increased units in the proposed scheme, the open space under-provision becomes even more concerning.
- 6.166. Some provision could be provided in the form of roof terraces provided they are publicly accessible, secure, landscaped and provided with greenery, wind breaks and shading where appropriate to maximise their attractiveness and safety for potential users.

Biodiversity

- 6.167. Provision of biodiverse roofs and more than 40 nest boxes is welcomed intended for terrestrial invertebrates, starlings, house sparrow and peregrine falcon. The scheme also makes provision for brown roofs that mimic the form and species assemblage of the rare coastal vegetated shingle habitat.

Tall Buildings

- 6.168. Policy CP12 Urban design has identified Brighton Marina as a potential location with the potential for taller developments, defined as 18 metres or more in height (approximately 6 storeys). Nearly all buildings in the proposed scheme are considered to exceed the tall building threshold. The tallest building is a 28 storey tower in Phase 2.

Waste Management

- 6.169. Policy WMP3d of the Waste and Minerals Plan requires development proposals to minimise and manage waste produced during construction demolition and excavation. A development of scale will produce significant quantities of construction, demolition and excavation waste, and a comprehensive Site Waste Management Plan should be required by condition. Paragraph 49 of the National Planning Practice Guidance provides guidance on what could be covered in the SWMP in order to meet the requirements of the policy¹. Policy WMP3d also requires applicants to demonstrate how the durability of the construction has been maximised.
- 6.170. Policy WMP3e of the WMP requires proposals for new development to identify the location and provision of facilities intended to allow for the efficient management of waste, e.g. location of bin stores and recycling facilities. The location of recycling facilities is indicated on the submitted plans and no concerns are raised with regard to this policy.

Recommendation

- 6.171. The proposal for a comprehensive redevelopment of this large strategic site is welcomed in principle. It is acknowledged that the proposed development will make a significant contribution towards the City Plan housing target. The proposal is broadly in compliance with the priorities listed in Policy DA2. However, there are a number of policy concerns regarding the following issues:
- Whilst it is acknowledged that the development would lead to an increase housing units inadequate provision / contribution towards the open space and outdoor sport needs that will be generated by the proposed scheme;
 - Housing mix considerations including unit size mix; mono-tenure and lack of affordable housing;
 - Lack of private amenity space.
- 6.172. **Conservation and Heritage – Comment**
Statement of Significance
Brighton Marina was formed in the 1970s and includes reclaimed land. This proposal concerns the prominent south-westernmost element of the Brighton Marina site, protruding far beyond the established built city-scape into the sea. The site sits immediately to the East of the Kemptown Conservation Area within which are the Grade I listed properties of Lewes Crescent and Sussex Square, and from this point westwards, most of the seafront and the band of urban development fronting onto it is designated conservation areas containing the bulk of Brighton and Hove’s listed buildings.
- 6.173. To the immediate north of the site is existing low grade Marina development within a poor public realm dominated by vehicular traffic. Beyond this is the locally listed Marine Gate, and further East 40&40a White Lodge The Cliff which are also locally listed. The grade II listed Roedean School lies to the east, and The Ovingdean and Rottingdean Conservation Areas are beyond. This is

therefore a prominent site in a sensitive location. The Heritage Team considers that the details of any proposed new development are extremely important in a situation such as this and is therefore concerned that an outline application is not appropriate in this instance. The principle of development including tall buildings is established with the existing approval BH2006/01124.

Relevant Design and Conservation Policies and Documents

- Planning (Listed Building and Conservation Areas) Act 1990
- National Planning Policy Framework Planning Practice Guidance
- Historic England Good Practice Advice Notes
- Local Plan policies HE3, HE6 City Plan part 1 policy DA2, CP12, CP15
- Planning Advice Note 04 SPG BH15 SPG BH20

The Proposal and Potential Impacts

- 6.174. The proposed development is a significant revision of the approved scheme BH2006/01124 for phases 2 and 3 of the Outer Harbour Development. The building form is more formal, lower in height but more dense. The application follows a preapplication process of advice and amendments which included input from the Design Review Panel.
- 6.175. The densification of the development that follows from the lowering of building heights impacts on visual permeability of the development, and views from the north through to the sea would be severely limited. Views East into the Marina would not be available at all.
- 6.176. The architectural language proposed for blocks 1, 2 and 3 in Phase 2 is based on a detailed study of the Regency style buildings of Brighton and Hove. This is a very constrained architectural form, and following encouragement from council officers and the Design Review Panel the development of the proposals through the preapplication process has resulted in the introduction of detailing that provides some variation between the blocks although the amount to which this will be apparent from a distance is doubtful and the degree of change achieved is disappointing. The concepts for Phase 3 indicate architecture and site layout more in line with the relaxed, playful approach encouraged by the Design Review Panel and it is considered that this responds more successfully to the marina setting.
- 6.177. The height of the approved tower was previously considered acceptable due to its 'attractive slender silhouette' which tapered towards the top. The slenderness and sculptural qualities are missing from the blocks in the current application and although lower in height, the angular form of the proposed tower and other blocks, and the closing of spaces between the structures have a very different, and no less significant, impact on the sensitive heritage assets identified above.

The suitability of this location for tall buildings is however already established, and the proposed heights are accepted in principle.

- 6.178. There remains concern that in views from the West the façade of phase 2 is unbroken by glimpses through to phase 3 or the seascape beyond, and there is concern that this will give an imposing and uninviting impression of the site which is not typical of the rest of the proposal. This would be the view from the busiest part of Brighton Seafront and is demonstrated in viewpoints 26, 28, 38 & 39 provided in the Townscape, Landscape, Heritage and Visual Impact Assessment. The North-Western 3 sided square (block 1) will be in the foreground in immediate approaches along Marine Parade and Madeira Drive and it is disappointing that the original courtyard concept offered at the earliest stage in the process has been retained for block 1.

Detailing

- 6.179. Doors and windows are set within deep reveals providing texture, shading and visual interest, and the profiles of the full height reconstituted stone columns change in plan and profile from broad on the lower levels to increasingly more slender at higher levels, and these profiles vary between the 3 buildings. In close proximity this will provide interest and some variety.
- 6.180. The choice of durable materials is supported, and gradation in the texture of the reconstituted stone as the buildings extend upwards is welcomed. The variation in colour tones between the blocks in phase 1 is also encouraged, however this is not readily apparent in the images provided, particularly at a distance, and assurance is required that this will be effective. Potentially, further development of this would be welcomed as a means of differentiating between the blocks, as only very subtle variations in detailing have so far been employed and concern remains that due to the lack of breaks in the façade this development will continue to appear monolithic and oppressive in views from the west and north west.
- 6.181. The 'beacon' element of block 3 has not been fully explained. It is a double storey height element with a smaller central enclosure for plant equipment. Images indicate that there will be planting within the space between the plant enclosure and the outer face of the tower, however this is not shown on the 'plant level' floor plan. It is considered that this feature has an over-dominant, heavy appearance due to its height and the close spacing of the masonry columns. This does not appear to follow the 'erosion' concept and is not considered to enhance the scheme in its current form.
- 6.182. Realistic images of the appearance of the tidal lagoons at low and high tide are required. There is concern that at low tides in particular these will be unattractive

areas and the current representation on the plans as blue pools could be misleading.

- 6.183. The Townscape, Landscape, Heritage and Visual Impact Assessment document includes detailed analysis of the significance of the identified heritage assets and provides an assessment of the impact the proposed scheme would have on them.
- 6.184. In considering the Kemp Town and East Cliff Conservation Areas the document states that the marina is part of their wider setting and that while the seaside setting contributes to the significance of the conservation areas, the marina itself does not. It goes on to state that the proposal will make the Marina development more visible, however the visible sea and sky will be reduced by a negligible amount and it considers that the proposal would have no impact on the setting of the conservation areas.
- 6.185. In considering the contribution of the parts of the conservation areas south of the A259 to the heritage significance of the conservation areas, the document states 'The sea beyond is part of its wider setting, together with the Madeira Terrace, Madeira Drive and the leisure activities which take place there. These do not, however, contribute to the conservation area's heritage significance' however Heritage Team would argue that this part of the conservation area reflects the origins of the urbanisation of this part of the city due to the fashion for promenading and should be considered. The conclusion that there would be no impact on the setting of the conservation area south of Marine Parade is never-the-less accepted.

Consideration of the impact on setting and heritage significance of the listed buildings:

- 6.186. Regarding the listed buildings in the Kemp Town Estate, the document states: 'The sea and coastal features beyond its boundary, including the Black Rock site and the marina are part of the wider setting. While the seaside setting is part of the group's significance, the latter features are not ...it goes on to state that ..[it will] 'make a positive contribution to this wider setting. There will be no effect on the heritage significance of the listed buildings or the ability to appreciate it.
- 6.187. The document goes on to conclude that there will be no effect on any of the assets or their heritage significance or the ability to appreciate them or their setting, in some instances due to the already compromised nature of the setting from the existing Marina development.
- 6.188. However the Heritage Team has concerns regarding the potential heritage impact on the following assets as demonstrated by viewpoints 26, 30 and 33 provided in this document.

Madeira Lift

- 6.189. Regarding Madeira Terrace, Madeira Walk, Lift Tower and related buildings the document states 'The significance of this structure arises from its role in the urbanising of the cliff, its engineering achievement, its intended use for leisure, its impressive unbroken length and its architectural detail. With regards to its setting, the elements that contribute to its significance are the two environments it mediates: the upper edge of the urban city of Marine Parade and the lower levels of the coast at Madeira Drive, Volk's Railway and the beach. It is a linear setting, its west and east ends gently transforming into urban and parkland settings, respectively. The wider setting, both of the city beyond Marine Parade and further away along the beach to the west and east, do not make any special contribution to its significance.'
- 6.190. This assessment is made of the structure when seen as a whole from beach level. The Heritage Team considers that the presence of the lift tower rising above the level of the Marine Parade roadway also has significance in the tower's connecting function between the upper and lower levels of the urban and beach environments respectively, and the relative isolation of the tower at this upper level is enhanced by the openness of the view of the seascape beyond.
- 6.191. With regard to Viewpoint 26, the statement identifies a moderate impact from the proposed development and assesses that this would be beneficial. The Heritage Team considers that the reduction in the openness of the view beyond this structure would cause harm which is less than substantial, however it is acknowledged that this view is generally experienced in a dynamic way and the relationship of the proposal to the tower will change and therefore its impact will not always be harmful.

Lewes Crescent

- 6.192. The document states 'The significance of this group is of the highest level,The essential setting of the Kemp Town terraces is: (i) its full embedding in the tight grain of the townscape on its east, north and west sides; and (ii) its openness to, and visibility from, the coast. Further, the landscaped slopes and architectural artefacts south of Marine Parade, though divorced by the busy coastal road, are also part of its setting and are included within its boundaries' With regard to viewpoint 30, the statement identifies a major impact from the proposed development, and that this would be beneficial.
- 6.193. The Heritage Team considers that the phase 2 structures would affect the openness of the views across the wide central open space across to the sea and horizon beyond and must therefore be considered harmful. The harm would be less than substantial.

- 6.194. With regard to viewpoint 33, the statement identifies a large change with a major impact & from the proposed development, and that this would be beneficial. The Heritage Team considers that this is a very sensitive view affecting Lewes Crescent which due to the loss of the visual contrast between the end of the terrace and the openness of the gardens to the West and seascape to the South, would have a harmful impact which is increased by the lack of definition between the dominant materials and the architectural influence of the proposal relative to the historic terrace.

Conclusion

- 6.195. The Heritage Team has concerns over the densification of the development that has resulted in a scheme without visible breaks between blocks, the formality of the architectural approach, and the impact this form of development would have on selected heritage assets.
- 6.196. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that the local authority shall have special regard to the desirability of preserving a listed building or its setting when considering an application for Planning Permission. 'Preserving' means doing no harm. There is therefore a statutory presumption, and a strong one, against granting permission for any development which would cause harm to a listed building or its setting. This presumption can be outweighed by material considerations powerful enough to do so. Where the identified harm is limited or less than substantial, the local planning authority must nevertheless give considerable importance and weight to the preservation of the listed building and its setting. Section 193 of the National Planning Policy Framework states 'When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation ... irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance' Section 196 states. 'Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.'
- 6.197. The aspirations of the local authority for the future of the Eastern Seafront include measures to encourage visitors to Madeira Drive, partly in connection with the need to invest in the restoration of Madeira Terrace. Destination points along the route and at its far end are seen as essential elements of this strategy, and connectivity and improved public realm will also be integral to the success of this. The potential of the further development of the Marina to be part of this is acknowledged and therefore the role that this could play in providing an attractive incentive for activities and movement along Madeira Drive could potentially be considered an indirect public benefit to be balanced against

identified harm to a heritage asset. It is however considered that the current form of the proposed development does not minimise the identified harm that would be caused, and until this point is reached these indirect benefits cannot be weighed against the harm.

- 6.198. For these reasons the Heritage Team cannot give full support to the proposal. *(following review of the comments from the Heritage and Conservation team, some revisions were made to the scheme and the Heritage and Conservation scheme issued the following additional comments)*

Additional Comments

- 6.199. This document sets out the changes to the proposal that have been made in response to concerns raised over the initial scheme in relation to the impact of the proposal on the identified heritage assets.
- 6.200. As stated in the submission the changes that have been made are subtle and there are no alterations to the proposed massing or height of the proposed development. The changes that have been made relate to slight increases in the depth of colour for each of the blocks, and additionally some amendments have been made to the detailing of the perimeter at the top of the tower and the addition of lighting to this element.
- 6.201. As a result the densification of the development (relative to the approved scheme) would continue to impact on visual permeability of the development, with views from the north through to the sea severely limited and views East into the Marina not available at all. There therefore remains concern that without glimpses through to phase 3 or the seascape beyond the development would appear imposing from the busiest part of the Brighton seafront.
- 6.202. It is however considered that the enhancement of the contrast in colours between the blocks does serve to provide some articulation to the scheme as viewed from a distance thereby reducing the monolithic appearance, and although this is a very limited change it is welcomed.
- 6.203. The changes to the colonnade around the top of Block 3 reduces the density of this element and the planting appears to have been deleted, however it is disappointing that no reduction in its height has been made and that the design retains elongated proportions which contrast with the storey heights of the rest of the development. There would be no objection to subtle lighting being added to this element if further steps were made to reduce the height and/or better reflect the storey heights below.
- 6.204. In relation to the impact on identified heritage receptors, these alterations are not so significant as to result in changes to the Heritage Impact Assessment that

accompanies this application, and it is stated that 'The alterations to the detailed and outline components of the proposed development are relatively minor in heritage terms and will result in no changes to the residual and cumulative effects on the heritage receptors' and that the 'HIA remain unchanged and valid'.

- 6.205. As a result of the limited changes, the harm to the significance of the heritage assets identified in the original Heritage Team comments is largely unchanged. For clarity (2as stated in the previous response) the elements of significance that are considered to be compromised are as follows.

Madeira Lift:

- 6.206. In addition to the significance stated in the HIA, the Heritage Team identifies the presence of the lift tower rising above the level of the Marine Parade roadway as having significance in the tower's connecting function between the upper and lower levels of the urban and beach environments respectively, and that the relative isolation of the tower at this upper level is enhanced by the openness of the view of the seascape beyond. The Heritage Team considers that the reduction in the openness of the view beyond this structure is unchanged by the amendments and would continue to cause harm which is less than substantial, however it is acknowledged that this view is generally experienced in a dynamic way and the relationship of the proposal to the tower will change and therefore its impact will not always be harmful.

Lewes Crescent:

- 6.207. The Heritage Team concurs with the HIA assessment of significance which states 'The significance of this group is of the highest level,The essential setting of the Kemp Town terraces is: (i) its full embedding in the tight grain of the townscape on its east, north and west sides; and (ii) its openness to, and visibility from, the coast. Due to the changes to the scheme being limited to subtle deepening in the colour variation between facades, and the unaltered scale and massing of the proposal, the harm to the setting from the phase 2 structures would still be considered to affect the openness of the views across the wide central open space across to the sea and horizon beyond, and must therefore be considered harmful. The harm would be less than substantial.
- 6.208. The Heritage Team considers that Viewpoint 33 is a very sensitive view affecting Lewes Crescent, which due to the loss of the visual contrast between the end of the terrace and the openness of the gardens to the West and seascape to the South, would have a harmful impact.
- 6.209. The previously identified lack of definition between the dominant materials of the proposal and the historic terrace has been altered slightly by the added variation in colours, however the impact on the openness to the coast remains a concern.

- 6.210. Additions to the Design and Access Statement includes views of phase 3 at high and low tide however it does not appear to include realistic images of the tidal lagoons as requested, therefore reassurance is still sought that at low tides in particular these will not be unattractive areas.

Conclusion

- 6.211. It is disappointing that no amendments have been made to the proposed scale and massing of the development, and the lack of visual permeability through the site from external viewpoints as identified in the original comments remains unchanged. As a result it is considered that the identified harm has still not been minimised, and therefore whilst subtle improvements to the scheme are acknowledged, the Heritage Team cannot give full support to the proposal.

- 6.212. **Urban Design** – Objection

Initial Comment:

The proposals are for Phases 2 & 3 of the Outer Harbour site at Brighton Marina. Phase 1 is already complete. Phase 2 proposals form a Full Planning Application, whereas Phase 3 proposals form an Outline Application. The proposals are predominantly residential though include some retail at ground floor level. They are of high density and include tall buildings ranging from 7 to 28 storeys in height.

- 6.213. The Outer Harbour site will be developed over the existing Spending Beach. The site presents significant challenges in connectivity to adjacent and wider city context, as well as exposure to severe weather conditions. Key nearby development sites include Black Rock, Brighton Marina Inner Harbour and the Gasworks.

- 6.214. Key policy objectives outlined in Brighton & Hove City Plan Part 1 Policy DA2 include:

- Secure a high quality of building design that takes account of the cliff height issues in and around the Marina, townscape and public realm while recognising the potential for higher density mixed development
- Improved legibility, permeability and connectivity for pedestrians
- Conserving and enhancing the biodiversity and geodiversity of the area through the implementation of an ecological master plan which ensures wildlife habitats are integrated throughout
- Enhance the transport infrastructure at the Marina
- Maximise opportunities to support the city's sustainability objectives
- Deliver a substantial amount of additional residential units including affordable housing

- 6.215. The proposals have progressed through three Design Review Panel (DRP) sessions, the reports from which shall be referred to in the following urban design comments.

- 6.216. Whilst the proposals have responded to some of the DRP recommendations, many have not been addressed and significant concerns remain in relation to the following.
- 6.217. Narrative, Site Strategy and Concept: Whilst the Design and Access Statement outlines some clear development ambitions, it is considered that these do not wholly address council policy, nor wholly consider matters of character and identity as set out in PAN04. No site strategy has been presented which responds to contextual analysis and environmental conditions, and it is considered that the early concept of coastal erosion, whilst interesting, does not translate successfully into proposals. These concerns are significant because these matters are fundamental to early stage design development and have implications on all subsequent design decisions. Please see detailed comments below for suggested improvements and ways forward:
- 6.218. Site layout and landscape: The general design approach appears to have been buildings-led, rather than landscape-led, which has generated a contrived and regimented site layout that does not respond well to environmental factors or conceptual drivers, nor generate cohesive community or identity. As Phase 2 is a Full Planning Application, there is no opportunity for modifications to site layout here, though the design approach to landscape could be improved (see detailed comments below). However, Phase 3 can be significantly improved leading to a Reserved Matters Application.
- 6.219. Connectivity, contextual integration and boundary treatments: The DRP consistently raised concerns with regard to northern connectivity, offering constructive feedback and suggested solutions which do not appear to have been explored. These issues are critical to the success of the scheme and can be addressed if a comprehensive redesign of Phase 3 is considered.
- 6.220. Biodiversity and geodiversity: Aligned with comment above, the council's ambition for an ecological masterplan has not been addressed. The beach shingle coastal environment is rare and unique and presents something to be celebrated in the development of the Marina. This opportunity has been missed in current proposals. This should be readdressed in line with redevelopment of Phase 3 proposals, as well as Phase 2 landscape design.
- 6.221. Scale and massing: Visual permeability is a concern which has also been raised by the heritage officer. These concerns are closely aligned with those on site layout, as the regimented arrangement and cuboidal blocks present as a composite from afar. There is additional concern with regard to spacing between blocks in Phase 2 at only 12-15m. This is not considered to be acceptable due to the detrimental impact on the quality of internal space within blocks, and external space between them. This is not easily addressed in Phase 2 without

fundamental design changes which cannot be accommodated during this application. However, these matters can be addressed in the redevelopment of Phase 3 proposals.

- 6.222. Sustainable Buildings: The proposals demonstrate the potential for 39% reduction against Part L regulations. However, proposals could be more ambitious with regard to circular economy considerations.
- 6.223. Provision of private residential amenity: Phase 2 proposals include a 0% provision of private external amenity for residents in the form of balconies. This is considered to be unacceptable and every effort should be made to improve upon this. As this would require modifications to internal layouts, it is not easily achieved during the course of this application and so remains a significant objection.
- 6.224. Architectural form and elevational composition: It is considered that the Georgian-inspired architectural form and composition is incongruous with the uniqueness of the Marina site and that a contemporary architectural response would be more appropriate for this high profile and impactful site. Whilst architectural form will be difficult to modify in Phase 2 during this application, elevational and material composition can be more easily addressed. Again, Phase three proposals can be redeveloped to address these concerns.
- 6.225. In assessing the current proposals, the response is to object on design grounds. Should the officer and the committee be minded to grant, the recommendation is to heavily condition landscape design (to include a public realm strategy and biodiversity/geodiversity gains strategy), matters of sustainability and circular economy, and pedestrian / cycle infrastructure improvements in both Phases 2 and 3, and to ensure comprehensive redevelopment of all reserved matters in Phase 3 proposals by means of condition or otherwise. Outline parameter plans for Phase 3 should not seek to fix site layout and should allow as much flexibility in design development as possible.

Further Response

- 6.226. Following the initial comments, a design response on some of the concerns expressed was issued by the applicant subsequent to which a further response was issued as set out below.
- 6.227. The proposals are for Phases 2 & 3 of the Outer Harbour site at Brighton Marina. Phase 1 is already complete. Phase 2 proposals form a Full Planning Application, whereas Phase 3 proposals form an Outline Application. The proposals are predominantly residential though include some retail at ground floor level. They are of high density and include tall buildings ranging from 7 to 28 storeys in height. The Outer Harbour site will be developed over the existing Spending Beach. The site presents significant challenges in connectivity to

adjacent and wider city context, as well as exposure to severe weather conditions. Key nearby development sites include Black Rock, Brighton Marina Inner Harbour and the Gasworks.

6.228. Key policy objectives outlined in Brighton & Hove City Plan Part 1 Policy DA2 include:

- Secure a high quality of building design that takes account of the cliff height issues in and around the Marina, townscape and public realm while recognising the potential for higher density mixed development
- Improved legibility, permeability and connectivity for pedestrians
- Conserving and enhancing the biodiversity and geodiversity of the area through the implementation of an ecological master plan which ensures wildlife habitats are integrated throughout □ Enhance the transport infrastructure at the Marina
- Maximise opportunities to support the city's sustainability objectives
- Deliver a substantial amount of additional residential units including affordable housing

6.229. The proposals have progressed through three Design Review Panel (DRP) sessions, the reports from which shall be referred to in the following urban design comments.

6.230. Whilst the proposals have responded to some of the DRP recommendations, many have not been addressed and significant concerns remain. As noted above, the recommendation is to object on design grounds. Reasons for objection include:

- The development vision does not wholly address local policy (especially with regard to biodiversity, geodiversity and social infrastructure), does not consider matters of character and identity as set out in PAN04, does not wholly address the recommendations of the National Design Guide, and does not address the OPL principles affectively.
- No site strategy has been presented which responds to contextual analysis and environmental conditions, implicating detrimentally on proposed site layout and landscape design.
- The early concept of coastal erosion, whilst interesting, does not translate successfully into proposals, implicating detrimentally on-site layout, architectural form and the character and identity of proposals.
- The site layout appears as contrived and regimented and does not respond well to environmental factors or conceptual drivers, results in poorly defined external areas, and does not generate cohesive community or identity.
- Biodiversity and geodiversity have not been successfully integrated into proposals and the LPA's ambition for an ecological masterplan has not been addressed. The beach shingle coastal environment (geodiversity) is rare and unique and presents something to be celebrated in the development of the Marina. This opportunity has been missed in current proposals;
- Connectivity, contextual integration and boundary treatments have not been successfully addressed, particularly to the north site boundary which

presents as hard and impermeable and does not integrate well with the inner harbour site opposite;

- Site layout and public realm strategy do not enjoy a positive relationship with the environmental conditions of the site, with priority public realm areas being closed at times of inclement weather conditions;
- Visual permeability is a concern which has also been raised by the heritage officer. These concerns are closely aligned with those on site layout, as the regimented arrangement and cuboidal blocks present as a composite from afar;
- Spacing between blocks in Phase 2 is extremely tight at only 12-15m. This is not considered to be acceptable due to the detrimental impact on the quality of internal space within blocks, and external space between them;
- Phase 2 proposals include a 0% provision of private external amenity for residents in the form of balconies or terraces. This is considered to be unacceptable;
- It is considered that the Georgian-inspired architectural form and composition is incongruous with the uniqueness of the Marina environment, that proposals do not present a positive landmark development, and that a contemporary architectural response would be more appropriate for this high profile and impactful site.

6.231. Environmental Health – Comment

No objection subject to conditions being secured if permission were granted.

6.232. Transport and Highways – Objection

An initial assessment was undertaken by the Council's Transport and Highways officers which can be summarised as below.

6.233. There remain a significant number of matters where the submitted information still does not provide a sufficient basis to assess the likely impacts of the proposed development. Key instances include the following:

- Baseline traffic surveys are inadequate.
- Analysis periods for traffic forecasting purposes have not yet been demonstrated to reflect peak conditions. Currently these consider conventional peak hours for weekdays only.
- Routing proposals for the distribution of vehicle trips remain unverifiable whilst there are obvious issues with these that are likely to have a bearing on the wider traffic forecasting exercise.
- We remain unable to verify trip generation proposals for the commercial uses as TRICS® output reports again haven't been attached.
- Forecasts of total daily (24hr) trips by all modes remain outstanding.
- We remain unable to verify the method used to generate AADT/AAWT traffic figures due to an ongoing lack of calculations.
- Committed development at Preston Barracks still needs to be considered in the traffic forecasting assessment. Whilst the applicant has briefly set out reasons for not doing this, we are currently unable to accept these.
- Proposed access routes for pedestrians and cyclists through the Marina has been revised. These would now provide the only means of direct

access to phase 2 for cyclists. However, some parts of the revised routes are not covered by previous PERS/CERS surveys and require additional assessment.

- Verifiable forecasts of delivery and servicing trips remain outstanding, as does a capacity analysis to demonstrate that proposed phase 2 infrastructure can cope with peak demand. Details are also needed of proposals to ensure safe access for pedestrians in the phase 1 'gap' which will continue to serve as a loading area for phase 1 uses.
- Whilst additional information about personal injury collisions have been provided for roads outside the Marina, information remains outstanding about incidents within the Marina itself.
- Whilst a stage 1 road safety audit has been submitted, this does not comply with the terms it is said to follow and is therefore rejected. A new stage 1 audit must be undertaken. The Brief and Audit Team must be agreed with us in advance. Notwithstanding, we note that the rejected Audit Report raises significant concerns about proposed pedestrian and cyclists access to the site within the Marina.
- Information remains outstanding to demonstrate the feasibility in principle of demolition/construction activities occurring alongside other operational access requirements within the Marina. Amongst other things, given that demolition/construction traffic will presumably need to use the service road we have particular concerns about how this will impact existing bus services and access to the Phase 2 site for pedestrians and cyclists once it is operational (recalling that it is no longer proposed to provide any access for cyclists via the outer harbour wall).
- In view of this and NPPF para 111 requirements, it would not currently appear possible to determine the application (other than for refusal). We encourage the applicant to submit additional information and will wish to be re-consulted should they do so. In view of the Planning Performance Agreement for this application we will also be happy to meet them to discuss requirements and potential resolutions.
- On other matters we do now have enough information to assess likely impacts. However, this assessment raises a number of significant concerns – some of which we consider to be potential reasons for objection and refusal. We recommend that the applicant review these carefully and submit alternative proposals and additional information, as appropriate. Key instances include the following.
- Whilst we agree that TRICS® SAM survey results for the existing phase 1 development suggest an unrealistically low level of trips, the alternative residential trip rates proposed using other sites in the TRICS® database remain unacceptable due to lack of representativeness (noting also that these is the same set of sites that we previously rejected). However, we note that some of the site selection criteria used by the applicant appear overly restrictive. By relaxing these appropriately we were able to find a suitable set. We therefore await revised proposals and remind the applicant of the need to present supporting evidence alongside these, including details of cross-test variance %s.
- The travel forecasting exercise also needs to take account of the likely reduction in vehicle trips from phase 1 as spaces in the phase 1 car park are reallocated to phases 2 and 3.

- A sensitivity test has been submitted to support land-use assumptions for forecasting the trips that the proposed commercial uses may generate. However, TRICS® output reports haven't been submitted to evidence this and allow us to verify the conclusions. We therefore remain unable to accept the proposed rates at this time.
- The above means that we remain unable to agree the applicant's traffic forecasts at this time.
- Proposals for pedestrian and cycle access to the site have been revised. Whilst the introduction of an external lift in phase 2 is positive, significant concerns remain and in some respects the proposals are retrograde. In particular, access for cyclists to phase 2 along the outer harbour wall has now been deleted. All access is now proposed through the Marina via the existing service road. Pedestrians will also need to rely on this for the minority of days when access along the harbour wall would need to be restricted due to poor weather. However, access via the marina for both user groups is very poor (and in some proposed areas, non-existent). Meanwhile a submitted road safety audit has also raised safety concerns. Moreover, it continues to be proposed that cyclists would have no access within the site, which is a retrograde step from the extant scheme which provided a route across it from the harbour wall. We currently consider these to be potential reasons for objection and refusal.
- Related to the above, there are further issues with pedestrian access within the site. Notwithstanding our previous comments, levels and gradients and other matters still don't comply with BS 8300.
- The proposals also appear to prejudice the delivery of the committed bus Rapid Transport System link to the Marina via Black Rock. This is because they rely on pedestrians having access along a narrow stretch of the sea wall which could not also then accommodate the RTS. In the extant permission this was avoided by the proposed introduction of a bridge over Black Rock beach which avoided the restricted section. However, the applicant has removed this from the current scheme. We currently consider this to be a potential reason for objection and refusal.
- Proposals for emergency vehicle access to the site are also retrograde from the extant permission. Whilst DA2 and PAN04 require an additional emergency vehicle access to the Marina to be provided with any further development (recalling that this proposal includes an increase in development over the extant permission), this application does not provide any and instead deletes the route that the extant permission proposed along the outer harbour wall. We currently consider this to be a potential reason for objection and refusal.
- Proposed arrangements for accommodating deliveries and servicing within the phase 1 undercroft remain unclear. Revised plans also raise questions about whether through access will be available to the phase 2 undercroft and – if not – whether additional vehicle accesses from the service road will be necessary.
- Cycle parking proposals have improved, with all long-stay spaces for phase 2 now being located in stores. However, many of these are too small for the spaces to be accessible and the level of supply falls short of SPD14 requirements (amongst other issues). It is also not clear how disabled cyclists would gain access. We do not accept the applicant's suggestion

that space has been maximised and that a compromise is necessary accepting a lower level of provision. Amongst other things, this may indicate over development and a need to reduce the number of proposed spaces. Proposals for visitor cycle parking also remain unacceptable due both to a shortfall and the lack of access routes to these. We currently consider this to be a potential reason for objection and refusal.

- As we are still unable to agree the submitted travel forecasts, we continue to reserve our position in respect to the need to model impacts at junctions. However, Technical Notes submitted to support modelling work already undertaken raises a number of issues that need to be addressed.

6.234. Following a review of the initial comments and the provision of some of the requested additional information, the Council commissioned an external review by a Transport specialist.

6.235. Their subsequent response maintained objections to the application in respect of cycle parking, breakwater access, car parking and expressed concern at pedestrian access from the north. The comments are set out in full along with commentary in the relevant section of this report.

7. MATERIAL CONSIDERATIONS

7.1. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report.

The development plan is:

- Brighton & Hove City Plan Part One (adopted March 2016)
- Brighton & Hove Local Plan 2005 (retained policies March 2016);
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013)
- East Sussex and Brighton & Hove Waste Local Plan (February 2006); Saved Policies WLP 7 and WLP8 only - site allocations at Sackville Coalyard and Hangleton Bottom and Hollingdean Depot.

7.2. Due weight has been given to the relevant retained policies in the Brighton & Hove Local Plan 2005 according to their degree of consistency with the NPPF.

8. POLICIES

8.1. The following policies are relevant to consideration of the application.
The National Planning Policy Framework (NPPF)

The National Design Guide

Brighton & Hove City Plan Part Two

Policies in the Proposed Submission City Plan Part 2 do not carry full statutory weight but are gathering weight as the Plan proceeds through its stages. They provide an indication of the direction of future policy. Since 23 April 2020, when the Plan was agreed for submission to the Secretary of State, it has gained weight for the determination of planning applications and is currently undergoing consultation under Regulation 19 to 30 October 2020.

Brighton & Hove City Plan Part One

SS1	Presumption in Favour of Sustainable Development
SA6	Sustainable Neighbourhoods
DA2	Brighton Marina, Gas Works and Black Rock Area
CP1	Housing delivery
CP2	Sustainable economic development
CP3	Employment land
CP4	Retail provision
CP5	Culture and tourism
CP7	Infrastructure and developer contributions
CP8	Sustainable buildings
CP9	Sustainable transport
CP10	Biodiversity
CP11	Flood risk
CP12	Urban design
CP13	Public streets and spaces
CP14	Housing density
CP15	Heritage
CP16	Open space
CP17	Sports provision
CP18	Healthy city
CP19	Housing mix
CP20	Affordable housing

Brighton and Hove Local Plan (retained policies March 2016):

TR4	Travel plans
TR7	Safe Development
TR14	Cycle access and parking
SU5	Surface water and foul sewage disposal infrastructure
SU9	Pollution and nuisance control
SU10	Noise Nuisance
QD5	Design - street frontages
QD15	Landscape design
QD16	Trees and hedgerows
QD18	Species protection
QD25	External lighting

QD27	Protection of amenity
HO5	Provision of private amenity space in residential development
HO13	Accessible housing and lifetime homes
HO21	Provision of community facilities in residential and mixed use schemes
SR5	Town and district shopping centres
HE3	Development affecting the setting of a listed building
HE6	Development within or affecting the setting of conservation areas
HE10	Buildings of local interest
HE12	Scheduled ancient monuments and other important archaeological sites

Supplementary Planning Guidance:

SPGBH15	Tall Buildings
SPGBH 20	Brighton Marina "An Urban Design Analysis"
SPGBH 20	Brighton Marina "Development Brief"

Supplementary Planning Documents:

SPD03	Construction & Demolition Waste
SPD06	Trees & Development Sites
SPD11	Nature Conservation & Development
SPD14	Parking Standards
SPD16	Sustainable Drainage

Planning Advice Notes (PAN)

PAN 04:	Brighton Marina masterplan
PAN 05:	Design Guidance for the Storage and Collection of Recyclable Materials and Waste
PAN 06:	Food Growing and Development

Further Guidance:

Affordable Housing Brief (December 2016)

Developer Contributions Technical Guidance (March 2017).

9. ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

- 9.1. The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017 ('the EIA Regulations') requires that for certain planning applications, an Environmental Impact Assessment (EIA) must be undertaken.

- 9.2. The term EIA is used to describe the procedure that must be followed to assess the impact of certain projects to determine whether planning permission can be granted.
- 9.3. The process ensures that the importance of the predicted effects, and the scope for reducing them, are properly understood by the public and the local planning authority before it makes its decision. This allows environmental factors to be given due weight when assessing and determining planning applications.
- 9.4. The development the subject of the application is considered to fall within part 10b of Schedule 2 to the EIA Regulations, and exceeds the relevant thresholds by virtue of being more than 5ha in area or 150 residential units. It therefore has the potential for significant environmental effects within the meaning of the EIA Regulations, so is considered an 'EIA development'.

Screening and Scoping for EIA development

- 9.5. Given the nature and scale of the development, it was common ground with the applicant that the proposal requires EIA. On this basis no Screening Opinion was sought from the LPA.
- 9.6. A Scoping Opinion was provided by the LPA on 31 January 2019, setting out the topics the authority considered needed to be addressed in the EIA, and those which could be 'scoped out'. The following topics were 'scoped in' to the EIA:
- Air Quality;
 - Climate Change;
 - Daylight, Sunlight and Overshadowing;
 - Ecology;
 - Marine and Coastal Environment;
 - Noise and Vibration;
 - Socio-Economics;
 - Traffic and Transport;
 - Water Resources and Flood Risk;
 - Wind Microclimate; and
 - Heritage, Townscape, Landscape and Visual Impact Assessment.
- 9.7. The following topics were 'scoped out' of the EIA:
- Archaeology;
 - Ground Conditions and Land Contamination;
 - Interference to Radio and Television Reception;
 - Waste and Materials;
 - Major Accidents and Disasters;
 - Human Health; and
 - Energy and Sustainability.

10. CONSIDERATIONS & ASSESSMENT

- 10.1. The main considerations in the determination of this application relate to the following:
- Principle of Development (including affordable housing, housing mix/density, standard of residential accommodation, amenity space)
 - Open space, outdoor recreation and sport
 - Design, Scale, Appearance and Townscape (including heritage)
 - Sustainable transport
 - Impact on Amenity
 - Sustainability
 - Ecology, Nature Conservation and Biodiversity
 - Flood Risk / SUDS
 - Marine and Coastal Environment
 - Crime Prevention
 - Socio-Economic Impacts

Principle of Development:

- 10.2. The principle of the development of the site has already been established through the approval of the 2006 application (ref. BH2006/04307, which amended planning permission BN2006/04307). The permission was to be delivered on a phased basis, with Phase 1 of the consent having been delivered and in situ.
- 10.3. The current application represents a 'drop-in' application which would supersede Phases 2 and 3 of the extant consent.
- 10.4. The scheme is fundamentally different to the approved scheme in terms of height, scale, massing and layout. With regards to height, the extant permission ranges from six storeys in height to a 40-storey tower which is slender in form. The current application ranges from eight storeys in height to a maximum of 28 storeys. Further, the extant permission allows 853 units across Phases 1, 2 and 3 (of which 195 units have already been built), while the current application seeks permission for up to 1,000 dwellings across both Phases 2 and 3 (i.e. with the dwellings already built in Phase 1, a total of some 1,195 dwellings across all phases). If permitted, the current application would therefore result in an additional 342 dwellings compared with the extant permission, though it should be noted that full permission is sought for 480 dwellings in Phase 2, and outline permission for up to 520 dwellings in Phase 3, so there may be some discrepancy in the final figure.
- 10.5. The application site is part of a Strategic Site Allocation in City Plan Part 1 known as 'Brighton Marina, Gas Works and Black Rock Development Area', which is the subject of Development Area policy DA2. Policy DA2 aims to revitalise the area by creating a sustainable, high-quality marina environment attractive for

both residents and visitors. The policy sets out wide-ranging principles that govern any redevelopment proposal coming forward, from housing, employment, retail floorspace and community uses. As set out in the comments from the Council's Planning Policy officers, some of these objectives have already been achieved through the delivered Phase 1.

- 10.6. The aim of this allocation in particular is to secure the creation of a high-quality housing around a marina and promote the efficient use of land through the creation of a destination along the seafront.
- 10.7. It is considered that the principle of the proposal is acceptable as it is in general accordance with Policy DA2 which supports the proposed mix of uses (primarily commercial and residential), and consistent with the approved 2006 scheme.
- 10.8. However, while the principle of a mixed-use residential development of the site is acceptable, the acceptability of this particular scheme must be assessed. In doing so, it must be acknowledged that there is an extant permission, so the principle of developing the site within the approved parameters has already been accepted.
- 10.9. The following considers each of the uses in turn.

Residential Provision

- 10.10. The City Plan Part 1 Inspector's Report was received in February 2016. The Inspector's conclusions on housing were to agree the target of 13,200 new homes for the city until 2030 as a minimum requirement. It is against this minimum housing requirement that the City's five-year housing land supply position is assessed annually.
- 10.11. The Council's most recent housing land supply position published in the SHLAA Update 2019 shows a five-year housing supply shortfall of 1,200 (equivalent to 4.0 years of housing supply). As the Council is currently unable to demonstrate a five-year housing land supply, increased weight should be given to housing delivery when considering the planning balance in the determination of planning applications, in line with the presumption in favour of sustainable development set out in the NPPF (paragraph 11).
- 10.12. The application scheme would deliver up to 1,000 new homes in the city as part of a mixed-use development. In this regard, the level of housing delivered by the scheme should weigh heavily in favour of the application, including accounting for the fact that it would deliver up to 342 more dwellings than the approved scheme.

Affordable Housing

- 10.13. City Plan Policy CP20 requires housing development of over 15 units to provide 40% affordable housing, though this may be applied more flexibly where the Council considers this to be justified, considering in particular how this would impact on the financial viability of the development.
- 10.14. In the original application submission, the applicant proposed 15% affordable housing across both Phases 2 and 3, all comprising Shared Ownership units.
- 10.15. Given that the affordable housing provision proposed fell below the CP20 target of 40%, a Financial Viability Assessment (FVA) was submitted as part of the application. The FVA concluded that the maximum amount of affordable housing that the scheme could provide was 6% (all shared ownership). Whilst it is clear that the originally proposed affordable housing level was above the purported viability position, the applicant recognised the commercial and planning benefits of providing additional affordable housing.
- 10.16. The Council engaged the District Valuer Service (DVS) to undertake a formal review of the FVA, following which revisions were made to the affordable housing offer in order to ensure that they better reflected the Council's housing needs.
- 10.17. The revised affordable housing offer sought to provide 10% affordable housing within Phase 2 (48 units), all consisting of Shared Ownership units, and a minimum of 15% in Phase 3, all consisting of Social Rented (S/R) units, a total of 78 units. The DVS confirmed that in their view, this offer, of 12.5% across both phases, was the maximum viable amount of affordable housing provision.
- 10.18. Whilst 12.5% affordable housing provision clearly falls below the CP20 policy target of 40%, it is considered that there are numerous, genuine reasons why the scheme cannot achieve the policy target. Most important of these factors is the unique and significant enabling works required for the development of the Outer Marina which have a significant cost attached, including the basement works, remedial works, construction of a temporary boardwalk and the formation of a podium deck/promenade. The abnormal costs have been subject to specific scrutiny by a professional Quantity Surveyor who considers that the estimates are reasonable.
- 10.19. It is noted that the DVS response identified a surplus of over £3m in "Basis A" which may suggest that additional affordable housing could be provided. However, this derives from the DVS adopting inputs associated with open market / affordable housing sales values, developers' profit, and contingency costs which differ from the applicant's inputs. It is also important to note that this surplus is inclusive of ground rent income which is likely to be discounted once future legislation in respect of leasehold practices.

- 10.20. At the time of the review being undertaken, market conditions were relatively strong. Since that time, the current Covid 19 pandemic has had a significant impact on market conditions. If the viability were to be reassessed at this stage, it is likely that sales values would be decreased and costs would increase, reflective of the current market conditions. Should such further review be undertaken under current market conditions then DVS have advised the Council that the surplus would disappear, and that the amount of deliverable affordable housing could reduce beneath that which has currently been assessed under Basis A.
- 10.21. Based on the above, and in order to ensure that the Council secures the maximum level of affordable housing is delivered through this scheme, DVS clearly advised the Council that the existing Basis A proposal should be agreed, with the caveat that a viability review be secured. Furthermore, in order to protect the Council' position in terms of the future viability review, it was recommended that some of variables such as benchmark land viability, ground rent and target profit were agreed through the S106.
- 10.22. Notwithstanding the discourse above, at the time of this report being reported to committee, members will note that the Council will be adopting a Community Infrastructure Levy (CIL) on 5 October 2020. As part of the adopted CIL regime, the application site is identified as being nil-rated for CIL meaning that no CIL payment would be liable for the development as proposed. With the adoption of CIL, the mitigation funding to be received through the Section 106 would not be able to be secured:
- Education Facilities Contribution - £790,599;
 - Public Realm and Environmental Improvements, incl. provision of an artistic component - £168,720;
 - £25,000 and £15,000 for Volks Railway and East Brighton Park respectively;
 - Open Space and Recreation Contribution of £1,942,352.
 - Total: £2,941,671
- 10.23. Given that these monies could not be secured by CIL, the figure would represent a surplus, benefiting the developer and altering the viability position considered by DVS. At the time of this report being presented to committee, the LPA do not have an up to date Financial Viability Assessment which takes account of the new CIL framework and updated financial position due to Covid. As such the LPA does not have sufficient information to be able to reach a robust conclusion on whether the proposed affordable housing provision is reasonable.
- 10.24. Whilst a balanced view may have been taken by officers in respect of the £3m surplus identified under Basis A, an additional surplus of over £2.9m provides a

cumulative surplus of nearly £6m which has not been accounted for within the viability position. Even if Covid-related market conditions were taken into account, officers consider that a viability reassessment inclusive of the £6m would be highly likely to be able to require additional affordable housing on site. No such viability reassessment has been undertaken.

- 10.25. Therefore, in the absence of an updated FVA stating otherwise, officers must conclude that the current affordable housing offer does not represent the maximum reasonable level of affordable housing. The application is therefore contrary to City Plan 1 Policy CP20.

Housing Density and Mix:

- 10.26. National and local planning policies seek to secure the delivery of a wide choice of high-quality homes which will contribute to the creation of mixed, balanced, inclusive and sustainable communities.
- 10.27. Paragraph 65 of the National Design Guide highlights the importance of an appropriate density: “Built form is determined by good urban design principles that combine layout, form and scale in a way that responds positively to the context. The appropriate density will result from the context, accessibility, the proposed building types, form and character of the development.”
- 10.28. Policy CP14 of City Plan Part 1 states that residential development should be of a density that is appropriate to the identified positive character of the neighbourhood and be determined on a case by case basis. It states development will be permitted at higher densities than those typically found in the locality where it can be adequately demonstrated that the proposal:
1. Would be of a high standard of design and would help to maintain or create a coherent townscape;
 2. Would respect, reinforce or repair the character of the neighbourhood and contribute positively to its sense of place;
 3. Would include a mix of dwelling types, tenures and sizes that reflect identified local needs;
 4. Is easily accessible by sustainable transport or has the potential to be easily accessible;
 5. Is well served by local services and community facilities; and
 6. Provides for outdoor recreation space appropriate to the demand it would generate and contributes towards the ‘green network’ where an identified gap exists.
- 10.29. Policy CP14 states that to make full, efficient and sustainable use of the land available, new residential development within the allocated Development Areas, which include the application site (DA2), the density of new residential development will be expected to achieve a minimum of 100 dwellings per hectare (dph) on major development sites, provided that all of the aforementioned criteria can be satisfactorily met.

- 10.30. Based on a site area of 3.54ha and the quantum of up to 1,000 residential units, the present proposal would result in a site-wide residential density of 283 dph. In assessing this density against the policy context set out, it is clear that the density is in excess of the minimum density of 100 dph as required by CP14.
- 10.31. It is important to note that CP14 does not prescribe a specific maximum density threshold. In purely density terms, the baseline for consideration should be the 240 dph that was approved with the consented scheme. The key consideration is therefore whether the currently proposed density of 283 dph represents an acceptable increase over and above the consented density, and whether that density is appropriate, with reference to the six policy criteria
- 10.32. Notwithstanding in principle support for a high-density scheme, in the following sections of this report, officers will set out concerns in respect of massing, townscape, and placemaking (contrary to Policy CP14, criterion 1); connectivity (contrary to Policy CP14, criterion 4); and open space (contrary to Policy CP14, criterion 6)
- 10.33. Given that the scheme fails to comply with three of the six criteria, it is not considered that the higher density of the development is appropriate to the identified positive character of the neighbourhood, and is therefore contrary to Policy CP14.

Standard of Residential Accommodation

- 10.34. In terms of the standard of the residential accommodation provided, the applicant has ensured that all units meet or exceed Nationally Described Space Standards (NDSS), and in emerging policy DM1. Further, ten percent of the residential units across both phases would be provided as wheelchair accessible which is considered acceptable given policy HO13 and emerging policy DM1, which seek 5% provision overall and 10% within the affordable housing element. The provision of these wheelchair units could be secured by condition if permission were granted.
- 10.35. With regards to the residential mix, the Council gives high priority to the importance of housing that responds to the city's assessed local housing needs in terms of dwellings sizes and tenure types, and which will contribute to mixed and balanced communities. This is reflected in adopted City Plan Part 1 Policies SA6 (criterion 8) CP19, and Policy CP14 (criterion 3). It is also reflected in Policy DM1 of the emerging City Plan Part Two indicates that the Council "will seek the delivery of a wide choice of high quality homes which will contribute to the creation of mixed, balanced, inclusive and sustainable communities".

- 10.36. The proposed housing mix of Phase 2 of the development, comprising 480 units would be as follows:
- Studios: 21 (4.4%)
 - One bed: 161 (33.5%)
 - Two bed: 268 (55.8%)
 - Three bed: 30 (6.3%)
- 10.37. Whilst it is noted that the Council's Planning Policy officers raised some concern at the proposed mix, it is clear from the above that over 60% of the proposed units would comprise larger two and three bed roomed units. Policy CP 19. Paragraph 4.213 of the City Plan Part 1 gives an indication of demand need for homes in the city over the plan period and sets out that an estimated 65% of the overall need/demand (for both market and affordable homes) will be for two- and three-bedroom properties; 24% for one-bedroom properties, and 11% for four-plus bedroom properties. Whilst the proposed mix is not exactly in accordance with these target mixes, the scheme would deliver 60% of the units as two and three bed roomed units which is broadly in line with the policy aspiration of 65%.
- 10.38. The applicant has submitted illustrative details of the Phase 3 residential mix which has been factored into the analysis by the Council's Policy officers, however it should be noted that these details are solely for illustrative purposes. Phase 3 is submitted in outline with all matters reserved other than access and as such the residential mix would be subject to assessment through reserved matters applications. Thus, the pertinent assessment is that of the residential mix of the detailed phase which is set out above.
- 10.39. It should also be noted that that the policy aspirations reflect citywide targets and some variations in individual sites will be accepted. In applying these to individual development sites, regard should be had to the nature of the development site and character of the area, and to up-to-date evidence of need as well as the existing mix and turnover of properties at the local level.
- 10.40. In this respect, and notwithstanding other concerns with the scheme, officers consider that the proposed residential in itself mix is appropriate for the site.

Private Amenity Space

- 10.41. Saved Policy HO5 requires the provision of private useable amenity space appropriate to the scale and character of the development. PAN04 also states that the provision of private amenity space will also be expected for all new units, in the form of a garden, balcony or roof terrace.
- 10.42. The application submission states that all units within Phase 2 have been provided with Juliet balconies of 250mm, with a reveal of between 350-700mm, accessed off a main living space.

- 10.43. As set out within the comments from the Council's Planning Policy Officers and the Urban Design Officer, whilst providing a good level of natural daylighting and outlook, the proposed 'Juliet' balconies would not provide a usable external space. These comments reflected concerns raised by the Design Review Panel in both their October 2018 and February 2019 responses.
- 10.44. The applicant states that balconies have been excluded from Phase 2 because of the need to minimise risk to future occupiers from prevailing south-westerly wind conditions, and concerns that the usability of the balconies would be significantly diminished due to the exposed nature of the elevations.
- 10.45. Whilst wind conditions are clearly an issue in this location, the applicant has provided no evidence to demonstrate that balconies are unfeasible, particularly when the extant scheme included private balconies of varying scales, along with private terraces/patios. Further, prevailing winds are from the south-west and so it is unclear why the northern and eastern elevations within Phase 2 do not include balconies. Balconies are prevalent on blocks of flats throughout the City and along the south coast so it is unclear why they could not be included in this part of the development. Further, despite concerns being raised by officers, no proposals have been put forward to mitigate the risk associated with wind conditions, and no alternative private amenity space have been included, such as winter gardens.
- 10.46. 9.46 With this in mind, Officers consider that the lack of balconies or other private external amenity space from Phase 2 would be unacceptably detrimental to the living conditions of future occupiers, and that there has been insufficient information provided to justify its omission from this part of the development.
- 10.47. 9.47 With regards to communal space, the development would provide communal, ground level amenity space of 1,109sqm in Phase Two, and approximately 1,020sqm within Phase Three. Whilst officers acknowledge that communal external amenity offers many social benefits, it does not offer the same user experience as private external spaces, and the two should not be considered to be mutually exclusive.
- 10.48. 9.48 Policy H2 of the National Design Guide identifies the important differences between communal and private external spaces, and illustrates how a combination of both results in the greatest benefit to residents.
- 10.49. Emerging local policy CPP2 DM1 (Housing Quality, Choice and Mix) sets the direction of policy travel with regard to private external amenity by stating that "all new residential development will be required to provide useable private outdoor amenity space appropriate to the scale and character of the development". This emerging policy goes further to say "Private amenity space

can make an important contribution in improving the health, well-being and general quality of life of the city's residents and has the potential to support and enhance local biodiversity. The provision of space for seating, play, drying and storage space is part of securing good design and a good standard of residential development in the city... In considering the type and amount of useable private amenity space the council will have regard to the type, scale, location and context of residential development... Appropriate forms of provision include gardens, balconies, patios, roof terraces and shared amenity spaces in flatted forms of development. Factors such as access to the amenity space, its orientation, scope for privacy, size and usability will be key considerations”.

- 10.50. A fair interpretation of this emerging policy is that communal amenity spaces, though encouraged in flatted developments, should not negate the requirement for private external space; and that private external space should only be omitted where it is not possible to provide it, and if communal amenity areas are able to offer adequate scope for privacy for all residents as well as are easily accessible for all residents. In accordance with existing and emerging policy, is not considered that communal amenity areas provide sufficient compensation for a lack of any private external amenity space.
- 10.51. Furthermore, as set out below, even if private amenity space could not be provided, which officers do not agree is the case, because of the lack of sunlight, the communal amenity space is not considered to be of high enough quality to compensate for the lack of private amenity space.
- 10.52. Phase 3 is submitted in outline with design matters reserved and as such there would be scope for Phase 3 to incorporate private external amenity space through Reserved Matters if permission were to be granted. Nevertheless, the potential provision of private amenity space in Phase 3 would not outweigh the harm arising from the lack of provision in Phase 2 and the detrimental impact this would have upon the living conditions of future occupiers.
- 10.53. In this regard, the application is considered to be contrary to Policies HO5 (Saved Policy), PAN04 (City Plan 1), DM1 (City Plan 2) and H2 (National Design Guide).

Non-Residential Uses

- 10.54. With specific regard to non-residential uses, Policy DA2 supports the development of retail and employment floorspace within the Marina to meet the needs of local communities. Furthermore, Policy PAN04 expects major schemes at the Marina to be genuinely 'mixed-use', including leisure, residential, retail, commercial and community uses. PAN04 also goes on to state that ground and pedestrian floor levels within residential blocks will have animated frontages, which will incorporate commercial uses.

Retail Uses

- 10.55. It is noted within the application submission that whilst the proposed development could potentially deliver up to 1,561sqm of retail space, given the flexible use nature of the site it is likely that approximately 1,000 sqm would come forward as Use Class A1-A4 floorspace as part of the completed development. In this regard, Phase Two is seeking full permission for 761 sqm of retail floorspace of which only Block 3 is likely to comprise retail uses whilst the exact mix of uses within Phase Three would be determined at Reserved Matters stage.
- 10.56. It is clear that there is planning policy support for the delivery of retail uses within the Marina, with Policy DA2 of City Plan Part 1 supporting a 'more balanced mix' of retail at the Marina, and Policy PAN04 noting the expectation that major developments in the Marina come forward with some 'A' (retail) uses. It is considered that the commercial units proposed are suitable within this location and given the evidence base underpinning these policies, it can be considered that the provision of the proposed retail uses would not adversely impact on existing centres.
- 10.57. In commenting on the application, the Council's Economic Development officer expressed some concern that the retail spaces proposed could become 'dead space' if it is not marketed locally at affordable rents. In this regard, a S106 obligation is included which would require the applicant to agree a marketing strategy for the commercial space with the Council. This would allow the Council to ensure that the space is marketed appropriately at a local level.
- 10.58. However, with specific regard to affordable rents, it is important to note the viability position of the application (which is discussed fully within the relevant section of this report). Any obligation reducing the rent of the commercial space would impact negatively on the yield of the floorspace, which in turn would further reduce the viability of the scheme and the level of affordable housing.
- 10.59. It is important to note that commercial space is being provided as part of a mixed-use development, along with up to 1000 residential units. The residential component of the development would increase the critical mass of population within the Marina and create significant additional footfall, promoting the attractiveness of the commercial floorspace for potential occupiers and reducing the likelihood of it becoming 'dead space'. Furthermore, the flexible use units have been designed to enable sub-division if necessary, which would allow for the spaces to be of a size to attract independent retailers. On this basis, the retail component of the development is considered acceptable.

Employment Uses

- 10.60. The application seeks permission for the commercial floorspace to be occupied on a flexible use basis, but details are included within the submission relating to the anticipated use of each of the units. The anticipated use of each of the units

within Phase 2 would generate up to 69 full time employment (FTE) opportunities; with an estimated 53 to follow in Phase 3.

- 10.61. This accords with Employment Policy CP3 of the City Plan Part One which endeavours to bring forward a mix of employment floorspace, while Policy DA2, relating to the Marina, seeks the provision of 2,000sqm of employment floorspace by 2030, to be focused on the Gas Works site. Nevertheless, PAN04 acknowledges that leisure and retail uses provide employment opportunities and are dominant in the Marina, but that other employment generating uses will be encouraged.
- 10.62. While the exact number of FTEs generated would be contingent on the exact occupier of the flexible use units, the broad numbers of jobs that would be generated through the non-residential uses should be considered as a benefit weighing in favour of the scheme.

Community Uses

- 10.63. As set out within the comments from the Council's Planning Policy officers, one of the strategic aims of Policy DA2 requires the wider Marina area to provide over 10,000 sqm of leisure provision. Whilst it is noted that a significant part of it could be provided by Black Rock sites, once they come forward for development, the Marina site provides opportunity to provide additional floorspace towards meeting this requirement.
- 10.64. To this end, the approved scheme incorporated a number of community related uses such as a crèche, health centre and internal space for older children and were secured through the Section 106 Agreement. It is important to note that the community facilities proposed as part of the overall Marina development have already been provided within Phase 1. On this basis, officers consider it acceptable that no specific provision is proposed within Phases 2 and 3.
- 10.65. Notwithstanding the lack of any specific provision, the flexible use nature of the commercial floorspace allows the opportunity for some extent of this floorspace to come forward as a community use.

Open Space, Outdoor Recreation And Sport

- 10.66. City Plan Policy CP16 (part 2) states that "new development will be required to contribute to the provision of and improve the quality, quantity, variety and accessibility of public open space to meet the needs it generates". Policy CP17 (part 5) sets a similar requirement for sport provision, stating that there is a requirement for new development to contribute to the provision and improvement of the quality, quantity and accessibility of sports services, facilities and spaces to meet the needs it generates.

- 10.67. The proposed development would generate a significant demand for all public open space typologies.
- 10.68. In responding to the application consultation, the Council's Planning Policy officers have outlined that the development would generate a requirement of 8.86ha (80,860 sqm) broken down as follows (Policy CP16):
- Children and young people play space – 0.11ha (1100 sqm)
 - Amenity green space – 1.21 ha (12,100 sqm)
 - Outdoor sports facilities – 0.97ha (9700 sqm)
 - Parks and gardens – 1.91ha (19,100 sqm)
 - Natural and semi-natural open space – 5.83ha (58,300 sqm)
 - Allotments – 0.47ha (4700 sqm)
- 10.69. The Planning Statement submitted in support of the application sets out that the development would provide a total of 11,420sqm of Publicly Accessible Open Space across the scheme, with 4,762sqm within Phase Two and approximately 6,658sqm within Phase Three. The total quantum of Public Realm, which excludes playspace and communal gardens, to be provided across the scheme is 8,849sqm with 3,600sqm in Phase Two and approximately 5,249sqm within Phase Three
- 10.70. In assessing the suitability of the open space and recreation provision, it is noted that the site lies in close proximity to Brighton beach which provides a large area of natural public open space, whilst the Yacht Club within the marina represents existing recreation provision. Nevertheless, Planning Policy Officers have raised concern at the lack of open space and particularly amenity space provided as part of the development. The concern is primarily based upon the size, and therefore the usability, of the areas provided.
- 10.71. In terms of playspace, Phase 2 provides just one small private area of playspace whilst Phase 3 would provide 2 further small areas of playspace. For a development of this size consideration should be given to the inclusion a larger play area or Multi-Use Games Area. This is particularly important given that the closest off-site children's play areas (Peter Pan playground and East Brighton Park) are more than 1km from the site, and not easily accessible, particularly with children. The proposed provision does not compare favourably to the extant consent which incorporates a children's play area, a multi-use games area, a bowling green and boules area. In addition, the extant consent provides a financial contribution towards upgrading the seafront walkway link to the Peter Pan playground, which is not included in the current proposals.
- 10.72. Whilst further details of the playspace could be secured by condition to ensure their quality, officers consider that any increased quality would not mitigate the

inadequate quantity of the space proposed. This is compounded by the lack of off-site improvements that are proposed to improve connectivity to existing playspaces.

- 10.73. Prior to the introduction of CIL in October 2020, the development would have provided a S106 contribution of £1,942,351.92 to spent on open space and recreation in the vicinity of the site. After October 2020 and the adoption of CIL, such a contribution could not be secured through the Section 106 nor would any CIL monies to available given the nil-CIL rating of the site.
- 10.74. Taking a balanced view of the open space provision, officers are conscious that in terms of open space and recreation there is existing provision in the form of Brighton Beach and the Yacht Club respectively. It was noted and agreed at pre-application stage that both of these existing elements are recognised as existing open space and recreation provision.
- 10.75. Whilst these constitute existing off-site provision and notwithstanding any quantitative assessment, officers consider on balance that in combination with the on-site general open space, residential occupiers would not have inadequate access to open space and recreation.
- 10.76. Nevertheless, in specific regard to children's playspace it is evident that the development is significantly inadequate, and in this regard, officers consider that it is contrary to Policy CP16 of City Plan Part 1.

Design, Scale, Appearance And Townscape

Tall Building Assessment

- 10.77. In respect of tall buildings, Policy CP12 of the City Plan identifies Brighton Marina as a location with the potential for taller developments, defined as 18 metres or more in height (approximately 6 storeys) (Tall Buildings SPG 2004).
- 10.78. PAN04 reiterates the policies set out within the City Plan and Tall Buildings SPG however notes that there are certain areas of the Marina which are better able to tolerate taller buildings than others; noting that the western, more commercial areas of the Marina, where the Site is located, are more suitable for taller buildings. The PAN also notes that development in close proximity to the Black Rock Cliffs must generally conform to or be lower than the existing cliff height.
- 10.79. The application proposes the following building heights:
- Phase 2:

- Block 1 – part 9, part 12 storeys
- Block 2 – 16 storeys
- Block 3 – 28 storeys
- Phase 3 (Indicative Parameters)
 - Block 4 – 14 storeys
 - Block 5 – 19 storeys
 - Block 6 – 8 storeys
 - Block 7 – 17 storeys
 - Block 8 – 8 storeys
 - Block 9 – 8 storeys

10.80. As is clear above, all of the nine blocks proposed as part of the development would exceed the threshold for tall buildings as set out in CP12. Given that the policy identifies the site as being potentially suitable for tall buildings, the overarching principle of tall buildings on this site is acceptable. Furthermore, whilst the current application is a drop-in application to be assessed on its own merits, the principle of tall buildings on the site has been established through the extant consent, which granted permission for a tower of 40 storeys in height.

10.81. Notwithstanding the above, it is necessary to undertake further assessment of the impact of these tall buildings in terms of townscape, heritage and detailed design.

Townscape and Heritage Impact

10.82. National and local policies seek to secure good quality design which respects townscape and the setting of heritage assets.

10.83. The design rationale set out by the applicant is for the proposed development to create a bookmark to the eastern extent of Brighton, consistent with the nature of Brighton Marina as a strategic destination within the city.

10.84. The site itself does not contain any heritage assets, but due to the height and scale of the proposals, and their highly prominent location, extending beyond the coastline, there are potential impacts on the settings of some designated and non-designated heritage assets and these impacts are required to be assessed in accordance with national and local planning policy and in accordance with the relevant Acts of Parliament. At national level this is the National Planning Policy Framework (NPPF) and locally under policy CP12 of CPP1 and policies HE3, HE6 and HE10 of the saved Local Plan.

10.85. In considering whether to grant planning permission which affects a listed building or its setting the Council has a statutory duty to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

- 10.86. Case law has held that the desirability of preserving a listed building or its setting must be given “considerable importance and weight”. It must also be noted that Paragraph 196 of the NPPF sets out that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
- 10.87. Furthermore, it is pertinent to set out that paragraph 197 of the Framework sets out that there is a lower level of protection for non-designated heritage assets stating: “The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”
- 10.88. From a heritage perspective, the application site sits immediately to the East of the Kempton Conservation Area within which are the Grade I listed properties of Lewes Crescent and Sussex Square, and from this point westwards, most of the seafront and the band of urban development fronting onto it is designated conservation areas containing the bulk of Brighton and Hove’s listed buildings. The grade II listed Madeira lift lies to the west of the site on the seafront opposite Marine Square.
- 10.89. To the immediate north of the site is existing low-grade Marina development within a poor public realm dominated by vehicular traffic. Beyond this is the locally listed Marine Gate, and further East 40 and 40a White Lodge The Cliff which are also locally listed. The Grade II Listed Roedean School lies to the east, and The Ovingdean and Rottingdean Conservation Areas are beyond.
- 10.90. The Council’s Heritage Officers carried out an assessment of the application initially set out some concerns at the densification of the scheme over and above that of the extant permission. Whilst it is noted that the principle of development including tall buildings is established through the extant consent, Heritage Officers raised concern that the reduced slenderness of the tower and the increased scale and massing of the other buildings within Phase 2 would reduce visual permeability through the site. Specific assessment of the impact of the development on the relevant heritage assets is set out below.

Madeira Lift

- 10.91. In relation to Madeira Terrace, Madeira Walk, Lift Tower and related buildings Council’s Heritage team considers that the reduction in the openness of the view beyond Madeira Lift would cause harm which is less than substantial. The Heritage team do acknowledge that this view is from a fixed point whereas in reality it would be generally experienced in a dynamic way and the relationship

of the proposal to the tower will change and therefore its impact will not always be harmful.

- 10.92. Given that less than substantial harm has been identified, Paragraph 196 of the NPPF is relevant which states that “where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”
- 10.93. In this case, officers recognise the less than substantial harm which would arise and recognise, in line with Paragraph 193 of the NPPF, that “great weight should be given to the asset’s conservation”. However, officers also recognise that this view would be largely experienced in transient manner which would reduce the extent to which the harm would be readily apparent. Added to this, officers consider that the separation distance between the heritage asset and the development would go some way to offset the harm. Weighed against this less than substantial harm is the benefits that would arise from the development, the most important of which is the significant additional housing delivery in the context of the City being unable to demonstrate a five-year housing land supply. Thus, in making a balanced judgement on the basis of heritage impact in isolation, officers are of the view that the public benefits of the scheme would outweigh the less than substantial harm.

Lewes Crescent

- 10.94. Lewes Crescent lies within the Kemptown Conservation Area and incorporates a row of Grade I Listed buildings.
- 10.95. The Council’s Heritage Team initially considered that views from Lewes Crescent were very sensitive, with a harmful impact due to the loss of the visual contrast between the end of the terrace and the openness of the gardens to the West and seascape to the South, increased by the lack of definition between the dominant materials and the architectural influence of the proposal relative to the historic terrace.
- 10.96. This view was maintained following a slight revision of the scheme which solely amounted to a more varied colour tone to the buildings within Phase 2. The previously identified lack of definition between the dominant materials of the proposal and the historic terrace has been altered slightly by the added variation in colours, however the impact on the openness to the coast remains a concern. Nevertheless, this harm is considered to be less than substantial.
- 10.97. Paragraph 196 of the NPPF is therefore again relevant in that the harm must be outweighed by the public benefit arising from the scheme. In this case, given the

Grade 1 listed status of the buildings, significant weight must be attached to the preservation of the assets value in accordance with Paragraph 193 of the NPPF.

- 10.98. It is clear that the proposed development would present prominently at the southern end of the terrace however it is important to note that there is precedent for a tall building in this location with the extant consent. Whilst there is precedent for a tall building in this location, the extant consent incorporated a taller, more slender tower. As has been identified by Heritage Officers in their assessment, the current proposals comprise of a lower, denser and bulkier development which presents as a singular mass in this particular view. Whilst a wider assessment of the scale and massing of the development is set out in a subsequent section of this report, for the purposes of Paragraph 196 the assessment is solely in relation to the impact on the heritage asset.
- 10.99. Again, weighed against the less than substantial harm is the benefits that would arise from the development, the most important of which is the significant additional housing delivery in the context of the City being unable to demonstrate a five-year housing land supply. Thus, in making a balanced judgement, officers are again of the view that the public benefits of the scheme would outweigh the less than substantial harm.

Conclusion

- 10.100. Having regard to the above, whilst the Council's Heritage Team cannot give full support to the proposal, officers consider on balance that the scheme is acceptable from a heritage perspective in isolation. On balance, it is considered that the benefits of the scheme in terms of housing provision would outweigh the less than substantial harm to heritage features, in accordance with Paragraph 196 of the NPPF. On this basis, it is not considered that the scheme could properly be refused solely due to its impact on heritage features, but that the concerns raised by Heritage Officers add some weight to the planning balance against the design of the scheme.

Height, Scale and Massing

- 10.101. In respect of the height, scale and massing of the scheme as previously outlined the principle of a tall building in this location is accepted and has been established through the extant consent.
- 10.102. The maximum height of the development would be 28 storeys within Block 3 of Phase 2 which would also incorporate a part-nine, part-twelve storey building (Block 1) and a 16-storey building (Block 2). This compares with the 40 storey, slender tower in the approved scheme.
- 10.103. Concerns have been raised in the response from the Urban Design Officer, and in Desig R2review Panel (DRP) comments, as well as in public responses over

the 'densification' of the scheme, compared with the extant development. It is of note that concerns over the scale and massing of the development, given the height of the building, were outlined to the applicant at pre-application stage.

10.104. In the DRP Report dated 13th February 2019 sets out that "the clear differentiation of the tower was one of the positive aspects of the original Wilkinson Eyre scheme, particularly concerning long distance views. However, this concept has been gradually eroded as the scheme has developed." The panel go further to suggest that the reduced differentiation of the tower and increased height of neighbouring blocks "could lead to the scheme being viewed as a composite, increasing the monolithic effect in longer distance views."

10.105. In assessing the current application, officers consider that the aforementioned concerns have not been adequately addressed or overcome. In responding to the consultation, the Council's Urban Design Officer reinforces the concerns expressed in the DRP report and states that Phase 2 appears as homogenous and impermeable due to the increased density, bulk and massing of the development.

10.106. Whilst Policy CP12 identifies Brighton Marina as being suitable in principle for the location of tall buildings, the policy goes on to set out criteria to which all development within the city should adhere which are set out below:

1. Raise the standard of architecture and design in the city;
2. Establish a strong sense of place by respecting the diverse character and urban grain of the city's identified neighbourhoods;
3. Achieve excellence in sustainable building design and construction;
4. Conserve or enhance the city's built and archaeological heritage and its settings;
5. Have regard to impact on the purposes of the National Park, where within the setting of the National Park;
6. Protect or enhance strategic views into, out of and within the city;
7. Be inclusive, adaptable and accessible;
8. Ensure that the design of the external spaces is an integral element of the overall design approach, in a manner which provides a legible distinction between public and private realm; and
9. Incorporate design features which deter crime or disorder and the fear of crime.

10.107. Criteria 2, 5 and 6 are of particular relevance to the height, scale and massing of the present proposal. In respect of criterion 2, it is considered that the tight spacing resulting in a homogenous mass in long views fails to establish a sufficiently legible and permeable form of development and fails to establish a strong sense of place as required by this criterion. The supporting text to Policy CP12 identifies Brighton Marina as a node and defines a node as "a place where activity and routes are concentrated". In this case the development fails to

provide a sufficiently legible form of development to identify and enhance the status of the marina as a node.

- 10.108. In terms of criterion 5, the Block 3 of the development would be present in long views from the southern edge of the South Downs National Park. Whilst there is precedent for a tall building in this location with the extant scheme, again in long views from the National Park this would have been viewed as a slender, singular tower which officers consider would have less of an adverse impact on views and the landscape. Criterion 5 requires development to have regard to the purposes of the National Park where located within its setting, and in this case the increased height of Phase 3 would result in a cumulative effect with Phase 2. Again, officers consider that this would present a bulky and homogenous form of development that would have an adverse impact on the setting of the National Park.
- 10.109. In terms of assessment of criterion 6, the original concept of development was to establish a 'bookmark' to the eastern end of the city, and it is considered that the lower, bulkier form of development has eroded this concept. In key long views from the west, Phase 2 would appear as a homogenous and singular mass which would not protect or enhance views along the coast or from within the built part of the city.
- 10.110. Officers are cognisant of the strategic nature of the site and that it is allocated in Policy DA2 with the objective to "facilitate the creation of Brighton Marina and the wider area as a sustainable mixed use area of the city, through the generation of a high quality marina environment" which inter alia "Secure a high quality of building design that takes account of the cliff height issues in and around the Marina, townscape and public realm while recognising the potential for higher density mixed development in accordance with the aims of the Spatial Strategy to optimise development on brownfield sites". The policy goes on to state that the Council will achieve this by "securing improved legibility, permeability and connectivity for pedestrians within and to the Marina and the surrounding areas through high quality building design, townscape and public realm".
- 10.111. In this case it is considered that the development would fail to secure a high quality of building design, would impact negatively on the surrounding townscape and would also fail to provide a form of development that would improve legibility, permeability and connectivity for pedestrians within and to the Marina and the surrounding areas. Officers are therefore of the view that the application fails to comply with Policy DA2.
- 10.112. In respect of Phase 3, the Urban Design Officer has expressed similar concern at the impermeable nature of the development. Whilst Phase 3 is submitted in

outline, parameter plans showing the layout and building heights were submitted, so if approved, would form the envelope within which the development could come forward.

10.113. On this basis, in terms of the height, scale and massing of the scheme, officers consider it is contrary to both Policy CP12 and DA2. Whilst both policies set out a range of objectives and/or criteria to which developments should adhere, on balance it is considered that in assessing the application against both policies as a whole, the level of non-compliance results in the application failing both policies when read as a whole.

Appearance

10.114. Policy CP12 states that all new development will be expected to raise the standard of architecture and design in the city, establishing a strong sense of place and respecting the diverse character of existing neighbourhoods.

10.115. The proposed architecture of the development draws inspiration from the Georgian Regency style architecture and seeks to reflect this in its style, pallet and detailing.

10.116. In assessing the scheme, the Council's Urban Design Officer considered that the presented material and cladding details were an interesting combination of coastal, chalky textures in the reconstituted stone cladding, and a contemporary interpretation of Georgian inspired architectural profiles and features. However, the Urban Design Officer also drew attention to the failure of the scheme to respond to comments on the design presented in the pre-application Design Review Panel. Comments from the Council's Heritage Consultant also suggest the "beacon" element to the proposed tower does not enhance the building in its current form but appears as heavy and over-dominant. They go further to state that elevational composition and architectural detailing distinguishes each block within Phase 2 on close inspection, but not successfully from afar.

10.117. The DRP report dated 26th October 2018 encouraged the design team to consider a contemporary architectural response in favour of Georgian-influenced styles as more appropriate to the nature of the site. The Panel commented on the "institutional" feel of the proposals and encouraged a more playful design. The DRP report dated 13th December 2018 considered that the general quality and character of the architecture had improved in that it appeared as less corporate. Though the panel encouraged distinguishing the tower from neighbouring blocks and elevating its iconic presence by means of special architectural treatment, increased height, and a more prominent position in plan relative to neighbouring blocks. The DRP report dated 13th February 2019 considered that the ambitions to distinguish the tower from neighbouring blocks had not been met and that a "simple but well detailed extruded form for the tower

may have further potential”. The panel sited an “over-reliance on roof level cornices and intermediate storey bands implying two or three storey ‘bases’ and ‘capitals’” as emphasising a “rather ‘commercial’, neo-classical aesthetic”. Being a residential-led development, this character is considered to be inappropriate and does not successfully address National Design Guide policy I3 (Create character and identity).

- 10.118. It is noted that whilst some effort has been made to develop the elevational articulation into a more contemporary aesthetic, the general principles of architectural form, composition and fenestration have not been significantly altered through the pre-application and design review process and thus remain visibly influenced by Georgian blocks, appearing as incongruous with the nature of the Marina site and failing to respond to the panels suggestion that a contemporary architectural response would be more appropriate.
- 10.119. The Urban Design Officer goes on to state that the Marina is a gateway to the city from the east and the outer harbour scheme has the potential for impactful presence in this location. It is considered that the homogeny and Georgian inspired architectural response of the current proposals fails to achieve such presence on the site.
- 10.120. Design matters must be considered in the context of paragraph 130 of the NPPF which states that “permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development.”
- 10.121. As such, the development plan does not impose a particular architectural style on the site but requires that development raises the standard of architecture and design in the city and establishes a strong sense of place. It is not considered that building design is of an acceptable quality, nor one that would enhance the Marina environment. It is therefore considered to be contrary to Policies CP12 and DA2 of City Plan Part 1, as well as the National Design Guide.

Layout

- 10.122. In terms of layout, the Design & Access Statement describes the “Key Urban Drivers” behind the proposals as follows:
- Improving connectivity, experience and setting
 - Creating a new urban language for Brighton Marina whilst drawing on references back to the heritage of Brighton’s squares and crescents
 - Providing meaningful and sustainable public realm

- Improving the experience and interaction with the sea by the creation of a new waterfront promenade
- Consider local and wider views of the development and its relationship with the existing townscape
- Reducing podium level vehicular movement
- Design a scheme which integrates with potential future development to the north of the site.
- Creating a new square for Brighton These ambitions are based on contextual analysis which focuses mainly on existing movement networks and historic urban grain of Brighton & Hove's seafront.

10.123. The Urban Design Officer considers that the items outlined offer creative possibilities in the form of the "new square" and "promenade"; and they go some way to addressing policies C1 and C2 (Context) of the National Design Guide. However, at a local level officers consider that they do not sufficiently address requirements of PAN04 (Brighton Marina Masterplan).

10.124. PAN04 outlines clear and detailed Masterplan and Development Objectives for the Marina. Masterplan objectives are categorised into Regeneration, Transport, Land Use, Ecological, Environmental and Linkages. Development Objectives are largely aligned with City Plan Policy DA2, but also include reference to social infrastructure for cohesive communities, as well as character areas identified within the document as "Cliff Park", "Urban" and "Seafront". These character areas are explored in some detail and include precedent images to "illustrate the qualities the LPA will be looking for in development proposals coming forward".

10.125. The relevant character area to the Outer Harbour site is "Seafront" which is described as follows: "The public realm within this area should be outward looking and should take advantage of views of the sea and harbour areas. ...Typical characteristics of this area include: boardwalks, seafront promenade, sitting out areas, viewing platforms, play areas, active frontages, effective lighting for the water's edge, public art etc."

10.126. The development addresses some of these ambitions by including a seafront promenade and new public square. However, it is considered that the proposed development is not adequately "outward looking". It is also considered that the development fails to address the qualities of a coastal setting and thus the character and identity of this high-profile site. Brighton Marina is a unique marine-centric environment, even within the context of Brighton & Hove. Whilst the precedent of sea-facing public squares offers many positive attributes, it is considered that the focus on Georgian heritage and "grand squares and crescents" is incongruous with the character of the Marina which is distinguished from these Georgian frontages by the Urban Characterisation Study (Blackrock Neighbourhood) and thus National Design Guide policies I1 and I3 (Identity) have not been addressed.

- 10.127. Furthermore, CPP1 Policy CP13 (Urban Design) states that “Innovative contemporary architecture, which enhances the reputation of the city... will be actively encouraged”; and it is considered that the focus on Georgian heritage has limited the potential for innovative and contemporary proposals relative to context. Importantly, the PAN04 Masterplan consistently refers to conserving and enhancing the ecological environment of the Marina; and CPP1 Policy DA2 outlines the local priority of “Conserving and enhancing the biodiversity and geodiversity of the area through the implementation of an ecological master plan which ensures wildlife habitats are integrated throughout”.
- 10.128. The ‘Building Better, Building Beautiful Commission report, Living with Beauty’, states “The greening of the city should involve a systematic weaving of the natural world into the built world and with it a concern for the biodiversity of the entire area”. In order to achieve an “ecological masterplan” and a “systematic weaving of the natural world”, considerations of biodiversity and geodiversity should be fundamental aspects of the development vision, informing site layout and landscape design from the beginning. These considerations do not appear as fundamental to the proposed development strategy and this has been detrimental to the success of design proposals.
- 10.129. Aligned with comment above regarding the overarching site vision, it is not considered that the proposed masterplan proposals respond well to their context and do not appear to have been landscape-led. It is considered that the impact and dynamism of coastal environments is not successfully translated into the proposals. The site layout and building forms present as static and contrived and, particularly block 1 of Phase 2, appear not to have “eroded” as significantly as the “Erosion Part Diagrams” in the Design & Access Statement suggest.
- 10.130. The DRP had previously encouraged a more playful, relaxed design approach and, despite the introduction of a crescent frontage within Phase 3 which the DRP stated was “sympathetic to Brighton”; this does not appear to have been explored to great success. The coastal erosion concept could have informed greater irregularity in site layout and building form, resulting in a more innovative and impactful ecological masterplan appropriate to this high-profile site and to context, generating an improved character. As such, the proposed masterplan does not successfully address National Design Guide policies on Identity, Built Form or Nature.
- 10.131. The DRP report dated 26th October 2018 reads “The Western Harbour development in Malmo, Sweden could be a useful case study as a site in a similarly exposed environment that was informed by a landscape-led strategy from the outset. More exposed public spaces with sea views and a mix of uses contrast with sheltered residential spaces, and the transition between these is

handled successfully. Narrow openings are used strategically to create shelter from the elements, and this kind of consideration could help inform the approach to Brighton Marina to create a development that functions throughout the year”.

10.132. The suggested precedent of Malmo Western Harbour utilises tightly grouped blocks which are formatted into a courtyard typology, overcoming issues of poor daylight and outlook, sheltering residential amenity from inclement weather conditions, and creating clearly identifiable function and purpose to the open spaces between blocks. These clusters of built form are interwoven with large open spaces which benefit from exposure and sea views, creating a legible rhythm of density and relief on the site which both invites in and shelters from the exposed coastal setting successfully.

10.133. Conversely, the current proposals present singular and regimentally spaced residential blocks which result in poorly defined external spaces and do not offer sheltered communal amenity areas, thus struggle to foster community spirit and do not respond well to the exposed context. The proposed crescent frontage disengages the “Exotic Gardens” from the coastal setting and as such these and the residential blocks to the north of Phase 3 are not considered to be “outward looking” (a priority of the PAN04 Seafront Character Area) nor to invite in the coastal setting. Whilst sheltered outdoor space is greatly important to this development, such a large portion of the site area should benefit from a more open outlook and sheltered spaces should be more intimate in scale and more clearly defined. Further, the current strategy is to close the “Sunset Square” area on the south western corner of the site during inclement weather conditions and possible wave overtopping, which presents a dysfunctional relationship between proposals and their exposed setting.

10.134. National Design Guide Policy B2 (appropriate building types and forms) states that “The built form of well-designed places relates well to:

- the site, its context and the opportunities they present;
- the proposed identity and character for the development in the wider place;
- the lifestyles of occupants and other users; and
- resource efficiency, climate change mitigation and adaptation.

10.135. The site layout as currently proposed does not successfully address this policy. It is considered that a similarly varied relationship to the coastal setting as presented by the Malmo Harbour development would align more closely with the concept of natural coastal erosion and could generate a holistic and comprehensive strategy for outward looking open space combined with high density residential typologies, generating clearly defined and adequately sheltered residential amenity; as well as biodiversity & geodiversity enhancement throughout the site; thus successfully addressing key policy

objectives of the PAN04 masterplan and CPP1, as well as the recommendations of the National Design Guide.

- 10.136. A landscape-led strategy such as this could also positively address the issue of overtopping waves and severe wind conditions on the south west of the site by utilising nature-based and climate resilient landscape design in place of manicured lawn and hard surfaced areas. Consideration of closely grouped residential typologies could also inform a strategy for social infrastructure and sustainable, healthy community; a key objective of the PAN04 Masterplan document.
- 10.137. The DRP raised concern with regard to connectivity between the proposed development site westward to Black Rock, northward to potential future development, and eastward to the Phase 1 development. Whilst integration with Phase 1 development has been partially addressed by aligning the east-west corridor in Phase 3 with the gap between Phase 1 blocks; integration with future development to the north could be better achieved by addressing this east-west street on the northern site boundary more positively. The DRP report dated 13th February 2019 reads: “As the site is accessed from the north, the way it interacts at ground level along the northern boundary will be significant to people’s experience of the scheme. It is vital that it is perceived as an integrated city street rather than a service road in the final proposal.
- 10.138. It is considered that the current proposal for largely solid basement façade screening parking and plant creates an inactive, hard, impermeable and uninviting frontage which would reinforce the current status of the road as a service road and, as such, jeopardizes the success of the proposed development and future development of the Inner Harbour site.
- 10.139. Western connection to Black Rock has been addressed by creating a new, step-free access point from the existing western breakwater onto the new Phase 2 podium deck. The deck in turn offers a direct, step free connection to the existing Phase 1 promenade and access to the Inner Harbour, greatly improving general access for pedestrians and cyclists to Brighton Marina. Nevertheless, commentary on accessibility across the breakwater is set out in the transport section of this report.
- 10.140. Addressing the east-west street on the northern site boundary and how this interacts with the Western Breakwater and The Boardwalk to the east in Phase 1 is critical to optimising permeability and establishing a well-connected public realm. National Design Guide policy M2 (Movement) states that “Well-designed streets create attractive public spaces with character, through their layout, landscape, including street trees, lighting, street furniture and materials”. As

currently proposed, the design does not address this policy, or National Design Guide policies on Nature or Public Spaces

- 10.141. In terms of the layout of the public realm, the DRP report dated 26th October 2018 reads “The inclusion of a fully public boardwalk is a positive development since the previous proposal. The ambition to attract people from the wider area with kiosks and mix of uses is encouraging, but the challenge of attracting a sufficient amount of people to this relatively isolated location should not be underestimated... Appropriate landscape treatment for this highly exposed environment must be explored. The garden shown beneath the tower is unlikely to be enough of a draw in itself to attract people away from more accessible beaches in the wider area”. This was a recurring theme in subsequent DRP reports.
- 10.142. Notwithstanding the positive comments above, the scale of the boardwalk and “Sunset Square” has been reduced since the originally presented scheme. Added to this, the anticipated closure of “Sunset Square” during inclement weather conditions illustrates that the public realm strategy does not enjoy a positive relationship with the environmental conditions of the site which officers consider symptomatic of an ill-conceived layout.
- 10.143. Having regard to all of the above, officers consider that the application does not sufficiently address the policy requirements of PAN04, DA2 or CP13 and also fails to adhere to National Design Guidance.

Sustainable Transport

- 10.144. City Plan Part 1 Policy CP9 seeks to promote sustainable modes of transport and cycling and walking in particular, to reduce reliance on the private car. Local plan policy TR4 promotes the use of Travel Plans. Policy TR7 seeks to ensure highway safety. Development is expected to meet vehicular and cycle parking standards set out in SPD14.

Impact on Highway Capacity

- 10.145. Data provided with the application indicates that several arms of the Black Rock tunnels junction, closest to the Marina site are over capacity with development traffic so a contribution of £125,000 is proposed to be secured by a S106 agreement to upgrade the traffic signal junction with the MOVA (vehicle-activated/smart) system. Other junctions would remain under capacity with the proposed development so no further mitigation works would be required.

Emergency Vehicle Access and Routing

- 10.146. Initial concerns regarding an additional emergency service vehicle access to the Marina were raised and in response the access and circulation diagrams now confirm that emergency vehicle access will be via the Breakwater. Some issues remain in terms of the access being via the narrow upper tier, which is about 3.3 metres wide between walls. Should an incident occur there could be concerns about where pedestrians and cyclists using the route will move to should vehicles need to use this route. In such exceptional circumstances when an emergency vehicle may require access, it will be essential to ensure that the area is cleared of people to prevent conflict, or further access by pedestrians and cyclists prevented, by some form of management plan for emergency vehicle access which should be secured by condition.
- 10.147. The need for an additional access, as sought by the 2008 PAN, is addressed by the applicant by stating that there is already an additional access to/from the Marina available via the existing Black Rock site. An egress to this exists from the Marina up ramp, and Marina traffic has a right of access over this in emergencies. Also, it reiterates that a further connection that will act as an emergency service access to the Marina is proposed within planning application BH2020/00042 for enabling works surrounding the Black Rock site. This is an application being made by the council. Although it is still to be determined, its design provides a clear indication of the intended route as part of the detailed design of these works. Also, the applicant has confirmed that East Sussex Fire & Rescue Service's views have been sought on the plans and it has not objected to the proposals.
- 10.148. The applicant has provided some illustrative plans in order to secure sufficient width along the Phase 3 Promenade to enable it to be used an emergency vehicle access route. It indicates a 4.75 metre width should be sufficient, made up of a 2.75 metre access zone for a heavy vehicle and a further 2.0 metres beside this for pedestrians to move into. It recommended that the zone is increased to 5.0m and if acceptable, then subject to some adjustments to the wording on the parameter plan (e.g. to confirm that this area is to be level and to remain unobstructed at all times by tables and chairs and any other temporary or permanent street furniture or planting) then this would be considered satisfactory. Details of the emergency access route along the Phase Three Promenade could be conditioned if permission were granted.

Car Parking

- 10.149. The development mix for Phase Two is 450 x studio, 1 bed, 2 bed and 30 x 3 bed. The maximum number of spaces in accordance with the standard is 255 excluding visitors. For Phase Three, the mix is to be confirmed and further details will be required to confirm the ratio. The existing Phase One parking includes 350 spaces, of which 190 are leased to residents of the 195 units. 40 spaces within the 350 are designed for blue badge holders, and 30 of these are

leased. There are also 30 motorcycle spaces. The parking is not allocated to individual phases and therefore the remaining car parking spaces can be made available for Phase Two and Phase Three residents upon application.

10.150. Within Phase Two, 44 out of 48 car parking spaces are designed with appropriate dimensions to be accessible to disabled people, while for Phase Three, 53 out of 108 spaces are designed to this standard. This level of provision for disabled people remains below the minimum standard expected for a development of this size, which should be 72 and 78 spaces respectively. In addition, the parking provision should include at least 5% of the maximum total car parking standard for motorcycles. Given the level of shortfall against policy TR14/SPD14 outlined above, this provides grounds for objection. However, the applicant has stated that the observed utilisation of parking spaces within Phase One, and the existing provision which also includes spaces that can be used by occupants of Phases Two and Three, provides a justification that the overall level of provision is adequate. The allocation of spaces within the development is also reviewed on an annual basis and therefore the applicant would be prepared to provide a Car Parking Management Plan to ensure that parking is provided to a suitable level for all users.

10.151. It has also been noted that the plans for the undercroft car park indicate that access to blue-badge holder space 39 would be obstructed by a pier. This presumably serves a structural purpose and cannot be easily moved. This bay should therefore be removed, and the design of spaces reviewed.

10.152. Notwithstanding the above, if permission is granted a robust Car Parking Management Plan could be submitted as a condition which details a revised parking layout plan to ensure that the overall parking provision and design is adequate, especially for the minimum number of disabled person's spaces that will be included at the start of the scheme.

10.153. There is no visitor parking provided but the Marina multi-storey car park is owned and managed by Land Securities and the Outer Harbour lease allows for the use of this car park by visitors to the wider Marina site, including Phases Two and Three.

10.154. Ten percent of the proposed car parking spaces will have active provision for electric vehicle charging, with passive provision for a further 10%, which is in compliance with the council's parking standards above. Therefore, the proposed development will provide up to a total of 16 spaces with active provision for electric vehicles and passive provision for a further 16 spaces. For Phase Two there would be eight spaces with active provision for charging and a further eight with passive provision. For Phase Three the provision would be as per Phase Two with eight spaces with active provision and another eight spaces with

passive provision. Details of the electric vehicle charging spaces will need to be conditioned.

- 10.155. The quantum of non-residential development includes up to 1,561 sqm of A1-A4 (retail and bars/restaurants), B1 (office space), C3 Ancillary Residential and D1/D2 (non-residential institutions), which will be allocated flexibly. The parking standards for the size of space would therefore vary between 16-78 however there is no provision made within the proposal. Disabled driver spaces would be a percentage of total spaces, if no spaces are provided there is still a requirement of at least two disabled spaces as a minimum. Phase One has 30,000 sqm of commercial space and no parking provision, on the basis that there are available spaces within the Marina's multi-storey car park.

Travel Plans

- 10.156. As agreed at the scoping stage, a Residential Travel Plan Framework has been submitted as part of the application and a Workplace Travel Plan would be secured by planning condition. The Travel Plan set out objectives to reduce the use of single occupant cars. The Residential Travel Plan Framework Workplace Travel Plan could be secured via appropriate obligations or conditions if permission were granted.

Pedestrian and Cyclist Access

- 10.157. The existing Marina breakwater is expected to be the sole point of direct access to the site from the seafront for pedestrians and cyclists. The route is approximately 200 metres long and is 7 metres wide for most of its length. A short section (30 metres) of the breakwater access on the upper tier, which provides pedestrian and cycle access to the development, has a reduced width which is only approximately 3.3 metres wide between walls that restricts the ability of it to be shared by pedestrians and cyclists (either segregated or mixed) and therefore this section does not comply with inclusive design guidance. As such this raises safety and inclusion concerns as all access to the Phase Two site therefore will have to pass along the breakwater's narrow southerly upper tier.
- 10.158. In order to provide segregated access for mounted cyclists to and across the site via the Breakwater without generating conflict with pedestrians it was recommended that the breakwater be re-engineered to create a wider, single deck access. However, the applicant has not included these works because this is no longer feasible for reasons of cost. Further iterations of design have included removal of any access for mounted cyclists beyond the existing gates to the narrow section. Cyclists would therefore be expected to push their bikes up the ramp to access the podium as the destination. The applicant's current proposals are to retain access for cyclists along the existing breakwater width without re-engineering/widening it, based on guidelines within the London Cycle

Design Standards (LCDS) that allow cyclists to share space with pedestrians. These state that where cycle flows are lower, sharing can be advisable, although these standards are not adopted by the Council.

10.159. This therefore creates a short section of route where there is potential for conflict that cannot be physically overcome, and this could provide grounds for objection. The applicant has estimated that there will be a total of just over 20 cycle trips in each peak hour from the development and therefore sharing is the appropriate design approach, along similar lines to Undercliff Walk. The only way to minimise such conflict would be to revert to a requirement to remove access for mounted cyclists over this short section of the breakwater, which it is acknowledged would not provide a continuous route into the development via the new Promenade.

10.160. Whilst the relevant section of breakwater is relatively short in length, the incompatibility of it being used for mounted cyclists as well as pedestrians would serve to sever a direct cycling connection to the site from the north and west. Policy DA2 states that one of the key objectives of development in this location is to “enhance the transport infrastructure at the Marina, promote more sustainable forms of transport and maximise opportunities to reduce car ownership”. By failing to provide a segregated cycle access, it is considered that the development would significantly diminish the usability of the route for cyclists and would fail to sufficiently promote sustainable forms of transport. Officers will go on to set out significant concerns regarding the level of cycle parking which exacerbates the lack of provision for cyclists and the failure to sufficiently promote sustainable forms of transport. In this regard officers consider that the application is contrary to policies CP7, CP12, DA2, TR14 and NPPF paragraphs 110-112.

Minimising Access Closures (breakwater)

10.161. The applicant has confirmed that, historically, the breakwater needs to be closed for access for approximately 30 days each year due to safety issue posed by overtopping waves. This would mean pedestrians and cyclists would be unable to use this to gain access to the site from the seafront at those times. They would instead have to rely on the problematic access through the existing Marina. The applicant has confirmed that for those 30 days, the breakwater would not necessarily need to close for the entire day on each occasion, although existing inspection regimes mean that it typically closes for a minimum 12-hour period on each occasion. Therefore, a management plan has been proposed which could be secured by condition or obligation to minimise closures to the shortest period possible.

Pedestrian Access (within Marina)

- 10.162. Transport Officers have also raised concern raised in respect of pedestrian access to the site from within the Marina being proposed along the western end of the service road. The concerns arise from the fact that there is no footway and the applicant has advised that it is not feasible cannot secure improvements because of third party land ownership issues. This matter is considered important because during poor weather it will be necessary to close the other main proposed access point via the breakwater for safety reasons. This is expected to occur for 30 days of each year (though not necessarily for the full day). At such times, pedestrians would be reliant on an alternative, internal route.
- 10.163. The applicant has therefore amended the proposed alternative access and circulation plans within the Marina to enable pedestrian access to the site via the existing zig-zag ramps opposite McDonalds at the eastern end of the service road, with pedestrians progressing into the site via existing development – including the constructed Phase One. When used as the alternative route during breakwater closures, this revised route is not ideal to reach the development as it is indirect and could be difficult to navigate. This could be overcome by the introduction of a simple pedestrian crossing and footway improvements on the corner of the service road to link the existing western footway to the start of the temporary access way between Phase One and Phase Two. However, this cannot be provided due to third party land ownership issues.
- 10.164. It has been noted that this pedestrian route, which uses existing surfaces/routes within the Marina which have been in place for some time to reach the zig-zag ramps, does not comply with inclusive design guidance. Unfortunately, as the applicant has explained that these routes are on third-party land outside their control and without the advance agreement of the third-parties before determination, changes to those areas could not be secured with any decision on this application and it is therefore not possible to recommend any conditions or obligations to mitigate this in this instance. It is expected that future development proposals within the Marina will result in improved routes and connections that are accessible to all.
- 10.165. Original access proposals for cyclists and pedestrians have been amended, although parts of the revised pedestrian access route within the Marina are not covered within the PERS (Pedestrian Environment Review System) assessments that were previously submitted, including proposed access from the service road via the existing Phase One. Given that this will be the only means of pedestrian access to the site when the Breakwater is closed, this additional information should be provided to enable any issues to be fully understood. Routes affected by changes to access and circulation should also be included. It is recommended that a further PERS Audit will be secured by condition. Pedestrian routes should also be marked out within the undercroft car park in order to comply with policies TR7 (safety) and NPPF para 110b

(inclusive access) amongst others. This requires changes to plans to address this and should be conditioned.

- 10.166. The introduction of an external public lift in Phase 2 to provide access between podium level and the service road below is welcomed. It is understood that the proposed lift is sized to accommodate 2 bicycles at the same time. If permission were to be granted additional details on this provision could be secured by condition.

Connectivity with Black Rock

- 10.167. Reference has been made to a footbridge over Black Rock beach to the west of the Marina which formed part of the extant permission. However, this reflected previous designs for the Black Rock site which are now no longer being pursued.

- 10.168. However, the previously agreed secondary route for the proposed Rapid Transport System [RTS] (approved in January 2005) is along the beach (southern) side of the Black Rock site which would be superseded by the recently-approved Black Rock application (BH2020/0042) which proposes a northerly alignment of the RTS. This proposed change is a clear indication that plans for the Black Rock site's redevelopment. The proposed new alignment also enables the creation of a new promenade area along the southern edge of the Black Rock site which will connect to the existing Marina breakwater to provide for walking and cycling connectivity. This being the case, it is not considered that requiring a footbridge link to Black Rock beach would be justified or appropriate. Cycle Parking

- 10.169. The proposal includes up to 477 cycle parking spaces for residents (317 for Phase Two and 160 for Phase Three) and up to 224 cycle parking spaces for visitors (20 for Phase Two and 204 for Phase Three, which includes 30 BTN Bike Share spaces). The quantity and quality of proposed long-stay and short-stay (visitor) cycle parking in Phase Two has been assessed and it has been noted that there is a very significant shortfall against Policy TR14 and SPD14 minimum quantity standards. The council's Parking Standards require a minimum provision of 510 and the applicant is proposing 300.

- 10.170. Policy TR14 requires access to parking to be convenient and readily accessible. Issues include some rather cramped cycle stores and a number of two-tier stands which are not fully accessible. NPPF para 110B also requires the transport needs of people with disabilities and reduced mobility to be addressed and this is not achieved owing to a lack of parking for disabled cyclists' bikes and overreliance on two-tier stands.

- 10.171. The applicant has suggested that the shortfall in Phase Two cycle parking could be addressed by utilising unoccupied cycle parking spaces within the Phase One

parking, as the original permission does not designate spaces to each phase of the development. This could serve to increase the supply ratio somewhat (albeit still significantly below SPD14 levels). The applicant has indicated that the level of under-occupation in Phase One is 37 out of 230 spaces, however it is considered that spaces in Phase One are too distant from Phase Two to be convenient for residents and visitors to utilise. The proposed level of provision is therefore not considered to be in accordance with SPD14.

- 10.172. As part of Phase Three the applicant will fund provision of 20 extra Bike Share cycles, which would require 30 docks to be accommodated within the public realm of the site and this will be a S106 requirement with details of the location and means of access to be provided.
- 10.173. In summary, whilst the applicant may point to a purported lack of occupancy within Phase 1 of the development, even if this were the case cycle parking standards are predicated on catering for both existing and future demand including sustainable modal shifts. In line with Policy DA2, development on this site should promote sustainable forms of transport and through providing such a significant shortfall within Phase 2 of the development the development would fail to adhere to Policies DA2, TR14/SPD14 and NPPF para 110b and para 108c. Given previously mentioned inadequate cycle access to the west of the site, it is considered the cumulative inadequate access and inadequate parking is symptomatic of the development failing to provide a sustainable form of development in transport terms.

Construction and Demolition Environmental Management Plans (CEMP and DEMP)

- 10.174. Consideration of the activities involved in construction and demolition activities requires a workable access solution to be achieved in principle. This is because of the constrained access to the site, the potential impact on bus services to the Marina were the service road to be obstructed (there being no obvious alternative turning area for them within the Marina) and the third-party ownership issues raised by the applicant that will affect the routes that will be used to access the site for demolition and construction.
- 10.175. A review of the information within the Environmental Statement about proposed construction sequencing and access and the roads within the Marina suggests that there is sufficient confidence that the principle of achieving suitable management plans and of meeting necessary planning tests is feasible. A DEMP and CEMP could be secured by condition if permission were granted.

Other Transport Issues

- 10.176. Some changes to the proposed design of the Phase Two undercroft appeared unclear about how a through-connection for vehicles (including potentially

service vehicles) could be achieved into a future Phase 3 undercroft and beyond. This was because the available width for such a connection had reduced owing to changes to the design of the Phase Two access ramp and the introduction of bike stores. An amended plan showing a combined Phase Two and Three undercroft has been provided, although this is illustrative since Phase 3 is an outline application. To assist with interpreting this plan, a swept path analysis should be provided to address this concern. Further details of the Phase Two and Three undercroft could be secured by condition.

- 10.177. Some concerns were raised during the application process over the ability for delivery and service vehicles to access the site, but it is accepted that in principle, this can be provided. It is considered that a Delivery & Service Management Plan should be secured by condition in order to provide assurance that movements to and from the site within the Marina can be managed safely and effectively.
- 10.178. Concerns were raised over access to disabled cycle parking spaces within the Phase Two undercroft, but it is considered details of levels and gradients of all access ramps could be secured by condition if permission were granted, to ensure this could be managed.
- 10.179. The original extant planning permission had an allowance for up to 30 car club spaces being implemented, provided there was sufficient demand to justify that level of provision. Two vehicles are currently provided based on demand. Based on current usage, the applicant is proposing to maintain that allowance, with up to 6 vehicles provided. However, it should be noted that the level of car club provision ultimately depends upon the car club providers' assessment of demand. Further discussions with the Car Club provider could be entered into post-submission, and details could be secured via a planning condition if permission were granted.

Sustainable Transport Contribution

- 10.180. Based on a pre-October 2020 policy framework and based on the council's 2017 Developer Contributions Technical Guidance, the Marina site is considered to be within the intermediate zone (where access to more sustainable forms of transport is less available than the city centre), and therefore there will be a 25% reduction on the maximum level of the calculated financial contribution. The calculated contribution for transport is therefore 11,587 person trips x £200 x 0.75, which amounts to £1,738,050. This
- 10.181. If permission were granted post October 2020, the development would require direct mitigation in the form of the proposed bus-based Rapid Transport System; the delivery of the Valley Gardens Phase 3 scheme; off-site cycling and walking routes and infrastructure linking with the site; measures on the A259 to minimise

congestion; and improvements identified within the council's Bus Network Review on routes to and from the site. Due to the new CIL regime post October 2020 it would not be appropriate for a tariff-based contribution to be secured through the S106 and thus the Council would seek to secured costed schemes of improvement for the abovementioned items if permission were to be granted

Impact On Amenity

10.182. Brighton & Hove Local Plan states that planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health. Policies SU9, SU10 and SU11 of the Local Plan seek to protect amenity and human health from air pollution, noise, nuisance and polluted land and buildings. SPGBH15 Tall Buildings states that proposals will be expected to be well designed and consider their climatic effects on their surroundings including overshadowing and wind speeds, to ensure the environmental quality of the locality.

Daylight, Sunlight, Outlook and Privacy

10.183. Daylight and sunlight provision to the new dwellings has been assessed as part of the application submission within the 'Brighton Marina Outer Harbour: Phases 2 & 3 Internal Daylight, Sunlight and Overshadowing Report'. The Council subsequently instructed BRE to undertake a critical analysis of the Avison Young report.

10.184. For daylight in new dwellings, the main criterion is the average daylight factor (ADF) which measures the amount of daylight within a room, whilst the assessment methodology for sunlight to new dwellings is annual probable sunlight hours (APSH).

10.185. In terms of daylight, the BRE standards recommend the following minimum values for ADF:

- - Bedrooms - 1.0%
- - Living rooms – 1.5%
- - Kitchens – 2.0%

10.186. The submitted assessment states that 92% of the open plan living room/kitchen/diners would achieve the requisite 2% ADF for a kitchen, whilst 97% would achieve the recommended 1.5% ADF for a living room. Furthermore, 92.5% of bedrooms would achieve target of 1% ADF which BRE has confirmed is satisfactory.

- 10.187. However, the BRE review goes on to identify numerous pinch points within the scheme which are centred around Block 2 within Phase 2, because of the narrow separation from Block 1 (12 metres) and Block 3 (8 metres).
- 10.188. As a result, there would be non-compliance with BRE standards in 8% of kitchen/diners and 8% of bedrooms in Block 1; 7% of kitchen/diners and 8% of bedrooms in Block 2; and 8% of bedrooms in Block 3.
- 10.189. Within Phase 3, the northern elevations of Blocks 6 and 9 also have areas of non-compliance, with 6% of kitchen/diners and 14% of bedrooms in Block 6 failing to adhere to the BRE standards, and 6% of kitchen/diners and 12% of bedrooms in Block 9.
- 10.190. Officers recognise that a balanced view must be taken in terms of daylight, and that it is unrealistic to expect that a scheme would deliver 100% compliance. The proportion of non-compliance with BRE standards is not itself a reason for refusal, but weight must be given to the fact that these failures are directly attributable to the inadequate separation distances between buildings within the development, which is symptomatic of the built density of the site.
- 10.191. In terms of sunlight, BRE standards recommend that living rooms receive 25% of annual probable sunlight hours, including 5% in winter. The submitted assessment sets out annual probable sunlight hours for rooms in the new development, which again, has been subject to review from BRE on behalf of the Council.
- 10.192. Across the whole development, the report shows that 56% of the kitchen/diners would meet the sunlight requirements in full; a further 3% would meet the annual recommendation but not the winter one; and 5% the winter recommendation but not the annual one. Eight percent are southerly facing but would not meet either recommendation.
- 10.193. BRE note that there are some areas of poor sunlight provision, particularly in Block 1 where the proximity of Block 2 limits the sunlight received by the south façade, whilst in Phase 3, Block 8 would also cause some overshadowing of Block 9.
- 10.194. Notwithstanding the potential pinchpoints set out above, BRE conclude that because of the coastal location, “most of the proposed development would be reasonably well sunlit, which is to be expected given the complete lack of obstruction to the south.” Whilst this may be the case, officers note that, again, the areas of poor sunlight are attributable to the inadequate separation distances, so that as with daylight, while not in itself a reason for refusal, gives weight to concerns regarding the density of the development.

- 10.195. In terms of outlook and privacy, the same elevations that would experience reduced daylight would also experience loss of privacy, due to their close proximity to each other.
- 10.196. In Blocks 1 and 2, most of the units within the facing elevations would be dual aspect, with the other aspect allowing for a good outlook from the primary living spaces. The only exception to this would be a single column of studio flats to the south elevation of Block 1. In Blocks 2 and 3, similarly, most of the units in the facing elevations with the reduced separation distance would be dual aspect, with the exception of two columns of 1-bedroom units on the southern elevation of Block 2.
- 10.197. Notwithstanding the above, the single aspect columns of units on the southern elevation of Block 2 would contain a total of 30 units which would have the outlook from their primary living area significantly restricted and dominated by their proximity to Block 3, at just 8 metres away. Likewise, the single aspect columns on the southern elevation of Block 1 would comprise a total of 11 units with inadequate outlook due to the 12-metre separation distance. The facing windows for each of the single aspect units would comprise bedroom windows which would also result in an unacceptable risk of mutual overlooking. Again, these impacts are directly attributable to the inadequate separation distances and will be taken into account in the wider assessment of residential quality and the wider planning balance.
- 10.198. In terms of overshadowing of the public open spaces, BRE guidelines recommends that no more than 50% of such an area should be prevented by buildings from receiving 2 hours of sunlight on 21 March. An overshadowing assessment is included submission which considers the access to sunlight of all of the public open spaces across both phases of development.
- 10.199. The assessment shows that most of the areas towards the south of the site, adjacent to the sea frontage, would receive over the 50% threshold on March 21 so would comply with this requirement.
- 10.200. However the assessment concludes that the courtyard garden of Block 1 and the vast majority of the spaces between the blocks in Phase 3 would fall below the requisite 50% threshold. These areas that fail to meet the requisite standard contain all of the development's proposed communal amenity spaces which the applicant proposes in lieu of private amenity space. Given that these would be the only semi-private spaces available to residents, it is especially important that they provide a welcoming and well sunlit space. The fact that the communal gardens would not receive the requisite levels of sunlight would significantly

diminish the quality of the spaces, to the detriment of the living conditions of the residential occupiers.

- 10.201. On this basis, the lack of sunlight to the communal amenity areas is unacceptable in itself, and in considering the overall provision of amenity space in the development, is exacerbated by the zero provision of private amenity space.

Overshadowing of Neighbouring Properties:

- 10.202. BRE has reviewed documents submitted with the application relating to the daylight and outlook for existing neighbouring properties, namely the flats in Phase 1 of the Marina. This concludes that while the development would have a moderate adverse impact on daylight conditions within Phase 1, and that some significant relative losses to a number of rooms, these are largely due to the design of Phase 1 and in particular the overhanging balconies which result in already low levels of daylight.

Air Quality:

- 10.203. NPPF sets out that air quality is a material consideration for the planning process. City Plan Part One states that new development proposals should take account of their impact on local air quality, be consistent with the council's Air Quality Action Plan and minimise or avoid increased exposure to existing poor air quality within the Air Quality Management Area which covers much of the Inner City. Improvements and/or mitigation will be sought wherever possible.
- 10.204. The most significant predicted contribution to local air quality from additional traffic emissions is to Grand Parade (A23) which the EIA determines as being 'major adverse' due to Phase 2, and 'moderate adverse' after Phase 3 is completed, as the annual mean NO₂ concentration against which the impact is measured is forecast to reduce over time. As the contribution from the development is characterised as 'significant', it is appropriate that the applicant has costed the additional emissions as a guide to the level of mitigation required (in accordance with regional and national air quality planning guidance. These costs for both phases are calculated to be almost £815,000 (£415,000 for Phase 2 and £400,000 for Phase 3).
- 10.205. The applicant has explained the on-site mitigation that is providing that it expects will assist in mitigating the air quality impacts of additional traffic from the proposed development including provision for 15 electric vehicle charging points, car club vehicles, a residential travel plan to promote sustainable transport use, and the adoption of a sea water heat pump system to avoid additional gas fired combustion with chimney on site. The applicant will also investigate the viability of measures to ensure commercial vehicles and fleet operations meet emissions standards through appropriate measures. The Air

Quality assessment also highlights the need for off-site mitigation; although this is not specific other than that it should focus on walking and cycling.

10.206. It is considered that the sustainable transport initiatives proposed on-site would be standard good practice requirements without the necessity to mitigate pollution impacts on the AQMA and to meet the planning policy requirements set out in Policy SU9. Whilst these measures are welcome, additional measures are considered necessary to help reduce traffic or mitigate the predicted major adverse impacts of the additional development traffic in the A23 corridor north of Edward Street (especially along Grand Parade) or contribute towards addressing smaller contributions elsewhere.

Wind Microclimate

10.207. As part of the application submission, the applicant commissioned a Wind Microclimate assessment which was submitted as a chapter of the ES. BRE were subsequently instructed by the Council to undertake a review of the relevant chapter.

10.208. The initial BRE review identified several areas of concern which are set out below:

- The assessment identifies several locations around the development where the wind conditions would exceed the distress/safety criteria, even with mitigation;
- The assessment identifies several locations around the development where the wind conditions are shown to be unsuitable for the intended use, even with mitigation;

10.209. A supplementary wind assessment was subsequently provided by the applicant, which included a Brighton Marina Outer Harbour closure management strategy.

10.210. The purpose of the closure strategy is to mitigate unsuitable podium wind conditions by keeping people away from those areas in high wind (and/or high wave) conditions. In high speed winds, pedestrian access to and from the buildings in Phase 2 would be provided by means of the undercroft from which there is core access to each building. BRE are content that from a wind perspective such an approach would be a sensible and pragmatic approach.

10.211. To this end, a robust condition would be attached to any permission securing the details of this closure strategy, mitigation and a monitoring regime to be implemented. Subject to this condition, officers consider that the application is acceptable from a wind microclimate assessment.

Noise, External Lighting and Odour:

10.212. In terms of noise generation during construction, these impacts would be temporary in nature and a robust condition would be attached requiring the

applicant to submit a Construction Management Plan (CEMP) for approval. Subject to the details of the plan, officers are satisfied that noise impacts during the construction phase can be mitigated.

10.213. In terms of the operational development, there are no significant noise generating uses proposed. The flexible use commercial units could come into use as A3 or A4 premises and as such it is considered prudent to attach conditions relating to the number of such units which can come forward (consistent with the consented scheme). It is also considered prudent to attach conditions relating to opening hours. Subject to these conditions and other noise conditions attached, officers are satisfied that the operational development would not result in any unacceptable noise impacts.

10.214. Likewise, in terms of external lighting and potential odour impacts from the final operational development, it is considered that the development does not propose any significantly high risk uses in either regard and as such any impacts are adequately mitigated by the proposed conditions.

Sustainability

10.215. City Plan Policy CP8 expects all new development to incorporate sustainable design features to avoid expansion of the city's ecological footprint, help deliver the principles of the One Planet approach, and seeks radical reductions in greenhouse gas emissions, particularly CO2 emissions. Residential new build is expected to energy and water performance standards as set out in the policy and a commercial office is expected to meet BREEAM 'excellent' standard. Policy DA4 expects development to incorporate infrastructure to support low and zero carbon decentralised energy and in particular heat networks subject to viability. DA4 also seeks to extend and strengthen green infrastructure in the area and secure enhancements to open space and biodiversity. Policy CP10 expects development to conserve and enhance biodiversity.

10.216. In this context, it is considered particularly important for substantial, high density developments to be as sustainable as possible. SPHBH15 states all tall buildings must be integrated into the public realm, be responsive to environmental conditions and embrace principles of sustainability. SPGBH15 requires submission of a sustainability statement outlining how the proposal will apply best sustainable practices.

10.217. The applicant has submitted Energy Strategy and Sustainability Statement in support of the application which has been subject to review by the Council's Sustainability Officers.

- 10.218. The energy strategy for the site proposes to minimise energy demand through the fabric performance and energy efficiency measures; to install a site-wide heat network infrastructure to provide communal space heating and domestic hot water to all flats and non-domestic buildings with significant heat demands; and utilise a sea-water source heat pump to provide an on-site source of renewable energy generation to serve the heat network.
- 10.219. An initial review of the application was undertaken by the Council's Sustainability Officers welcomed the commitment to the fabric performance and the site wide heat network however asked for clarification on the following matters:
- BREEAM
 - Salt-Water Heat Pump
 - Overheating
- 10.220. The applicant subsequently provided a response and additional information in September 2019 for further review of officers.
- 10.221. In respect of BREEAM, the addendum note explains that the commercial parts of the development will target a 'Very Good' BREEAM standard, instead of the 'Excellent' standard laid down in Planning Policy CP8. This is considered acceptable, given that some BREEAM credits cannot be achieved because of the flood risk, and because the commercial units will be built 'Shell only', while the eventual tenants will fit out the units. This again limits the BREEAM credits that are achievable. The proposal to complete the shell to 'very good' standard and set targets for energy and water in line with the 'Excellent' criteria is considered acceptable.
- 10.222. In respect of the salt-water heat pump, further information about the salt-water heat pump was provided through the addendum to the satisfaction of sustainability officers. The schematic for the heating distribution system demonstrates that it is satisfactory and will provide both heating and hot water whilst the innovative low carbon technology is welcomed.
- 10.223. In terms of overheating, Section 6 of the Energy Statement discusses cooling and overheating and in addition a new Domestic Overheating report was supplied through the addendum which was in line with CIBSE TM59 as requested in the initial sustainability review. The results show that all living rooms and bedrooms pass the overheating design criteria. Additional measures to mitigate overheating of apartments include curtains.
- 10.224. In addition, the communal corridors were identified as being at risk of overheating, as the heating pipes run along them. The note sets out that additional ventilation will be provided to ensure overheating does not occur

which satisfies the overheating requirements and concern expressed in the initial sustainability comments.

- 10.225. In addition to the above, the development would provide 15-16 electric car charging points which meets the minimum requirement set out by the Brighton & Hove supplementary planning document 14 (SPD14). The scheme needs to incorporate a further 10% passive provision to allow for conversion at a later date in accordance with SPD14. In this regard, a condition would be attached to ensure a policy compliant level of provision.
- 10.226. Furthermore, officers welcome the inclusion of brown roofs and one green wall is welcomed to enhance biodiversity on the site, help to reduce the heat island effect, moderate internal temperatures and minimise the visual impact of the site. A plan of these would be secured through condition to show the exact position and layout of the brown roofs and green wall.
- 10.227. All of the necessary details pertaining to the sustainability and energy strategy would be secured by condition. Subject to these conditions, officers consider that the development is acceptable from a sustainability perspective.

Climate Change

- 10.228. In order to minimise greenhouse gas (GHG) emissions from the proposed development and in order to promote climate change resilience the following measures would be incorporated into the development:
- Wastewater efficiency measures and design measures to combat internal overheating;
 - Robust pre-cast concrete and marine grade window systems to withstand current and future environmental conditions in this maritime location;
 - A sea water heat pump system with higher energy efficiency and reduced carbon emissions when compared to a conventional energy centre.
- 10.229. As part of the assessment undertaken, no significant effects on climate change (GHG) were identified during the construction or operation of the proposed development, taking into account the mitigation embedded within the development. The assessment goes on to conclude that, given the scale and nature of the proposed development, and its impact on the UK meeting its GHG reduction targets as defined by the five-year UK carbon budgets, the effects on climate change are considered to be minor adverse and hence there are not considered to be any significant residual environmental effects.
- 10.230. In light of the assessment carried out, and consistent with sustainability considerations, officers consider that the conclusions of the assessment are reasonable. No climate change specific mitigation is considered necessary

through condition over and above that already set out within the sustainability section of this report.

Ecology, Nature Conservation And Biodiversity

- 10.231. Given the nature of the development site, above ground ecology matters were scoped out of the ES and the assessment focused on sea floor (benthic) invertebrates.
- 10.232. The assessment identifies sensitive ecological receptors surrounding the site including local aquatic fauna and marine habitats of the Beachy Head West Marine Conservation Zone (MCZ). The assessment goes on to state that overall no likely significant effects related to ecology, including on designated sites, habitats and protected species would be expected to occur as a result of the proposed development.
- 10.233. The Environment Agency (EA) were consulted on the application and in assessing the relevant ES chapter, they raised concern that, in the absence of details to demonstrate otherwise, the development would cause a direct loss of Intertidal Habitat (muddy shingle) and objected to the application on this basis.
- 10.234. Intertidal muddy gravels are a priority habitat in the Government's UK Biodiversity Action Plan (UK BAP). One of the main objectives is to maintain at least its present extent and regional distribution. Although the area of habitat to be affected by the proposed works is outside designated nature conservation areas, the EA consider it to be a valued wildlife asset.
- 10.235. In light of the above, the applicant was requested to provide the requisite additional information regarding intertidal shingle. The additional detail was subsequently provided to the satisfaction of the EA who were able to conclude that the development would not cause a loss of intertidal shingle and thus withdraw their objection.
- 10.236. Whilst above ground ecology was scoped out of the ES assessment, the chapter does identify ecological mitigation and enhancement such as the provision of biodiverse roofs and more than 40 nest boxes intended for terrestrial invertebrates, starlings, house sparrow and peregrine falcon. The scheme also makes provision for brown roofs that mimic the form and species assemblage of the rare coastal vegetated shingle habitat. All of these measures are welcomed and could be secured through condition.

Flood Risk / SUDS

- 10.237. Given the coastal location of the site, flood risk is particularly important to consider and was thus scoped into the ES accordingly. Section 4 of the Flood Risk Assessment (FRA) and Section 14.2 of the ES provides the necessary assessment which has been reviewed by the EA, LLFA and Southern Water.
- 10.238. The application site is located within Flood Zone 3 and is at raised probability of tidal flooding. Therefore, in order for the development to be acceptable it must pass the Sequential and the Exception tests, as set out within the NPPF.
- 10.239. The site is allocated in Brighton and Hove City Plan Development Area DA2. The 'Sequential and Exception Text for Brighton and Hove City Plan Update 2014' confirms that all Development Area allocations have passes the Sequential Test. The Exception Test was also considered in the report and concluded 'the wider sustainability benefits of development' at the Marina outweighs the flood risks. In this regard, the scheme passes both the relevant NPPF tests.
- 10.240. The FRA reviews all current flood risks to the site and considers future flood risks, in the light of possible climate change impacts. It presents proposals to manage surface water associated with the potential developments and identifies the feasibility of measures necessary to reasonably protect the site against flood risk without adversely affecting third party flood risk elsewhere.
- 10.241. Measures have been incorporated into the development to mitigate the flood risk, predicated on the 1 in 200-year flood level with the more vulnerable uses located above this level.
- 10.242. Additional measures to manage flood risk would include a proposed wave-wall alongside the existing western breakwater, including flood protection measures (gates); a separated drainage system to directly drain over-topping waves back into the Outer Harbour; and restricting access to the ground level public realm areas of the proposed development during high winds/waves. flood protection and resilience measures will be implemented across other areas of the site, and a comprehensive flood warning and evacuation plan will be in place.
- 10.243. It is considered prudent to secure the aforementioned measures through condition and such conditions are attached accordingly. Southern Water were consulted on the application and raised no objection, subject to a condition relating to maintenance of the SUDS infrastructure. Such a condition is also attached accordingly. It should also be noted that the EA raised no objection to the application on flood grounds. Subject to the relevant conditions, it is therefore considered that the application is acceptable from a flood risk perspective.

Marine And Coastal Environment

- 10.244. The impact of the development on the marine and coastal environment is considered within Section 9.2 of ES which assesses the effects on coastal processes through alterations to flows and wave climate; the effects on sediment quality during construction; and the effects on underwater sound climate during construction.
- 10.245. The assessment identifies that the main potential impacts to sediment quality would be through accidental spills of polluting substances during construction. The assessment sets out that if no large spills occur during construction, or effective spill containment prevents any polluting substances reaching the marine environment, the impacts would be negligible. On this basis, a CEMP would be secured by condition to ensure that the construction process was well managed and to minimise the risk in of such spills occurring.
- 10.246. In terms of underwater noise, although there is no practicable way to reduce the sound of piling from affecting the marine environment, the ES sets out that any piling would not propagate a significant distance from the site and as such it is concluded that the impacts would be moderate adverse, although temporary and local.
- 10.247. Officers consider that given the coastal location of the site and the nature of the proposed development and construction, it is inexorable that some element of underwater noise was occur, as set out within the ES. Given the minor adverse and temporary nature of the impacts, officers consider this acceptable.

Crime Prevention

- 10.248. In respect of crime prevention, Sussex Police were consulted on the application and raised no objection to the proposal provided prevention measures are incorporated. This is supported by policy and an appropriate condition is recommended. Officers consider the development of the site would help prevent crime as it will help regenerate the area, introduce more active frontages, natural surveillance and more general activity. Appropriate conditions are also attached in respect of the flexible use commercial units to ensure that if the units come forward as A3/A4 uses.

Socio-Economic Impacts

- 10.249. It is considered that the development would have significantly positive effects on meeting housing needs in Brighton and Hove and would also provide up to 96 full time employment opportunities. In terms of health and education impacts, the development has been fully assessed by the Council's officers and S106 contributions commensurate with the assessed impact would be secured.

10.250. Subject to the S106 contributions on health and education which would fully mitigate impacts in these matters, officers consider that the development would have a beneficial impact in terms of socio-economics.

Conclusions & Planning Balance:

10.251. Paragraph 11 of the NPPF makes it clear that planning application decisions should apply a presumption in favour of sustainable development. Furthermore, it sets out that where relevant development policies are out-of-date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

10.252. As noted previously the Council is currently unable to demonstrate a 5-year housing supply, and as such the relevant planning policies relating to housing delivery are considered to be out-of-date and the 'tilted balance' of paragraph 11 must be applied.

10.253. Therefore, weighing in favour of the application is the housing delivery of 1,000 residential units which would make a significant contribution towards the Council's currently inadequate housing delivery, though it must also be acknowledged that this represents a 342 unit uplift over the consented scheme.

10.254. Also weighing in favour of the application is that it would go some way to achieving the objectives of Policy DA2 and PAN04 in delivering a mixed-use development that would help to boost the local economy. It would provide a good level of building sustainability, would help to preserve the marine coastal environment, and would largely be acceptable from an environmental perspective. Further, it would not impact detrimentally on the residential amenity of any surrounding occupiers.

10.255. However, these benefits must be balanced against the significant concerns over the density and form of the development and its unacceptable design, as well as the cumulative impacts of both phases which would result in unacceptable impacts on the townscape, heritage features, and the setting of the South Downs National Park. Further, it is considered that the lack of private amenity space and poor quality of communal space would unacceptably impact on the amenity of future occupiers, as would the lack of light to parts of the residential blocks, the lack of children's playspace, and the potential for overlooking and loss of privacy.

10.256. In addition, insufficient information has been provided to demonstrate why the affordable housing levels to be provided would not meet the requirements set out in the development plan. Finally, the development does not include sufficient

cycle parking, or access for cyclists across the breakwater to meet the need for sustainable transportation.

10.257. Based on the above and based on the balanced assessment required by Paragraph 11 of the NPPF, officers consider that the benefits arising from the development would be outweighed by the harm. Whilst significant weight is given to the increased housing delivery proposed, officers consider on balance that unacceptability of the development in terms of its layout and design, the amenity space and children's playspace provision, the inadequate standard of accommodation to parts of the development, the lack of affordable housing provision, and insufficient cycling infrastructure would render the proposal unacceptable in planning terms, taking into account the development plan and other material considerations.

11. RECOMMENDATION

11.1. For the reasons set out above, officers recommend that the Committee resolves that had the planning application come before the Committee for determination it would have **REFUSED** planning permission.

12. EQUALITIES

12.1. The development would be accessible to all members of society with lift access to the podium level provided to the north west corner of the site for cyclists and wheelchair users. The development would also provide 10% of the residential units as wheelchair adaptable. The only area of concern in terms of equalities would be the access across the section of breakwater which would not provide dedicated provision for pedestrians and cyclists and may prejudice the safety of users.