

PROOF OF EVIDENCE  
OF  
CHRIS DALY  
ON BEHALF OF CORNWALL COUNCIL

APPEAL REFERENCE: APP/DO840/A/09/2113075  
(PLANNING AUTHORITY REFERENCE 08/00761)

In respect of the Planning Appeal by SITA Cornwall Ltd

Relating to the decision by the former Cornwall County Council (now Cornwall Council) to refuse planning permission for the Cornwall Energy Recovery Centre (CERC) and associated development on land at Rostowrack Farm, Wheal Remfry, Goonvean and Parkandillick Dryers St Dennis St Austell Cornwall.





**Cornwall Energy Recovery Centre  
Planning Proof of Evidence of  
Chris Daly BSc DUP MTPI MRTPI**

**Contents**

1. Personal Details
2. Scope of Evidence
3. Site Description
4. Policy Context
5. Planning Application History
6. Issues & Evidence
- 7a). Public Rights of Way
  - i) existing public footpaths in the area
  - ii) description of proposals to public footpaths
- 7b). Public Rights of Way Policy context
- 7c). Impacts on users and network of public footpaths
8. Impacts on amenity from noise impacts
9. Overall planning assessment
10. Conclusion

## Contents (continued)

### List of Appendices

<b>APPENDIX 1</b>	Plan 1. Site Context and main Environmental Designations
<b>APPENDIX 2</b>	Letter from Waste Disposal Authority (WDA) 20 January 2005
<b>APPENDIX 3</b>	Email from WDA to Waste Planning Authority (WPA) 24 October 2005
<b>APPENDIX 4</b>	Email from WDA to WPA 19 January 2006
<b>APPENDIX 5</b>	WDA Brief Instructions to WPA, September 2005
<b>APPENDIX 6</b>	WPA Planning Brief, May and November 2005
<b>APPENDIX 7</b>	Email from Private Finance Initiative (PFI) Solicitor to WPA 5 June 2007
<b>APPENDIX 8</b>	Letter from Deputy Director to SITA Cornwall 22 May 2007, and reply from SITA UK June 2007
<b>APPENDIX 9</b>	Planning Inspectorate Advisory Note to WPA, April 2007
<b>APPENDIX 10</b>	Commission for Architecture in the Built Environment (CABE) Panel Report, October 2007
<b>APPENDIX 11</b>	Letter from Natural England to WPA 28 February 2008
<b>APPENDIX 12</b>	Email from Terrence O'Rourke to WPA 28 November 2007
<b>APPENDIX 13</b>	Email from SITA UK to WPA 18 March 2008
<b>APPENDIX 14</b>	Letter from Terrence O'Rourke to WPA 6 August 2008, and reply from WPA 13 October

<b>APPENDIX 15</b>	Preliminary footpath consultation for WDA, Jan 2008
<b>APPENDIX 16</b>	Letter from Terrence O'Rourke to WPA 25 February 2009
<b>APPENDIX 17</b>	Draft report of the Assistant Director: Spatial Planning 19 March 2009 (negative recommendation)
<b>APPENDIX 18</b>	Appeal documentation September 2009
<b>APPENDIX 19</b>	Figure 2. Public Rights of Way Location Plan
<b>APPENDIX 20</b>	Figure 3. Permissive Path and Rights of Way Location Plan
<b>APPENDIX 21</b>	Email from Historic Environment Services to WPA 2 February 2010
<b>APPENDIX 22</b>	Relevant consultee comments.

## **1. Personal Details**

- 1.1 My name is Christopher Daly. I hold a Bachelor in Science degree in Physical Geography; a Diploma in Urban Planning and a Masters Degree in Town Planning and the Environment.
- 1.2 I am a Corporate Member of the Royal Town Planning Institute and have over 10 years experience as a Chartered Planner.
- 1.3 I am currently employed as a Principal Planner by Cornwall Council where I have worked for 11 years. I previously worked for Somerset County Council as a planning officer for 1 year.
- 1.4 My experience has focussed on assessing planning applications for minerals and waste related developments and the development of waste planning policy. I have gained experience in appeals and inquiries including being one of the Council's witnesses at the public inquiry in 2002 which considered the Cornwall Waste Local Plan.
- 1.5 I was also the case officer for the planning application that dealt with the CERC proposal.

## **2. Scope and Structure of Evidence**

2.1 The application that is subject to the Appeal was considered by the Planning (Development Control) Committee of the former Cornwall County Council at their meeting 26 March 2009 where Members resolved to refuse planning permission for the following eight reasons.

2.2 1. The proposed energy from waste facility in this location is contrary to the Waste Planning Authority's policies by virtue of failing to meet the criteria set out within Policy L6, L6A and L6B (Energy from Waste) of the Cornwall Waste Local Plan 2002.

2. The proposal would have an unacceptable impact on landscape character and visual impact by virtue of its scale, massing and height; the significant encroachment into undeveloped countryside, and the proposed loss of established Cornish hedge. This is contrary to Policy SD3 (The Environment and Natural Resources) of the draft Regional Spatial Strategy 2008; Policy 1 (Principles for Sustainable Development), 2 (Character Areas, Design and Environmental Protection) and 6 (Waste Management) of the Cornwall Structure Plan 2004; Policy L6A, L6B (Energy from Waste) and C1 (Operational Practice) of the Cornwall Waste Local Plan 2002, and Policy 6 (Development and Design Principles), 10 (Energy Supply), 11 (Protecting the Borough's Heritage) and 18 (Protecting the Wider Countryside) of the Restormel Borough Council Local Plan 2001.

3. The proposal would have an unacceptable impact on historic landscape and Listed Buildings. This is

contrary to Policy 2 (Character Areas, Design and Environmental Protection), and 6 (Waste Management) of the Cornwall Structure Plan 2004; Policy C1 (Operational Practice) of the Cornwall Waste Local Plan 2002, and Policy 11 (Protecting the Borough's Heritage), 18 (Protecting the Wider Countryside), 24 (Areas of Great Historic Value), 25 (Scheduled Ancient Monuments), 26 (Local Archaeological Sites) and 33 (Listed Buildings) of the Restormel Borough Council Local Plan 2001.

4. The proposal would have an unacceptable impact on the network and users of public rights of way. This is contrary to Policy 2 (Character Areas, Design and Environmental Protection), 6 (Waste Management) and 13 (Tourism and Recreation) of the Cornwall Structure Plan 2004, and Policy C1 (Operational Practice) of the Cornwall Waste Local Plan 2002.
5. The proposal would have an unacceptable impact on residential amenity due to noise both during the construction and operational stage, particularly in respect of those properties located at "La Mount Corner", Rostowrack and Bodella Farms; north-west Treviscoe and properties immediately adjacent to the proposed haul road. This is contrary to Policy 3 (Use of Resources) and 6 (Waste Management) of the Cornwall Structure Plan 2004; Policy C1 (Operational Practice) of the Cornwall Waste Local Plan 2002, and Policy 37 (Noise) of the Restormel Borough Council Local Plan 2001.
6. The applicant has inadequately considered the availability of alternatives, the development of which may have given rise to lesser environmental impacts. This is contrary to Policy SD1 (the Ecological Footprint)

of the draft Regional Spatial Strategy 2008; Policy 1 (Principles for Sustainable Development), 3 (Use of Resources) and 6 (Waste Management) of the Cornwall Structure Plan 2004, and Policy C1 (Operational Practice) of the Cornwall Waste Local Plan 2002.

7. The proposal by virtue of its scale, size and proximity to surrounding areas would have significant adverse impacts upon the environment and setting of those areas. This is contrary to the regeneration ambitions of the china clay area within the china clay Strategic Investment Framework which proposes regeneration of communities, landscape and the economy as well as improving the well being of such communities. This is contrary to Policy SD1 (the Ecological Footprint) of the draft Regional Spatial Strategy 2008; Policy 1 (Principles for Sustainable Development), 2 (Character Areas, Design and Environmental Protection), and 6 (Waste Management) of the Cornwall Structure Plan 2004; and Policy 11 and 12 (Protecting the Borough's Heritage) of the Restormel Borough Council Local Plan 2001.
  
8. The proposed development would be contrary to sustainable development objectives by its dependence on the transportation of waste by road, and increasing distances between the origin of waste and its disposal. For these reasons the proposal conflicts with Policy W2 (Waste Facilities and the Waste Hierarchy) and SD1 (the Ecological Footprint) of the draft Regional Spatial Strategy (2008); Policy 1 (Principles of Sustainable Development) in the Cornwall Structure Plan 2004 and Policy 1 (Plan Strategy Policies) of the Restormel Borough Council Local Plan 2001.

- 2.3 In my proof I outline the background to the application and site location, examine the planning history, summarise the policy context and refer to the main planning issues.
- 2.4 I will give specific evidence on the impacts on the network and users of the public rights of way in the area surrounding the application site.
- 2.5 I will also address the impact of the development on local amenity through noise, relying on technical evidence provided by Simon Stephenson, Principal Consultant at Bureau Veritas UK Limited.
- 2.6 My Proof will also provide an overall planning assessment of each reason for refusal having regard to the technical evidence provided by the other witnesses and planning material considerations. Specific technical evidence will be provided by the following:

**Waste Planning Policy and Alternatives** – Roger Miles, Director, RMPL;

**Landscape and Visual Impact** – Robyn Butcher, Senior Associate and Landscape Architect, Terra Firma Consultancy;

**Historic Landscape and Listed Building Impacts** – Nick Cahill, Consultant, The Cahill Partnership;

**Noise** – Simon Stephenson, Principal Consultant, Bureau Veritas UK Limited;

**Impact on Economic & Regeneration Strategies –**

Stephen Vinson, Economic Development Manager,  
Cornwall Council;

**Transportation Impacts –** Nigel Millington, Director,

Phil Jones Associates Ltd;

**Ecological Impact including Appropriate**

**Assessment matters –** Kevin Webb, Principal  
Ecologist, Bureau Veritas UK Limited.

### **3. Site Description**

- 3.1 The site of the proposed Cornwall Energy Recovery Centre (CERC) site is located in the former Borough of Restormel (now known as Central Area 2), between the villages of St Dennis and Treviscoe. The site is located within agricultural land immediately to the north of the extensive St Austell China Clay District.
- 3.2 The site and surrounding area, and main environmental designations are shown on Figure 1 in Appendix 1.
- 3.3 The main features that lie within the general area include the A30 Trunk Road, the Indian Queens power station (known as the Peak Power Plant), and the Breney Common and Goss and Tregoss Moors Special Area of Conservation (SAC) (collectively known as the Goss Moor SAC) to the north. To the west and east of the proposed CERC lie the villages of St Dennis and Treviscoe. Further to the west of the site and adjacent to the south lies the extensive St Austell China Clay District with its associated pits, tips and refining and processing facilities. The agricultural and other natural areas of land in the surrounding area are defined by fields, Cornish hedges and areas of woodland and heath. The Statement of Common Ground and landscape witness Mrs Robyn Butcher will provide further detail on the description of the site and surrounding area.
- 3.4 The china clay workings to the south of the CERC are separated from the agricultural land to the north by a mineral railway owned by Network Rail and operated by IMERYS Minerals (UK) Ltd (Imerys). Imerys use the

railway on a relatively infrequent basis (approximately 1 movement per week) to transport china clay products to the main Penzance to Paddington West Coast Main line, with a further 3 local movements per week.

3.5 The total planning application site footprint comprises a total area of 14.6ha, of which the principal elements are the Cornwall Energy Recovery Centre (CERC) site which covers 6.6ha; access road (approximately 800m in length, occupying 1.7ha), private haul road (approximately 2km in length, occupying 5ha) and an area of pipework for the transmission of heat to the adjacent Parkandillick Dryers complex (approximately 1.3ha).

3.6 The CERC site and access road would be constructed on an area of previously undeveloped Grade 3a and 3b agricultural farmland, currently part of the Rostowrack Farm holding (forming part of the larger Carsella Farm holding). By road the CERC site is approximately 3km south east from the Highgate Hill junction of the A30/A39/B3279 at Indian Queens, although the actual distance by road would be 4½ km.

3.7 The proposed private haul road lies within land owned by Imerys. At the time of writing this evidence the Planning Authority are awaiting confirmation from SITA as to their legal interest in the haul road, or the details of any other type of control over other elements to the CERC scheme e.g. the land subject to the proposed access road. The route of the haul road would partly follow existing haul roads associated with the adjacent Wheal Remfry china clay works (forming part of the

larger Fal china clay works operated by Imerys) west of the C184 public highway. Other sections of this road would cut through areas of semi restored and natural woodland and scrub vegetation including an area which is a designated Tree Preservation Order.

3.8 The nearest residential properties to the planning application site include Rostowrack Farm and Bodella Farm which are located immediately either side of the main proposed CERC site; La Mount and Glen Garth residential properties which are located on a dog-leg corner of the C184 (known as La Mount Corner) and would be adjacent to the junction with the proposed access road, and Hawthorns, Springfields and Godstone which are a group of residential properties located on the C184 further to the west, and would lie adjacent to the north of the proposed haul road and its junction with the C184. Other residential properties in the vicinity include those at Trerice Terrace approximately 600m to the north of the CERC site. The nearest properties on the outskirts of St Dennis are in the Hendra area and are located approximately 330m away from the CERC. The nearest properties in Treviscoe are located approximately 60m away from the proposed access road. Other farmsteads and residential properties are located in the general area. The site and surrounding area is shown on Figure 1 (Appendix 1).

#### **4. Policy Context (general)**

- 4.1 This section of the Proof sets out the main planning policy context for the matters raised in each reason for refusal. A summary of the relevant national, regional and local policies are provided. This section does not repeat the detailed planning policy context provided where relevant by the other expert witnesses in their Proofs.
- 4.2 Reasons 1 and 6 relate to the manner in which the CERC scheme is proposed at this location having regard to waste planning policy. At the national level key planning policy guidance is set out within Planning Policy Statement 10 (Planning for Waste Management) (Core Document E6). The Government's strategy for waste management is set out within the Waste Strategy 2007 (Core Document F1). At the local level the key local planning policy context is set within the Cornwall Waste Local Plan (Core Document D5), and in particular policy L6 of that Plan, as well as the Cornwall Structure Plan (Core Document D3) and the emerging Regional Spatial Strategy (Core Document D2). Policy W2 of the Regional Spatial Strategy is particularly relevant to these Reasons. These are matters which are considered further in the Proof of Mr Roger Miles.
- 4.3 Reasons 2 and 3 have common themes as they address matters that relate to impacts on visual and landscape character. These impacts include a historical perspective and specifically impacts on the settings of Listed Buildings and historic landscape.

- 4.4 At the national level key planning policy guidance for landscape matters is set out in Planning Policy Statement 1 (PPS1) which advises at paragraph 1 (page 2) that an objective of the planning system is to facilitate and promote sustainable development by "... protecting and enhancing the natural and historic environment, the quality and character of the countryside and existing communities." Further key guidance is set out in PPS7 (Sustainable Development in Rural Areas) which states on page 6 that one of the Government's key objectives is to "raise the quality of life and environment in rural areas through the promotion of ... good quality, sustainable development that respects and, where possible, enhances local distinctiveness and the intrinsic qualities of the countryside; and ... continued protection of the open countryside for the benefit of all."
- 4.5 National policies for planning and the historic environment are principally contained in Planning Policy Guidance Note 15 (PPG15) and Planning Policy Guidance Note 16 (PPG16). Both documents place impacts on historic and listed buildings in their wider context. PPG15 provides policies for the identification and protection of historic buildings, conservation areas and other elements of the historic environment. PPG16 contains policies on archaeological remains on land and how they should be preserved or recorded both in an urban setting and in the countryside. These policies are in addition to the statutory protection afforded under the Planning (Listed Buildings and Conservation Areas) Act 1990.

- 4.6 The above objectives are reflected at the County-wide level in the Cornwall Structure Plan which contains policies directly relevant to protecting landscape character, as well as promoting good design and safeguarding the environment generally. The Restormel Local Plan provides a number of policies which seeks to conserve and enhance the physical and natural environment of the area. This Plan contains a number of relevant policies to protect the historic environment which is a matter that is considered further in the Proof of Mr Nick Cahill.
- 4.7 Reasons 4 and 5 relate to Rights of Way and Noise. The policy context for these is provided in Sections 7 and 8 of this Proof as they are matters which I address directly.
- 4.8 In terms of regeneration matters raised in Reason 7 the main planning policy context is set out in draft Regional Spatial Strategy, and principally Policy SD1 which relates to the key principles of sustainable development. This policy seeks to stabilise and then reduce the region's economic footprint, while ensuring relative economic prosperity, to be achieved through a range of measures. While it is accepted this policy is more high level and aspirational in its outlook, it is considered at paragraph 1.6.5 of the Regional Spatial Strategy that this approach is "Critical to achieving a more sustainable region is the continuation of the South West's relative economic prosperity." The successful social and economic wellbeing of the area surrounding the CERC is dependant on the regeneration ambitions of the area; however the CERC scheme is considered to adversely

affect these ambitions. More detail on this is provided in the Proof of Mr Stephen Vinson.

4.9 Reason 8 relate to the manner in which waste to be managed at the CERC scheme. The CERC is proposed to receive waste inputs exclusively by road based methods. Relevant planning policies seek to minimise the distance waste is transported, particularly by road, and should be managed as close as practicable to where it arises. Policy SD2 and W2 of the emerging Regional Spatial Strategy and Policy 1 of the Cornwall Structure Plan are particularly relevant in this context.

4.10 Finally, the impact of the CERC scheme on nearby sites of nature conservation interest is a matter addressed in the Proof of Mr Kevin Webb. Policy L6 of the Cornwall Waste Local Plan and policy 6 of the Cornwall Structure Plan are particularly relevant in this context. Both policies contain criteria which seek to protect the environment from adverse effects of waste management facilities. Key national government guidance on the protection of biodiversity interests is set out principally in PPS9 Biodiversity and Geological Conservation. These policies are in addition to the statutory protection afforded under the Conservation (Natural Habitats &c.) Regulations 1994.

## 5. Planning Application History

- 5.1 This section of the proof sets out the involvement of the Waste Planning Authority (WPA) in the planning history of the CERC, leading up to the submission of the planning application in March 2008.

### Pre-application discussions

- 5.2 The Council's Waste Disposal Authority (WDA) had adopted the strategy set out in the Cornwall Waste Local Plan 2002 (Core Document D5), and in respect of energy from waste the central 'Area of Search' and policies L6, L6A and L6B.

- 5.3 In 2005 the WPA first became aware of the WDA's proposals to develop an energy from waste plant at Rostowrack Farm. The WDA had initially indicated that it was looking at several potential locations within the centre of the County to develop an energy from waste plant<sup>1</sup>. However correspondence from the WDA to the WPA at the time also confirmed they had acquired an option to develop the Rostowrack Farm site and were progressing the commissioning of background environmental information.<sup>2</sup> Correspondence from the WDA indicated that a planning application would be submitted January 2007, with a scheduled operational date for an energy from waste plant in 2014.<sup>3</sup>

- 5.4 In September 2005 the WPA were requested by the WDA to provide a planning brief for an Energy from

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<sup>1</sup> Letter from WDA 20 January 2005. See Appendix 2

<sup>2</sup> Email correspondence between WDA and WPA 24 October 2005. See Appendix 3

<sup>3</sup> Email correspondence from WDA 19 January 2006. See Appendix 4

Waste plant at Rostowrack Farm as part of the Council's procurement process for a range of new waste management facilities under the Private Finance Initiative (PFI) process. The instructions to the WPA (Appendix 5) were based on a generic energy from waste design on a site covering approximately three hectares. The facility was based on a building design approximately 54m maximum height, approximately 150m in length, and a stack height of 75m. Access to the site was shown as a junction from the C184 at La Mount Corner.

5.5 The planning brief supplied by the WPA in May and November 2005 (Appendix 6) consequently reflected the generic nature of the instructions and was therefore limited in the advice it could reasonably provide. The WPA understood the planning brief was to be used by the WDA and the two PFI bidders, SITA UK Ltd (SITA) and Focsa Services (UK) Ltd to inform their bid submissions. One of the WPA's key messages from the brief was to request further detailed discussions with the WPA, to include a discussion on the extent to which alternative sites had been considered.

5.6 During this time the WPA initiated the preparation of the Waste Development Framework (WDF) (Core Document D6) to replace the existing Cornwall Waste Local Plan 2002. The preparation of the WDF was informed by a site search process for new waste management facilities. In terms of energy from waste facilities the WPA examined a number of sites across the County, and in particular within, and adjacent to, the central Cornwall Area of Search identified in the Cornwall Waste

Local Plan. The WPA issued a site search report in July 2006 (Core Document G3) which identified 47 sites in a ranking of their suitability having regard to locational and environmental constraints. This report was informed by generic design guidance for the development of energy from waste facilities issued by the Office of the Deputy Prime Minister and the Regional Waste Strategy<sup>4</sup>. The report ranked Rostowrack Farm overall as 13<sup>th</sup>.

5.7 The Council's preferred bidder for waste management (SITA) was announced in 2006. The WPA understood at the time that a planning application for an energy from waste facility to be developed at Rostowrack Farm (known at the time as the 'Residual Waste Treatment Plant') would be submitted in late summer 2007<sup>5</sup>.

5.8 Although meetings had taken place with the WPA, the WDA and other key parties on certain matters relating to this development, the WPA had concerns that these discussions were not sufficiently comprehensive, in particular given the expectation that a planning application would be submitted later in 2007. These concerns led to the Deputy Director of Planning, Transportation & Estates and also Head of Spatial Planning to write to SITA to express concern with the lack of effective engagement with the WPA.<sup>6</sup>

5.9 In April 2007 the Planning Inspectorate met the WPA to consider the work undertaken to date on the WDF. The

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<sup>4</sup> ODPM Planning for Waste Management Facilities, 2004, page 154, and Regional Waste Strategy, 2004, page 83.

<sup>5</sup> Email correspondence from PFI Solicitor to WPA 5 June 2007. See Appendix 7

<sup>6</sup> Letter from Deputy Director to SITA Cornwall Ltd 22 May 2007, with attached reply from SITA June 2007. See Appendix 8

Inspectorate advised that the document in its current form was likely to be considered 'unsound', should it progress to an independent inquiry. In particular, the Council was advised against the simultaneous submission of a Core Strategy document, a Development Control Development Plan Document (DPD) and a Site Allocations DPD. The Planning Inspectorate's advice note is set out at Appendix 9. Work effectively stopped on the WDF at that time and has not resumed since. As a consequence of this advice very little weight is attached to this document. The Council is currently producing an evidence base to inform the forthcoming waste elements of the single Core Strategy for a unitary authority Local Development Framework, although to a large extent the future spatial strategy for waste management is on hold pending the outcome of this appeal.

- 5.10 In June 2007 SITA's agents Terrence O'Rourke (ToR) requested the WPA to provide a Scoping Opinion under the Environmental Impact Assessment (EIA) Regulations 1999 for the development of an energy from waste facility at Rostowrack Farm. Following consultation a Scoping Opinion was subsequently issued by the WPA in July 2007 (Core Document A17), which set out the main planning issues to be addressed in the planning application and environmental statement.
- 5.11 The design and layout of the facility was based upon a series of drawings prepared by architects commissioned by SITA, and showed a 75m stack integral to the main incinerator building. Discussions with the WPA and SITA's landscape consultants were based on this layout

at the time. The discussions included a presentation to a 'Design Review Panel' hosted by CABE. In their report following the presentation the Panel raised queries regarding the site's location on a greenfield site and requested assurances that every effort had been made to look for a site on former mining land. Further the Panel observed that a development of this size would have a "huge presence" on the surrounding landscape, and requested that consideration be given to reduce its height and visual impact. The Panel report is appended at Appendix 10. The WDA questioned the involvement of CABE in the process and its findings.

5.12 During summer and autumn 2007 a series of meetings took place between SITA, ToR, the WDA, the WPA, Natural England (NE) and the Environment Agency (EA) on the issue of air quality at the site. The discussions were based upon emissions modelling for a stack height of 75m.

5.13 SITA were advised by the NE and EA that the development as proposed at Rostowrack Farm was likely to require an 'appropriate assessment' under the Habitats Regulations 1994. NE also raised potential surface water/hydrology concerns from an energy from waste plant at this location in a letter dated 28 February 2008 (Appendix 11).

5.14 At the time the WPA understood a planning application would be submitted by winter 2007.<sup>7</sup> In late 2007 SITA advised the WPA of a revised stack height of 120m, and

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<sup>7</sup> Indications provided in meetings held with WPA, WDA and SITA during November 2007.

indicated that this was for reasons of emissions levels.<sup>8</sup> At the time the WPA had not seen design details of the amended development, and had not been requested to comment on the planning issues associated with a development on this basis, other than in the context of relatively limited discussions relating to air quality.

5.15 In November 2007 SITA and the WDA requested the WPA's comments on a range of draft surveys and reports relating to the proposed scheme. The WPA provided its comments in December 2007, where concerns were raised that there was an appreciable lack of detail on certain key aspects of the proposal which therefore gave the WPA limited knowledge of the potential impacts of the proposal. This concern was particularly acute given the indication from the WDA and SITA that a planning application would be submitted within a matter of weeks and possibly the New Year.

5.16 From late 2007 to spring 2008 a series of letters were exchanged between the WPA and SITA regarding the level of information to inform the planning application. In particular there was concern that the issue of appropriate assessment was not proposed to be addressed in the Environmental Statement, as a specific chapter (or equivalent), notwithstanding the concerns expressed earlier in the year on matters relating to impacts from emissions on European sites which appeared to the WPA to be unresolved. SITA advised the WPA that they did not consider it appropriate to

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<sup>8</sup> Email correspondence to WPA from ToR 28 November 2007. See Appendix 12

include a chapter on these matters within the Environmental Statement.<sup>9</sup>

5.17 The planning application was received March 2008 and validated in April.

#### Planning application administration - general

5.18 The planning application was accompanied by an Environmental Statement (ES) under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (the EIA Regs). It is intended that the various steps and key stages undertaken in the handling of the planning application will be included in a further Statement of Common Ground.

5.19 Following extensive consultation on the ES in May 2008 the applicant was requested October 2008 to submit "Further Information" under Regulation 19 of the EIA Regs on a wide range of issues, some of which include the matters of concern raised in this Proof. As part of the lead up to the WPA's request SITA expressed concern with the nature and scope of the information that the WPA's advisors Bureau Veritas UK Ltd considered necessary<sup>10</sup>. Notwithstanding this, a report of further information was received from SITA December 2008, and this was subject to a further round of consultation and publicity by the WPA.

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<sup>9</sup> Email correspondence to WPA 18 March 2008. See Appendix 13

<sup>10</sup> Letter from ToR to WPA 6 August 2008. See Appendix 14

5.20 SITA provided a response to the Regulation 19 request and further consideration to this is given in later sections to this Proof and by the other witnesses.

5.21 The subject of impacts to public rights of way was included within the Council's Regulation 19 request for further information, which stated:

4.3 Please provide a full assessment of the likely significant direct and indirect effects of the proposed development on the physical network of and users of, the public rights of way in the area around the site. Please confirm the proposed mitigation measures in respect of the identified effects.

With the following reasoned justification:

*4.3 To assist the WPA in understanding the likely significant effects of the development on the public rights of way network and its users, and the measures to mitigate such effects.*

5.22 Supplementary proposals for changes to the public rights of way in the area took place in January 2009 through a consultation undertaken by the Council's Environment & Heritage section for, and on behalf of the WDA. These supplementary details were not included in the planning application and Environmental Statement and the consultation took place outside the formal planning application consultation and publicity process. The consultation advised that its purpose was to invite feedback concerning the changes to the public rights of way which are proposed should a decision be made to grant planning permission for the CERC. The details of

this consultation are appended to this Proof at Appendix 15.

5.23 A key aspect to the administration of the planning application was to inform Members of the key issues associated with the CERC. During the consideration of the planning application a series of visits with Members of the Planning (Development Control) Committee to the site and surrounding area were held on 24<sup>th</sup> July, 5<sup>th</sup> August, 17<sup>th</sup> September and 5<sup>th</sup> November 2008. A public meeting was held in St Dennis on the evening of 17<sup>th</sup> September 2008. Two technical briefing sessions took place where Members were able to hear the current position of several key technical consultees to the planning application process, as well as raise questions. Members of that Committee also visited an operational Energy from Waste plant in Teeside in September 2008. SITA and the WDA were critical of this choice of facility and had recommended a visit to a site in France.

5.24 On 28<sup>th</sup> January and 25<sup>th</sup> – 27<sup>th</sup> February 2009 (inclusive) the WPA commissioned the raising of a balloon on the application site to the full height of the proposed stack associated with the CERC facility. This was undertaken in order to allow all parties to gain an appreciation of the height of the proposed stack and its visual and landscape impact. The WDA were critical of this approach. However the exercise attracted a lot of public attention and resulted in additional representations from the public and others to the WPA.

5.25 During January and February 2009 and following consideration of the further information and the consultation comments that were received, the WPA came to an initial view that there were several key areas of the scheme that caused concern. The WPA sought to discuss these issues with the appellants and the WDA and held a number of meetings at this time<sup>11</sup>.

5.26 The outcome of these discussions were such that SITA did not propose to alter the fundamentals of the scheme and while there was some correspondence submitted to provide relatively limited detail in respect of clarification of several matters<sup>12</sup>, and an indication that financial compensation could be made available to nearby properties affected by the proposals, the proposals remained substantively unchanged.

5.27 After careful consideration of the relevant key issues, officers of the WPA concluded at this point that the harm generated by the scheme outweighed the apparent benefits and that there were aspects of waste policy which were not complied with. As such the Committee was to receive a recommendation to refuse planning permission, and during February and March 2009 a report was drafted on this basis at Appendix 17 in discussion with senior officers, external experts and legal advice. I had the burden of writing this report, although in accordance with established practice, it was expressed in the name of the acting Assistant Director: Spatial Planning, Mr Tim Horwood.

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<sup>11</sup> For example a meeting of key parties took place in Bodmin 25 February 2009.

<sup>12</sup> Response from ToR to meeting 25 February 2009. See Appendix 16

- 5.28 At this point, the newly-appointed head of planning Mr Phil Mason reviewed the case and came to a different view. He considered the proposals were capable of being granted planning permission. Mr Mason then re-drafted the report which recommended approval, subject to conditions and a legal agreement; the outcome of any appropriate assessment, and subject to the Secretary of State not calling in the proposals. This was the report which was considered at a special meeting of the former County Council's Planning (Development Control) Committee. (Core Document B1)
- 5.29 The Committee resolved to refuse planning permission for the reasons set out above.

#### Post Decision correspondence

- 5.30 On 17 September 2009 SITA confirmed their intention to appeal the refusal with the submission of an appeal form and associated documentation (extracts of appeal documentation in Appendix 18).
- 5.31 As part of the appeal preparation the WPA sought to progress its consideration of appropriate assessment, as the matter remained unresolved following Member's decision to refuse planning permission. Upon the appeal being lodged the potential impacts on European Sites once again became relevant, and having regard to the Inspector's request to be informed on the issue, the WPA prepared and issued a 'shadow' screening opinion concluding that an appropriate assessment should be undertaken (Core Document K13). Further detailed evidence on this is provided by Mr Kevin Webb.

## **6. Issues & Evidence**

- 6.1 This section of the Proof provides a summary of the key issues for this appeal, and an indication who is providing specific technical evidence.
- 6.2 I will deal with a planning assessment for impacts on rights and way and noise impacts on neighbouring residential amenity.
- 6.3 Reasons 1 and 6 relate to key locational waste planning policy considerations for energy from waste, and the extent to which alternatives to the scheme as proposed are dealt with. These matters are addressed by Mr Roger Miles, Director, RMPL.
- 6.4 Reason 2 deals with the impacts of the scheme on landscape and visual resources, in particular focussing on its scale, massing and height. These matters are addressed by Mrs Robyn Butcher, Senior Associate and Landscape Architect, the Terra Firma Consultancy.
- 6.5 Reason 3 relates specifically to the impact the CERC scheme has on historic landscape and Listed Buildings. These matters are addressed by Mr Nick Cahill, consultant for The Cahill Partnership.
- 6.6 Reason 4 deals with impacts on the users and network of rights of way in the area. This is a matter which I will speak directly.
- 6.7 Reason 5 relates to the noise-based impacts of the CERC scheme on residential amenity. While I will

provide a planning assessment of these impacts technical evidence will be presented by Mr Simon Stephenson, Principal Consultant, Bureau Veritas UK Limited.

6.8 Reason 7 relates to the impacts of the CERC scheme on the environment and setting of surrounding areas by virtue of its scale, size and proximity, contrary to the regeneration ambitions of the china clay area. This will be presented by Mr Stephen Vinson, Economic Development Manager, Cornwall Council.

6.9 Reason 8 relates to the transportation arrangements for managing waste in the County and the extent to which the exclusive reliance on road based methods are contrary to sustainable development objectives. This will be addressed by Mr Nigel Millington, Director, Phil Jones Associates Ltd.

6.10 Finally, impacts of the CERC scheme on nearby European sites of nature conservation importance are addressed by Mr Kevin Webb, Principal Ecologist, Bureau Veritas UK Limited.

## **7a. Public Rights of Way**

7.1 This section of the proof will consider the aspects of the CERC scheme that are relevant to public rights of way to which I speak directly.

### i) Existing public footpaths in the area

7.2 A number of public footpaths are located within the immediate area surrounding the CERC application site, and in varying degrees would be physically affected by the development, as I explain below. The relevant footpaths are numbered below together with the corresponding Parish Council which they are located in:

#### Footpaths to be physically affected

FP/416/2 St Dennis

FP/416/5 St Dennis

FP/416/15 St Dennis

FP/416/17 St Dennis

FP/416/18 St Dennis

FP/416/14 St Dennis

FP/416/31 St Dennis

FP/422/108 St Stephen-in-Brannel

FP/422/109 St Stephen-in-Brannel

7.3 A number of other footpaths are found in the general area and which form part of the local network. No physical works are proposed to these footpaths as part of the CERC scheme but they would be indirectly affected by the CERC development, and are therefore considered in this Proof:

## Footpaths to be indirectly affected

FP/416/10 St Dennis

FP/416/26 St Dennis

FP/416/13 St Dennis

FP/416/16 St Dennis

7.4 In respect of footpaths 15, 16, 17 and 108 there are sections which could not be fully traversed at the time of writing this evidence. However it is possible to use an alternative route nearby which would get you to the same destination. In practical terms it is accepted that there are sections which cannot be used although in legal terms the route exists and there is a duty on the Council to keep them open. This proof considers the impacts on those sections of the routes that legally exist as well as the impacts on the alternative routes.

7.5 All the above relevant footpaths considered in this Proof are shown on Figure 2 (Appendix 19).

7.6 There are also a number of non-definitive permissive trails being developed in the area by Imerys, in association with Natural England and other partner organisations. These form part of the wider network of recreational routes in the area which the existing rights of way network link into. The network of permissive and non-permissive trails and footpaths are shown in Figure 3 (Appendix 20).

## Description of existing footpath routes

- 7.7 In general the network of existing public footpaths in the area are located on tracks and/or agricultural land (typically rough pasture) within the green 'bowl' of land in the areas between St Dennis and Treviscoe. The majority of these footpaths provide linkages to the main settlements of St Dennis and Treviscoe and form part of a general network in the area. For example it is possible to undertake a circular walk in the local area using a combination of sections of footpaths 2, 5, 14, 13 and 18. These footpaths are all located within or in close proximity to a mainly agricultural setting and contribute to the generally rural, undisturbed character of the area, which contrasts with the dominant presence of the china clay workings to the south west and east.<sup>13</sup> The Goss Moor and surrounding areas is designated Open Access Land which enables the public to walk freely in the locality, and in places this Land adjoins the CERC site.
- 7.8 The route of footpath 15 runs across areas of former mining land which are now largely restored through formal measures such as tree planting or through natural regeneration. This route cannot be precisely walked however it is possible to walk an alternative route which has similar characteristics.
- 7.9 There is evidence that some of the footpaths in the area surrounding the CERC are of historic importance. For example sections of footpath 5 are identified on the Tithe Map for St Dennis. It is likely these footpaths

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<sup>13</sup> Cornwall and Isles of Scilly Landscape Character Study

provided historic links between the villages and farmsteads since medieval times and have continued in use since then during the early days of the developing china clay industry to the present day.<sup>14</sup>

ii) description of physical effect of proposals to public footpaths

7.10 To accommodate the proposed development it is proposed to undertake a number of physical alterations to the existing network of public footpaths in the area. These alterations would take place during both the construction stage and the operational stages of the CERC development. The footpaths which would be altered the most would be sections of footpaths 2 and 5.

7.11 A summary description of the extent of the works is provided in Table 1 overleaf:

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<sup>14</sup> Email from HES to WPA 2 February 2010. See Appendix 21

**Table 1. Summary of Footpath Works proposed in CERC application, and their relevant status.**

Footpath and Parish Council Reference	Footpath Status <sup>15</sup>	Summary of works to footpath <sup>16</sup>
FP/416/5 St Dennis	GOLD	Western end proposed to be diverted to form a crossing of the proposed Access Road. Major intermediate section (320m) proposed to be relocated and incorporated into pavement on northern side of proposed Access Road with a "swale" (a shallow drainage ditch) on the "outward" side next to the proposed realigned Cornish hedge. A 260m section of existing footpath would be diverted around perimeter of proposed CERC Site if rail facility developed (length of proposed perimeter diversion approx 650m). This section would be located between perimeter features of CERC including security fence, scrub planting drainage attenuation pond, earth bunds and cattle track. Surface to be gravel with timber edging.
FP/416/2 St Dennis	SILVER	Whole length proposed to be incorporated into pavement on northern side of proposed Access Road. The extent of the works is also set out above.
FP/416/14 St Dennis	GOLD	No works proposed.
FP/416/18 St Dennis	Southernmost link BRONZE, remainder of path SILVER	No works proposed.
FP416/15 St Dennis	BRONZE	'Flat crossing' and stiles to be provided where the haul road would cross.
FP/416/17 St Dennis	BRONZE	Eastern section to be incorporated into new footway between 0.75m and 2.0m adjacent to public highway. Western section unaffected.
FP/416/31 St Dennis	GOLD	Stile to be provided adjacent to gate on southern side of access road where this footpath joins footpath 5. Signs to be provided to direct walkers across the access road and join Footpaths 2 and 5. Dropped kerb to be provided.
FP/422/108 St Stephen-in-Brannel	BRONZE	Not considered by applicant in Environmental Statement. (although was considered in the separate consultation undertaken by the Council's Environment & Heritage section on behalf of the WDA)
FP/422/109 St Stephen-in-Brannel	BRONZE	Not considered by applicant in Environmental Statement. (although was considered in the separate consultation undertaken by the Council's Environment & Heritage section on behalf of the WDA)

<sup>15</sup> From the Public Path Improvement Plan required under the CROW Act 2000. See section 7c) of this Proof for further details.

<sup>16</sup> Where relevant information has been taken from the appellant's Regulation 19 information.

7.12 A consultation undertaken in January 2009 by the Council's Environment & Heritage section for the WDA provided the following further details relating to the proposed changes to public footpaths. This consultation took place outside the formal consultation of the planning application and environmental statement.

Footpath 15 (on former mining land)

7.13 Steps would potentially be proposed to connect the footpath to the haul road crossing point in accordance with details to be agreed in the future. A barrier/gate arrangement and signage would be provided to prevent walkers walking straight onto the haul road carriageway. Road marking would not be provided. Dropped kerbs and tactile paving would be provided at the crossing. Stiles or kissing gates would be provided if livestock were present.

Footpath 17 (alongside public highway)

7.14 The proposed southern pavement would be surfaced with tarmac with a raised kerb along the length of the C184 public highway. Informal crossing points would be provided to cross the haul road and the C184 public highway opposite La Mount Corner. Signage would be provided to alert walkers of the presence of large vehicles and vice versa, both at the haul road and on the public highway. No road markings would be provided. Dropped kerbs and tactile paving would be provided at the crossing. The consultation states consideration is

being given to realign the public footpath on the section of this footpath to the west of the southern haul road junction (i.e. behind the three properties on the south of the public highway) although this has not been confirmed at the time of writing this proof.

#### Footpaths 108 and 109 (at La Mount Corner)

- 7.15 Footpath 108 and a section of footpath 2 would be accommodated within the access road footway. Footpath 108 and 109 would be extinguished via a proposed 'Stopping Up' Order to reduce its length to tie into the access road footway. Directional signage would be provided at the junction of footpaths 2, 108 and 109.

#### Footpaths 2 and 5 (along proposed access road)

- 7.16 Signage would be provided to alert walkers of presence of the access road and to alert drivers to the presence of walkers. No road markings would be provided. Drop kerbs and tactile paving would be provided.

#### Footpath 5 (at and around main CERC buildings)

- 7.17 A further stub of footpath would be provided to provide access to Open Access Land to the north of the CERC site. A second stub would be provided to provide an access to footpath 14 (although an objection was received to this from the landowner). A post and rail fence would be provided throughout the length for safety purposes.

## **7b Public Rights of Way Policy Context**

7.18 This section of the Proof sets out the key legislative context and planning policy and other Government guidance for Public Rights of Way.

7.19 Public rights of way enjoy a range of statutory protection under the Highways Act 1980. For the purposes of considering land use implications of development affecting such rights of way rests with the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004.

7.20 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

7.21 So far as relevant to this Proof the principal components to the development plan comprise the Cornwall Structure Plan 2004 and the Cornwall Waste Local Plan 2002. Regard will also be had to the relevant policies in the Restormel Local Plan 1999.

7.22 The development plan policies most relevant to this proof are Policy 2 (Character Areas, Design and Environmental Protection), 6 (Waste Management) and 13 (Tourism and Recreation) of the Cornwall Structure Plan 2004, and Policy C1 (Operational Practice) of the Cornwall Waste Local Plan 2002.

7.23 In particular the supporting text to the policies within the Waste Local Plan highlights the necessary protection that should be given to users of public footpaths from the effects of waste related developments. For example at paragraphs 7.24 and 7.25 the Plan states that:

“The County Council will have regard to the impact upon recorded and claimed public rights of way in determining planning applications for waste management facilities.... (The) County Council will have regard to the impact of any proposals upon the amenity of sites and areas which are important for the public enjoyment of the coast, countryside and recreational areas and routes and locally important open spaces. Such areas represent an important resource for recreation and (the) tourist industry.”

7.24 Other material considerations which have been taken into account include Planning Policy Guidance (PPG) Note 17: Planning for open space, sport and recreation, and DEFRA Circular 01/09, and are considered further below.

PPG17

7.25 PPG17 states at paragraph 32 (page 9) that “Rights of way are an important recreational facility, which local authorities should protect and enhance. Local authorities should seek opportunities to provide better facilities for walkers, cyclists and horse-riders, for example by adding links to existing rights of way networks.” PPG17 also states at paragraph 17 (page 5)

that in terms of open space (which this area is considered to comprise):<sup>17</sup>

“Local authorities should:

.....

iii. protect and enhance those parts of the rights of way network that might benefit open space;”

Defra Circular 1/09

7.26 Defra Circular 1/09 states at paragraph 7.1 (page 46) that “Proposals for the development of land affecting public rights of way give rise to two matters of particular concern: the need for adequate consideration of the rights of way before the decision on the planning application is taken and the need, once planning permission has been granted, for the right of way to be kept open and unobstructed until the statutory procedures authorising closure or diversion have been completed.” Furthermore this Circular advises at paragraph 7.2 (page 46) that “The effect of development on a public right of way is a material consideration in the determination of applications for planning permission and local planning authorities should ensure that the potential consequences are taken into account whenever such applications are considered.”

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<sup>17</sup> See definition of ‘open space’ in PPG17 para 2 ix) ‘accessible countryside in urban fringe areas’

## Emerging Planning Policy

7.27 The draft Cornwall Waste Development Framework 2006 contains policy 32 which seeks to, inter alia, safeguard the amenity of users and the physical network of public rights of way from unacceptable development. However in the light of my evidence referred to in section 5 of this proof the policy is of little significance.

## Countryside and Rights of Way (CROW) Act 2000

7.28 The CROW Act requires the Council to prepare a "Rights of Way Improvement Plan". This is known as the "Public Path Improvement Plan (PPIP)" and was produced in 2006/7. This Plan identified the condition of public rights of way and their potential for generating, economic and social benefits for Cornwall's resident and visitor population. All paths were classified as either "gold" "silver" or "bronze" status. Paths classified as 'silver' would be improved at a later date, while paths classified as 'bronze', with more fundamental issues, would be addressed in the longer term. As paths are completed, they are shown on the interactive map and marked out on the ground with the erection of a "gold" plaque. This classification does not affect their legal status.

7.29 A summary of the criteria is provided below:

#### Gold

- All promoted national or regional trails or important connections to them, to include the 'South West Coast Path'; 'St Michael's Way Trail' near Penzance, and 'The Saints Way', near Bodmin.
- All paths (except some 'dead-ends') starting in or within 1km of the centre of a sub-parish settlement of >1000 people.
- Paths providing established access to formal, well visited visitor attractions including identified ancient monuments, significant accommodation centres and businesses, based on ranger knowledge and consultation responses.
- Paths known to be in popular use based on ranger knowledge and consultation responses.
- Paths accessible to people with limited mobility or sensory impairments based on existing promotion, ranger knowledge and consultation responses.
- Useful bridleways and byways accessible to equestrians and cyclists will generally be prioritised as gold unless dead-end, requiring excessive investment or subject to legal processes which might negate work done.

#### Silver

- Paths with potential to provide new promoted trails or circular routes

- Paths providing important access to or within attractive landscape features
- Important access to or within CROW access land
- Paths connecting to public transport nodes

#### Bronze

- 'Dead end' paths without other priority.
- Paths that run parallel with others that have a clearer higher priority
- Paths requiring excessive investment compared to the value of the route
- Paths under legal / definitive map review or possibly subject to diversion / extinguishments which might negate investment made.

7.30 Applying this criterion to the footpaths around the CERC area the footpath status shown in Table 1 above has been confirmed by the Council. It can be seen that the footpaths which would be adversely affected and which would be subject to the most significant physical alterations, also have the highest status (gold). Other footpaths immediately connecting to these footpaths also have the highest status (silver and/or gold):

#### Relevant Appeal decisions in Cornwall

7.31 The policy approach indicated in current Government guidance and reflected at the local policy level has been previously upheld on appeal in Cornwall on two relevant occasions. The two appeal references are a) Appeal by County Environmental Services Ltd for the development

of land at the Blackman's Site, United Downs, St Day (ref T/APP/B0800/A/95/258523/P2 dated 17 July 1996: (the "Blackman's Site"); and b) ref: Appeal by South West Water Ltd for the development of a sewage treatment works on Back Lane, Bossiney, north Cornwall (ref: APP/B0800/A/05/1176233 dated 22 January 2007)). The two appeal decision notices are provided at Core Document I4 and I5.

7.32 The case at the Blackman's site is relevant as it highlighted the issue of lorry movements and the effect on the amenities of local residents. The roads serving the appeal site were considered to have adequate capacity and were suitable in technical terms to serve the proposed development. Further, there was no record of injury accidents associated with the existing situation. However the effect of increased lorry movements associated with a proposed waste facility passing through small communities was considered to have an adverse environmental and psychological effect on residents. The Inspector considered that the environment for the non-car users was bound to deteriorate and did not sit well with government objectives to improve the quality of life.

7.33 The case of the appeal by South West Water at Bossiney is relevant as it demonstrates the importance of impacts of the development of an adjacent sewage treatment works on the amenity of users of a public footpath in a rural area. In that case the public footpath (known as 'Back Lane') provided a link to the nationally important 'South West Coast Path'. Although in that case the

landscape was in an Area of Outstanding Natural Beauty (and in this respect differs from this appeal development), the Inspector placed material weight on the impact of the development on the amenity of the users of the footpath who use the path to enjoy the surrounding landscape. In upholding the Inspector's recommendations to dismiss the appeal the Secretaries of State concluded that:

"The Secretaries of State agree with the Inspector that, whilst the screening measures (of the appeal development) could be made higher and more effective in hiding the development, even with the measures now proposed would be harmful by intruding into the open quality of the landscape, by channelling and restricting the outlook for walkers along the lane, and by intruding into views towards the higher land at the coast."<sup>18</sup>

7.34 In the above cases the Planning Inspector and the Secretaries of State dismissed both appeals, and considered that adverse impacts on pedestrians from development and associated vehicle movements weighed against the proposals. These decisions are considered to be relevant to the present case as the CERC scheme gives rise to similar impacts which I consider further below.

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<sup>18</sup> Para 15 of Decision Letter dated 22 January 2007

## **7c Impacts on users and network of public footpaths**

7.35 This Section of the Proof provides a planning assessment of the impacts of the development on users and the network of public footpaths. In this context impacts on 'users' relate to those people who would use the footpaths, and impacts on the 'network' relate to the physical alterations to the network.

7.36 Reason no. 4 of the CERC Decision Notice relates to impacts on the network and users of the public rights of way in the area, and is copied below:

4. The proposal would have an unacceptable impact on the network and users of public rights of way. This is contrary to Policy 2 (Character Areas, Design and Environmental Protection), 6 (Waste Management) and 13 (Tourism and Recreation) of the Cornwall Structure Plan 2004, and Policy C1 (Operational Practice) of the Cornwall Waste Local Plan 2002.

7.37 A key aspect to the overall development involves the alterations to the existing network of public footpaths in the area to accommodate the haul road and access roads. The most significant physical changes would be the incorporation of approximately 800m of footpaths 2 and 5 and their junctions with other footpaths in the area, into a pavement immediately adjacent to the access road. These footpaths currently run across agricultural land. A potential 260m further section of footpath 5 is also proposed to be extended to and re-routed around the perimeter of the main CERC

incinerator and ash handling buildings (total length of additional footpath approximately 650m), purportedly to allow for the accommodation of any future rail siding and associated infrastructure.

7.38 There are sections of other footpaths in the area which would also be physically affected by the route of the proposed haul road although these alterations are relatively minor and do not give rise to the same planning impact. A section of footpath 17 would be incorporated as a footway adjacent to the public highway, and footpath 15 would be "severed" by the haul road.

7.39 While there are a number of footpaths that would lie in the vicinity of the proposed CERC, footpaths 2, 5, 14 and 17 in particular would bring the public closest to the main CERC buildings and associated haul and access roads, and in places immediately alongside it, and therefore users would potentially be impacted at close range.

7.40 In addition to direct physical alterations there are other footpaths in the surrounding area which would be indirectly affected by the development. Users of these footpaths would experience an impact on their amenity principally from the effects caused by the presence of a major waste development in the immediate locality.

7.41 The principal adverse impacts on footpath users are considered to relate to impacts from a) noise and general disturbance from close proximity to lorry

movements and the main CERC buildings; b) dust impacts from lorry movements and c) adverse landscape and visual impacts. These would be experienced during the construction and operational stages. The impacts are assessed in further detail below.

a) Impacts from noise and general disturbance

7.42 In respect of noise the greatest impacts would be experienced by walkers of footpath 2 and 5 adjacent to the access road and around the CERC buildings, both during the construction and operational stages. A further section of footpath 5 may be diverted around the CERC facility were the facility to be rail served. If not the section would remain in situ south of the main incinerator hall and ash handling building, and adjacent to the mineral rail-line and Parkandillick dryers.

7.43 Background noise levels along sections of footpath 5 vary and are currently in the range of 32 to 48 dB (A), as set out in section 8.8 of the evidence of the Council's noise witness Mr Simon Stephenson. The evidence also shows that noise impacts would be particularly adverse from lorry movements along the haul and access roads and to a lesser but still harmful extent, from lorry movements on the site itself. Table 10.2 of Mr Stephenson's proof states that during the construction stage it is estimated that the increase in noise levels would range from +15 to +34 dB for sections of footpaths 2 and 5 and +5 to +21 dB for sections of other footpaths in the vicinity. This is corroborated to

an extent by the appellants who have stated that noise levels experienced by footpath users would be “higher than 55dB LaeqT” and would have a “more than minor significance to local sensitive receptors”.<sup>19</sup> In my opinion the increase in expected noise levels during the construction stage on users of these footpaths will have a highly disturbing impact.

7.44 During the operational stage there would be continuing harm caused to users of the footpaths. Mr Stephenson has shown in Table 8.2 of his evidence that current background noise levels on footpaths adjacent to and in the vicinity of the CERC range from 38 dB to 48 dB. During the daytime period noise levels would change by +17 to +22 dB for sections of footpaths 2 and 5 and by +5 to +15 dB for other footpaths in the vicinity. For users of footpaths 2 and 5 alongside the access road, the noise impacts would further increase to 64 – 69 dB during the peak hour traffic period (13.00 to 14.00).

7.45 In the event footpath 5 is diverted around the main CERC buildings to accommodate any future rail-head facility, the appellant has indicated the noise levels would significantly rise for “approximately half of the north western boundary” where the footpath would be located near to the CERC air cooled condensers. In this area noise levels are anticipated to rise to between 55 and 65 dB (A)<sup>20</sup>.

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<sup>19</sup> Section 4, paragraph 22 of appellant’s Regulation 19 response

<sup>20</sup> Section 4 paragraph 41 of appellant’s Regulation 19 response.

7.46 Further adverse impacts on the amenity of footpath users would be experienced in this scenario as the additional 650m of diverted footpath would be in close proximity to the CERC security fence (proposed to be a 2m palisade/chain link style fence), and only metres away from the ash handling building. The diverted section of footpath 5 would be located in close proximity to the CERC security fencing and in places immediately adjacent to it. At its closest would be no more than 40m away from the doors of the ash handling building. Further, the overall increase in length of the diverted path may deter users from using the path to link to other footpaths in the area.

7.47 While it is accepted that a proposed additional section of footpath leading from the diverted section of footpath 5 would link into Open Access Land and therefore provide an opportunity to link into this designated area, this section of new footpath would bring users in close proximity to the air cooled condensers which SITA have acknowledged to be a noisier area of the CERC facility, where noise levels would rise to 55 to 65 dB(A) and for this reason would give rise to an adverse impact on their amenity.

7.48 While it is accepted that stretches of footpath 5 already run close to existing large buildings and fences associated with the Parkandillick Dryers, the addition of 650m of diverted footpath however which would run in close proximity to a development would give rise to such conspicuous and regular noise impacts which would significantly decrease their amenity.

7.49 Users of this footpath would experience a decrease in their amenity from walking in close proximity to buildings of this scale in such close quarters. The physical presence of large industrial structures, and regular use of the perimeter roads serving the incinerator and ash handling building in close proximity to the footpath would create a somewhat oppressive effect for users and adversely impact their amenity. These impacts would be further exacerbated by walkers who would be required to cross the access road at the entrance to the main CERC facility so that they may continue to use the footpath. The vehicles using the road will range from cars and light vans through to bulker lorries carrying waste, in some cases the largest type of lorries to use the UK road network.

7.50 The route of footpath 14 would remain unaltered from its current alignment however approximately 200m would run alongside the CERC site boundary. In places this footpath would be as close as 40m away from the ash handling building and associated vehicle movements. While it is accepted that the section of footpath 14 south of the rail line runs through the existing china clay dryers, the 200m of this footpath in close proximity to the CERC is not considered to enhance the overall amenity users of this footpath.

7.51 In terms of general disturbance the principal impacts will be caused by the close proximity of users on footpaths 2 and 5 with the access road. Users of these sections will experience lorry movements during the construction period at a frequency of 4 total movements

per hour, and during the operational period these would increase to 30 total vehicle movements per hour for all vehicle types (i.e. a movement every two minutes on average), of which 18 per hour would be waste deliveries. Mr Stephenson has calculated that during the peak hour period (13.00 to 14.00) there would be a continuous flow of traffic using the haul and access roads. Users of footpath 5 would be required to cross the access road where it enters the main CERC facility and which would coincide with the 'busiest' areas for all site and non-site traffic using the incinerator and ash handling facility. The risks associated with this would further impact on their amenity.

7.52 Users of footpath 17 will experience a change in their amenity from close proximity to the haul road. The proposed pavement adjacent to the C184 would provide some mitigation of the impacts of a permanent increased in lorry movements however approximately 40m of the pavement would reduce in width to 0.75m and fall short of the Council's preferred width for a footway of 1.8m, and for other footpaths that have recently been created in the local area.<sup>21</sup>

#### b) Dust impacts

7.53 Other impacts on users are considered likely from dust emissions arising from vehicles during the construction and operation stage, as well as dust emissions arising during the construction of the CERC itself and

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<sup>21</sup> For example a footpath created adjacent to the B3269 south of St Dennis at the Hendra cross-over was approved at 1.5m width.

associated roads. SITA has indicated that dust arising has the potential for “significant impacts” on receptor locations within 10m of the site boundary, well within the proximity of footpaths 2, 5, 14 and 17<sup>22</sup>. Even at 100m from the route for construction vehicles SITA has stated there is the potential for significant impacts from dust.<sup>23</sup> SITA’s assessment of dust impacts has been based upon residential properties, and while no assessment has been made of the impacts on users of the footpaths, it is reasonable to assume such impacts would also be felt by footpath users who would be closer to the dust sources adjacent to the access and haul roads.

7.54 SITA considers that the use of mitigation measures to control dust should ensure that dust would not be a significant issue<sup>24</sup>; however the specific measures to achieve this mitigation have not been confirmed. SITA also consider the effects will be temporary in nature, as the construction works themselves would not be continuous and the receptors i.e. pedestrians and other similar users are transitory in terms of the duration of them being impacted. However the duration of the construction period of the haul and access road is proposed to be nine months and the duration of the main CERC site 33 months<sup>25</sup>. While it is accepted that impacts on the network from the construction stage would be temporary the likelihood of a significant effect on users cannot be discounted during this period.

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<sup>22</sup> Section 5.2 of Technical Appendix B to Environmental Statement: ‘Air Quality’

<sup>23</sup> Ibid

<sup>24</sup> Para 24 and 40 of appellant’s Regulation 19 report

<sup>25</sup> Para 8.53 of Chapter 8 to Environmental Statement: ‘Noise’

### c) Landscape and visual impact on footpath amenity

7.55 Sections of footpath 5 currently run through agricultural land and a 260m section alongside the existing railway line and afford good panoramic views across the landscape to the north. Users of footpath 2 also enjoy similar views.

7.56 Where footpath 5 meets footpath 14 in front of Parkandillick Dryers the route of the path runs in relative close proximity to the existing rail-line and adjacent china clay dryers to the rear, and the proposed incinerator and ash handling building.

7.57 The principal impact from a landscape and visual perspective would be the lessening in the opportunities to enjoy the panoramic views, caused by the physical obscuring of views by the development, together with the replacement of the views by a visually dominant industrial development with a conspicuous stack and associated plume. The opportunity for panoramic views over the landscape to the north will be lessened due to the change in ground levels. Further detailed analysis of these impacts is described in the landscape and visual impact proof of Mrs Robyn Butcher.

7.58 Users of other footpaths in the local area would also be affected by the proposal due to impacts on views by the provision of a very large industrial building. In general the users of the network of footpaths would experience an adverse amenity impact. Some of these footpaths

connect to locally important historical buildings e.g. footpaths 10 and 26 lead from St Dennis Church directly in the direction of the CERC and currently offer panoramic views across the local area. These footpaths would have clear views of the CERC which would obscure views of surrounding countryside. The scale and massing of the CERC building is not proportionate to the existing development. Indeed, the sheer size and scale of the CERC building and stack would serve to focus views on it. The development and stack would be particularly visible from the nearest footpaths and would 'cut' into the skyline. These impacts would present a significant change to users of the footpaths. Further detailed analysis of these impacts is described in the landscape and visual impact proof of Mrs Robyn Butcher.

#### Indirect effects on footpath users

7.59 Other footpaths in the locality where no physical works are proposed include Footpath Nos. 10, 13, 14, 18, 26 and 31. These are also important public rights of way in the local network and the amenity value of these footpaths would be affected principally from visual, noise and general disturbance due to the presence of a major new waste management facility in the locality.

7.60 The appellant has suggested that the low usage of the footpaths and the relatively transient nature of walkers in the area reduces the significance of the impact, and has stated that the level of usage of the public footpath

is low<sup>26</sup>. This does not however reflect the comments expressed in local representations. Further, the statement is contradicted elsewhere in the environmental statement where it is stated that footpaths 2, 15, 14 and 31 “appear to be well used”.<sup>27</sup> In any event the perceived lack of usage does not diminish the weight to be attached to the level of harm to users of these footpaths.

### Consultee Responses

7.61 An analysis of the consultee comments reaffirms the Council’s concerns on this issue. The Cornwall Countryside Access Forum and Cornwall Area Ramblers Association have both raised objections to the siting of the footpath adjacent to the access road and have highlighted the perceived dangers in the road crossings. The Parish Council have highlighted the historical importance of the footpaths and has highlighted their use in the local community. Other consultees such as STIG and local representation have raised similar concerns. Consultee comments are provided at Appendix 22.

### Conclusion on footpath impacts

7.62 Overall to conclude on this issue it is clear that the proposed works would significantly alter the network of public footpaths in the area and would cause material harm to the amenity of the users and character of the

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<sup>26</sup> See for example paragraph 6 of SITA’s ‘Response to request 4.3’ Regulation 19 request  
<sup>27</sup> Chapter 9 of Environmental Statement; paragraph 9.94

local public footpath network. The harm would be experienced during both the construction and operational stage and would derive from noise, general disturbance and landscape and visual impact. The footpaths principally affected by direct changes would be sections of footpaths 2, 5 and 17. The footpaths principally affected indirectly are footpaths 10, 26 and 14.

7.63 Government policy for rights of way is to recognise their importance in providing social and economic benefits for people and communities. In this context the government wishes to safeguard their routes and places a responsibility on local authorities to protect and enhance such routes. This development would achieve the opposite.

7.64 Consequently the proposals are contrary to Policy 2 (Character Areas, Design and Environmental Protection), 6 (Waste Management) and 13 (Tourism and Recreation) of the Cornwall Structure Plan 2004, and Policy C1 (Operational Practice) of the Cornwall Waste Local Plan 2002.

**Tables 2 and 3**  
**Generalised impact summary for users and network**  
**of relevant footpaths**  
(see also explanatory notes overleaf)

**2. Construction stage (including CERC, haul and access roads)**

Footpath number	Impact Type and planning assessment			
	Noise	Dust	Visual	Disturbance
2	XXX	XXX	XXX	XXX
5	XXX	XXX	XXX	XXX
14	XX	XX	XX	XX
15	XX	XX	X	XX
17	XX	XX	XX	XXX
18	XX	X	XX	XX
31	XX	X	XX	XXX
108	Footpath proposed to be stopped up as part of the development proposals at 'La Mount corner'			
109	Footpath proposed to be stopped up as part of the development proposals at 'La Mount corner'			
10	-	-	X	-
26	-	-	X	-
13	X	-	-	-
16	-	-	-	-

**3. Operational stage**

Footpath number	Impact Type and planning assessment			
	Noise	Dust	Visual	Disturbance
2	XXX	XXX	XXX	XXX
5	XXX	XXX	XXX	XXX
14	XXX	XX	XX	XX
15	XX	XX	X	XX
17	XXX	XX	XXX	XXX
18	X	X	XX	XX
31	XX	X	XX	XX
108	Footpath proposed to be extinguished/stopped up as part of the development proposals at 'La Mount corner'			
109	Footpath proposed to be extinguished/stopped up as part of the development proposals at 'La Mount corner'			
10	-	-	XXX	-
26	-	-	XXX	-
13	-	-	XX	-
16	-	-	X	-

Key

XXX Impact very high

XX Impact high

X Impact adverse but overall tolerable

## Notes

1. The generalised impact summary is based on a land use assessment, having regard to the evidence presented by other witnesses.
2. The dust assessment is based on the Environmental Statement's assessment of significance only.
3. Section of footpath 5 affected. Impacts on this footpath also account for any potential diversion around the CERC perimeter.
4. Impacts to footpaths 13, 14, 15, 16, 18 and 31 would lessen or intensify the further away/closer you are on these footpaths to the CERC.
5. Sections of Footpath 14, 15, 16 and 108 not possible to traverse but nearby routes have been assessed where appropriate.
6. Construction-based impacts will only take place when construction works in operation.

## **8 Impacts on residential amenity from noise**

8.1 Reason no. 5 of the Decision Notice relates to impacts on residential amenity due to noise both during the construction and operational stages of the CERC development, and is copied below:

5. The proposal would have an unacceptable impact on residential amenity due to noise both during the construction and operational stage, particularly in respect of those properties located at “La Mount Corner”, Rostowrack and Bodella Farms; north-west Treviscoe and properties immediately adjacent to the proposed haul road. This is contrary to Policy 3 (Use of Resources) and 6 (Waste Management) of the Cornwall Structure Plan 2004; Policy C1 (Operational Practice) of the Cornwall Waste Local Plan 2002, and Policy 37 (Noise) of the Restormel Borough Council Local Plan 2001.

8.2 This section of the proof provides a planning assessment of the impacts of noise impacts on residential amenity. Separate technical evidence is given by Mr Simon Stephenson in relation to noise and this Proof does not repeat the specific points raised by Mr Stephenson.

### Existing amenity

8.3 The surrounding area is characterised by a pocket of relatively undisturbed agricultural land (referred to as a ‘green bowl’ in the Proof of Mrs Robyn Butcher) which contrasts in its character to the adjacent and extensive china clay workings. The appeal site is located on

agricultural land adjacent to the main china clay drying and processing facilities of 'Parkandillick calciners' and 'Trelavour Dries' operated by the two china clay companies, Imerys and Goonvean Ltd. The rail line provides a distinctive physical barrier between the agricultural land and the china clay works.

8.4 From a noise perspective the C184 public highway which runs down from Stamps Hill near to the A30 Highgate Hill junction, down to Treviscoe and past the appeal site, is used by lorries, which creates a presence on properties that face the road. However the frequency of use of this road by lorries is constrained by a height restriction on a low bridge in Treviscoe (13.3ft or 4.05m), with the result that that tallest articulated-style lorries that serve the china clay industry and nearby processing facilities at Parkandillick, Trelavour Dries and Treviscoe do not use this road and instead use an alternative route through St Dennis to access the A30. I consider the road to be relatively quieter in terms of lorry movements than other similar roads in the local area with direct access to the A30 for example the B3279 St Dennis road, which is a direct consequence of the limitations imposed by the low bridge. The Council's traffic count which is referred to in SITA's Transport Assessment supports this finding.

8.5 Within the surrounding area lie the two villages of St Dennis and Treviscoe. St Dennis is the larger and more significant settlement than Treviscoe, with the latter comprising a grouping of residential properties that were first developed with the development of the china

clay industry. Other residential properties lie within the general area. For the purposes of this appeal the nearest residential properties are:

- a) the two farmsteads (Bodella and Rostowrack Farms) either side of the proposed CERC building; and
- b) the two residential properties (La Mount and Glen Garth) adjacent to the proposed access road; and
- c) the group of properties in the north west of Treviscoe village; and
- d) the group of three properties to the north of the proposed haul road.

8.6 The location of these properties and other key features can be seen in the Statement of Common Ground.

8.7 In noise terms the general area is relatively undisturbed, and while background noise levels are influenced to a degree by the adjacent china clay drying and processing operations, outside that influence the area generally assumes a relatively quiet environment. The A30 Trunk Road is locally 'noisy' but its influence diminishes with distance and is barely discernable at the appeal site. These findings are borne out in Table 6.3 in the evidence of the Council's noise expert Mr Simon Stephenson who considers that during the day time period background noise levels would be 38 dB – 48 dB.

8.8 In terms of the china clay workings it is accepted that more noticeable noisy activities can take place from time to time in the surrounding area, for example the

occasional sound of mobile plant and machinery at the adjacent dryers; or more distant sounds from the china clay workings. However other than these sources, and outside the immediate locality of the china clay refining facilities, the area assumes a relatively quiet noise climate.

#### Planning Policy considerations

8.9 The issue of noise is addressed at the national and local level. The statutory planning guidance in relation to noise in England is contained in Planning Policy Guidance Note 24 - Planning and Noise.

8.10 The general principles within PPG24 are that (summarised from paragraph 2, page 5):

- noise is a material consideration in determining planning applications;
- locate new noise sensitive developments away from noise sources;
- locate new noise generating development away from noise sensitive development;
- where it is not possible to separate noise sensitive developments from major sources of noise, use planning conditions to reduce noise impact;
- avoid locating noisy developments in previously quiet areas.

8.11 The overall aim of the guidance is "to provide advice on how the planning system can be used to minimise the adverse impact of noise without placing unreasonable

restrictions on development or adding unduly to the costs and administrative burdens of business" (paragraph 1, page 5).

8.12 At the local planning policy level the issue of noise is addressed in the Cornwall Structure Plan 2004; the Cornwall Waste Local Plan 2002 and the Restormel Local Plan 2001. These plans seek to safeguard existing amenity from the impacts of noise and seek, through their protective criteria, to prevent developments that give rise to an unacceptable noise impact.

#### Planning Assessment of noise

8.13 The proposed facility would introduce a range of new noise sources into an area which is currently relatively undisturbed from intrusive noise sources.

8.14 Within the planning application SITA has proposed a number of site specific and more generic measures to minimise the noisiest aspects of the CERC operations by implementing a series of operational controls at the site which would apply during the construction and operational stages. These include for example the restriction on times and vehicle speeds for traffic serving the site; the provision of earth mounds around the site perimeter, as well design-based measures to the plant and machinery such as the installation of attenuators and acoustics rated louvres on the building.<sup>28</sup>

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<sup>28</sup> Paragraph 8.27 of Environmental Statement and Section 4 of Regulation 19 response.

8.15 However it is clear from a technical assessment of the Environmental Statement and the evidence presented by Mr Simon Stephenson for the appeal that notwithstanding the proposed mitigation noise levels would materially increase during both the construction and operational stages. Some of these noise levels would be particularly acute at close distance and which would impact on sensitive receptors.

8.16 The properties which would be most affected by noise resulting from the proposed CERC facility during both the construction and operation period would be:

- a) the two farmsteads (Bodella and Rostowrack Farms) either side of the proposed CERC building; and
- b) the two residential properties (La Mount and Glen Garth) adjacent to the proposed access road; and
- c) the group of properties in the north west of Treviscoe village; and
- d) the group of three properties to the north of the proposed haul road.

These impacts are considered further below.

- a) The two farmsteads (Bodella and Rostowrack Farms)

8.17 During the construction phase these properties would experience a substantial noise impact above and beyond the thresholds of an acceptable level as defined in

relevant guidance. While it is acknowledged that the construction period would be temporary in nature, in this case the total duration of the construction period would be up to 42 months (including the construction of the access and haul road), and the noisiest construction operations to affect these farmsteads would take place for several months within this period. The farmsteads would also experience noise impacts during the operational phase. Rostowrack Farm is in close proximity to the proposed ash handling building and the farmhouse itself is approximately 80m from one of the main entrance/exit doors to the ash handling facility, although the door to this facility is approximately 20m from the boundary of this property. While it is reasonable to expect the entrance and exit doors to the ash handling facility to remain closed when not in use it would need to be opened to facilitate the loading and unloading of lorries.

8.18 It is clear from the potential impacts identified above and in the evidence of Mr Stephenson that demonstrable planning harm would be caused to these farmsteads, in particular from the construction noise.

b) The two residential properties (La Mount and Glen Garth) adjacent to the proposed access road

8.19 These two properties are located adjacent to the proposed junction of the access road with the public highway. They would be exposed to high levels of noise and disturbance as a result of lorry traffic during the construction and operation period.

8.20 Noise from vehicle movements would be influenced by noise from vehicles using the public highway. It would therefore be impractical to set any meaningful noise conditions at these residential properties. Further, the potential impacts from noise would be so adverse that, notwithstanding the proposed mitigation, it would render the possibility of imposing conditions which seek to control noise limits unworkable and therefore unenforceable.

8.21 The appellant has indicated that the proposed access road would be adopted as a public highway and compensation would therefore be payable to nearby residential properties which experience depreciation in land values from factors which include noise. Even assuming that these legal provisions are applicable, it is considered that the use of such financial compensatory measures do not remove a planning objection, as existing and future occupants would be exposed to an unacceptable planning environment. Financial compensation in these circumstances is not regarded as mitigation.

c) the group of properties in the north west of Treviscoe village

8.22 These properties are located approximately 55m to the south of the proposed access road. The principal impacts of the appeal development upon these properties would derive from the exposure to noise from

lorries travelling along the access road during the construction phase and the operational period.

8.23 SITA have not proposed any specific mitigation measures to control/minimise noise impacts on these properties, other than the more generic safeguards referred to above. Without suitable mitigation measures it is considered that the residents of these properties would experience unacceptable harm to their amenity.

d) group of three properties to the north of the proposed haul road.

8.24 These properties are located approximately 25m north of the proposed haul road. They would be exposed to noise from lorries travelling along the haul road during the construction phase and during the operational life of the proposed facility.

8.25 For the same reasons as above without suitable mitigation measures it is considered that the residents of these properties would experience unacceptable harm to their amenity.

#### Conclusion on noise impacts

8.26 It is clear from the above that noise arising from the construction and operation of the proposed CERC facility would have a significant effect on the surrounding area and would have a serious impact on the quality of life of individuals and communities. Government guidance is

clear that development should not cause an unacceptable degree of disturbance. The lack of any implementable mitigation measures and the creation of potentially “un-tenantable” farm units compound the planning concerns. In conclusion the construction and operation of the proposed CERC and associated infrastructure would have a significant detrimental impact on local amenity, notwithstanding the proposed mitigation measures.

8.27 For the above reasons it is concluded that the proposals are contrary to Policy 3 (Use of Resources) and 6 (Waste Management) of the Cornwall Structure Plan 2004; Policy C1 (Operational Practice) of the Cornwall Waste Local Plan 2002, and Policy 37 (Noise) of the Restormel Borough Council Local Plan 2001.

## **9 Overall planning assessment**

9.1 This section of the proof provides an overall planning assessment of the matters raised in the Proofs provided by the other expert witnesses.

9.2 In waste planning policy terms it is accepted that the appeal site is located within the Area of Search for energy from waste facilities as set out in the Cornwall Waste Local Plan 2002. On this basis there is a general conformity with the adopted local strategy for dealing with the County's Municipal Solid Waste (MSW) stream. While the Cornwall Waste Local Plan remains the adopted local Plan for the provision of new waste management facilities in the County and remains relevant as part of the Development Plan, there has been more recent national and regional planning policy and guidance that has emerged, and the passage of time since the Plan adoption (2002) reduces the weight to be attached to that Plan. Since the Waste Local Plan was adopted a revised Planning Policy Statement on sustainable waste management has been issued (PPS10); a revised national waste strategy has been issued (Waste Strategy 2007), and the emerging Regional Spatial Strategy has now reached an advanced stage. All these documents attract material weight in the planning assessment. Further evidence on this is given in the proof of Mr Roger Miles.

9.3 In respect of new waste management facilities the Cornwall Waste Local Plan includes criteria-based policies, and for a development to be considered

acceptable in planning terms it must meet the criteria within the relevant policies. In respect of energy from waste facilities the Plan does not identify a specific site, or technology, nor does it preclude energy from waste facilities from being delivered outside the area of search. As part of the planning assessment it is necessary therefore to identify the harm generated by the CERC scheme and then assess the CERC scheme against the key relevant criteria contained within the plan policies, which in this case are policies L6, L6A and the text in L6B.

- 9.4 A comparison of the scheme against the criteria of these policies is set out as follows:

Policy L6

*Within the Area of Search applications for an Energy from Waste plant will be approved where the proposals:*

- a. *demonstrate reasonable proximity and accessibility to the Primary Route Network;*

The CERC site is located approximately 2-3 km from the Primary Route Network (the A30), although vehicles need to travel 4 1/2 kms to reach the A30. The haul and access roads are considered acceptable from a highways development control perspective. Overall it is considered this criterion is met;

- b. *the Plant is to be served by rail;*

The CERC would not be served by rail nor is there any specific intention to serve the CERC in the future. Further, the evidence of Mr Nigel Millington casts doubt as to whether the layout of the CERC could be served by rail. This criterion is not met;

- c. *demonstrate reasonable proximity and a good quality connection to the main electricity grids;*

SITA has stated that the proposed CERC facility would be connected to the nearest electricity sub-station at Fraddon, although SITA has stated that this would be addressed by the relevant utility company and there are no details to demonstrate how this would be achieved. This criterion is therefore not met;

- d. *will produce both electricity and heat for off-site consumption;*

The CERC will produce electricity for export to the National Grid and heat for consumption in the adjacent china clay dryers. This criterion is therefore met;

- e. *have sufficient on site capacity to provide for residue processing facilities;*

The CERC provides for an ash handling facility sufficient to accommodate the needs of the adjacent incinerator. This criterion is therefore met;

- f. *can demonstrate that any adjacent ancillary development will be in accordance with the spatial strategy contained in the relevant development plan;*

No ancillary development is proposed and this criterion is therefore not applicable.

- g. *do not adversely effect the integrity of a candidate Special Area of Conservation;*

The evidence of Mr Kevin Webb indicates that it is not possible to conclude that the CERC would not adversely affect the integrity of nearby European Sites (specifically the Breney Common and Goss and Tregoss Moors Special Area of Conservation, and the Clay Pits Special Area of Conservation), either alone or in combination with other developments in the area around the CERC. This criterion is therefore not met.

- h. *the Plant has a gross maximum annual capacity of no more than 200,000 tonnes.*

The CERC would have a gross maximum annual capacity of 240,000 tonnes. This criterion is therefore not met.

## Policy L6A

*Planning permission will not be granted for EfW proposals which would:-*

- *Harm landscape features such as ancient woodland, significant areas of other woodland, historic parkland, extensive areas of semi-natural vegetation, hedgerows or trees of significant landscape or nature conservation importance;*

The CERC proposals would have an adverse effect on existing Cornish hedges and trees, some of which are considered to be important in particular those within the protected trees at Trerice Bridge which is also subject to a Tree Preservation Order. The proposals would also have an adverse effect on Anciently Enclosed Land which is addressed in the proof of Mr Nick Cahill. There is conflict with this criterion;

- *Cause loss of important local landscapes;*

There are important local landscape views in particular views from buildings of historic importance and across the affected Public Rights of Way. There is conflict with this criterion;

- *Be incompatible with local landscape character in terms of location, scale, building design or choice of planting;*

The CERC would be incompatible with local landscape character due to scale, massing and design impacts. There is conflict with this criterion;

- *Cause significant light pollution of surrounding rural landscapes;*

The evidence of Mrs Robyn Butcher states that there is insufficient information to allow an adequate assessment of the nature and severity of this impact, although it is indicated that there is a potential for a likely significant effect arising from the CERC buildings.

- *Cause significant impact on the visual amenity of local residents or recreational users.*

The CERC would have an unacceptable impact on the visual amenity of local residents and recreational users of Public Rights of Way. There is conflict with this criterion;

9.5 In terms of reviewing the CERC scheme against the reasons for refusal, Reason 1 highlights the conflict that the CERC scheme would generate against key criteria in Policies L6, L6A and the text in L6B of the Cornwall Waste Local Plan. Several of the criteria directly relate to the matters raised by other expert witnesses. The issues I raise on public rights of way and noise are also relevant to these policies.

- 9.6 Further, the strategy for handling MSW and policies L6, L6A and L6B are intended to apply to the MSW fraction of waste arising in the County. In this case the CERC scheme is intended to provide an overall capacity of 240,000 tonnes of both MSW and the Commercial and Industrial waste streams. The evidence of Mr Miles shows that the scale of this facility is predicated on an assumption on future waste arisings which are considered to be overly pessimistic and therefore it is likely that a greater proportion of C&I waste would be utilised. These may adversely affect nationally-set recycling targets during the projected life of the CERC.
- 9.7 Reason 2 specifically raises the adverse impact the scheme and its associated haul and access roads would have on the landscape resources of the area. The sensitivities of the receptors are high as identified by Mrs Robyn Butcher and the impacts on these receptors are manifested in the changes from an agricultural character to an industrial character. The impacts are further manifested by the loss of the local historic field patterns and removal of Cornish hedge. The conclusion is that the proposal would have an unacceptable landscape and visual impact.
- 9.8 Reason 3 addresses the impacts on the historic landscape and the impacts on the settings of three Listed Buildings in the area. The principal objections under this heading are the impacts on the setting of the Parkandillick Engine House by compromising the public viewpoints of this building. The setting of the Church of

St Dennis and further afield the Castle-an-Dinas hillfort would be impacted due to the breaking of the skyline and the interruption of key historic views. The principal impacts to Trerice Bridge would be to its setting, caused by the development of the haul road including its access with the public highway and the bridge that would cross the river Fal. The scheme would also involve the loss of ancient hedgerows.

9.9 The evidence presented by Mr Cahill and to an extent by Mrs Butcher demonstrates that the CERC scheme does not conserve and enhance landscape features and habitats of heritage importance nor the integrity or continuity of landscape features in the wider landscape (in this case Cornish hedges) and on this basis there is conflict with Policy 11 and 18 of the Restormel Local Plan 2001. While the CERC scheme would deliver some benefits, which are acknowledged elsewhere in this proof, these are not considered to outweigh the identified harm. The adverse impacts on Areas of Great Historic Value in the surrounding landscape, which are addressed in policy 24, and in the case of Trerice Bridge would be directly affected by the physical works at the haul road which are located around the CERC site, contribute to the overall harm.

9.10 Reason 4 and 5 relate to impacts on amenity from noise on residential properties and rights of way. The specific impacts are manifested through noise, visual impacts and through general disturbance from the CERC scheme. These impacts relate to harm from the buildings themselves and the proximity to the footpaths

and several residential properties, and would be felt during the construction and operational stages.

9.11 Reason 6 relates to the manner in which the CERC scheme gives rise to identified environmental impacts and the extent to which SITA have not adequately considered alternatives. In this case the evidence of the other witnesses has identified the harm that would be caused by this proposal, which produce a conflict with relevant policies in the local plan. Mr Miles has identified suitable solutions to the CERC scheme that could give rise to lesser environmental impacts. Mr Miles has also identified other technology solutions which may give rise to lesser environmental impacts in terms of impacts to environmental and amenity interests.

9.12 Reason 7 deals with the conflict the scheme would have on the regeneration ambitions of the surrounding area. The proof of Stephen Vinson identifies that the local area is undergoing an economic and social regeneration following the establishment of a number of statutory and non statutory regeneration initiatives. The objective of these initiatives however is common: to address and turn around the historic difficulties that the local area has had in its economic and social fortunes. While the CERC scheme offers a number of positive attributes to this objective for example in job creation, they are not considered to outweigh the negative attributes in terms of creating harm to people and environmental interests. Overall there is a negative impact on the regeneration of the local area which is unwarranted and conflicts with key planning policy.

- 9.13 Reason 8 deals with the transportation impacts of the proposed scheme and the conflict the scheme has on sustainable development objectives by its dependence on the transportation of waste by road. The evidence of Mr Millington shows that there are potential alternatives to the scheme which would give rise to fewer overall vehicle based miles and accord with key policy indicators of sustainability. He further shows that the CERC scheme could be served by rail in terms of its viability, although the actual layout of the CERC would preclude the provision of an adequate rail facility.
- 9.14 In addition to the above the impacts to nearby European sites of nature conservation importance have been identified. The evidence presented by Mr Kevin Webb concludes that it cannot be ascertained that there would not be harm to the CERC scheme alone or in combination with other relevant developments which contribute to similar impacts on such sites. In these circumstances unless the applicant can demonstrate both that there are no alternatives to the scheme and that there are over riding interests of public importance, the permission cannot be granted. The Council is unaware that the appellant seeks to make such an argument and on the evidence before me, I cannot, in any event, see how such a case could be made out. It is therefore my opinion that the effect of the Habitats Regulations is to prevent permission from being granted for this scheme.

9.15 I have looked at the relevant policies carefully and my view in light of the evidence presented by the expert witnesses is that the identified harm is significant to outweigh the acknowledged benefits. Having analysed the CERC scheme against relevant planning policy including the key criteria in the Cornwall Waste Local Plan, and identified the harm that the scheme would generate, on balance it is concluded that the scheme should be refused planning permission.

## **10. Conclusion**

- 10.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that planning applications must be determined in accordance with the development plan unless other material considerations indicate otherwise.
- 10.2 The appellant is seeking to provide a large scale energy from waste plant on agricultural land at Rostowrack Farm. I am clear in my conclusion that such activities will give rise to a range of adverse environment and amenity impacts.
- 10.3 To conclude a planning assessment on the matters raised in this Proof it is necessary to return to the provisions of the relevant policies in the Development Plan. The adopted Cornwall Waste Local Plan seeks to achieve the objective of a more sustainable method of managing waste. For the Municipal Solid Waste stream this would be achieved by the provision of a single centrally located energy from waste facility. It is recognised and accepted that the proposed scheme would facilitate a move up the waste hierarchy in terms of providing an energy recovery facility. It is also recognised and accepted that this should be delivered by an energy from waste facility. The CERC scheme would also generate energy for adjacent users, and to a limited extent would provide employment opportunities. Further, the application site is located within the Area of Search and accords with the broad strategic approach in the adopted Waste Local Plan.

10.4 However although the CERC meets the broad strategic approach for MSW as set out in the Cornwall Waste Local Plan it does not comply with the more recent emerging strategic policy set out in the draft Regional Spatial Strategy. Further there are alternatives to the CERC scheme (both in terms of sites and technology options) which could give rise to lesser environmental impacts.

10.5 However in order to achieve the above objective the delivery of an energy from waste facility must also accord with the key criteria in adopted policy. Following an analysis of the scheme it is considered that harm would be caused, notwithstanding the proposed mitigation, in particular due to landscape and visual impacts; historic environment; noise and general amenity including users of public footpaths and impacts on the regeneration ambitions on the local area. The CERC scheme relies on the exclusive dependence on road based transportation of waste, while alternative sites and methods of transportation could give rise to fewer environmental impacts and better accord with sustainable development objectives. Further, it has not been objectively concluded that the scheme would not have an adverse impact on nearby European sites. The cumulative weight to be attached to this harm is considered to be significant and outweigh the in-principle support for energy from waste in this location.

10.6 I have reviewed the application and relevant government guidance and conclude that the proposals would have an overall unacceptable impact on the

network and users of the public rights of way in the area.

10.7 I therefore conclude on balance that the application is contrary to the policies of the Development Plan specifically the Cornwall Structure Plan, the Waste Local Plan and the Restormel Borough Council Local Plan with regard to safeguarding the environment and amenity interests of the surrounding areas and would not warrant a departure from the policies contained within the Development Plan.