HATFIELD QUARRY INQUIRY

CLOSING ON BEHALF OF HERTFORDSHIRE COUNTY COUNCIL

A: Mineral Extraction here

1. The Site is allocated for mineral extraction and has been for many years. Whilst HCC has been able to maintain a healthy landbank since 2002 without a single tonne being extracted here, it is accepted that minerals have to be extracted where they are and that here that means in the green belt ("the GB"). Policy gives great weight to such extraction and there can be other significant benefits from extraction. Thus, once the hydrogeology issue is appropriately resolved, it is accepted that permission will need to be granted for a scheme which is for appropriate development only, which minimises the impact on the openness of the GB whilst maximising the quality and quantity of public access during the 32 years of works. The question for the inspector at the end of this inquiry, from HCC's perspective, is whether the amended scheme meets those tests. HCC considers that it does not. The allocation and policy support does not provide a blank cheque to the developers and Brett can hardly rely on benefits which *any* scheme will have to deliver to justify a grant for this scheme.

B: The Original Scheme

2. The 2016 Proposals remained unchanged at the point of the report to committee, the making of the appeal, Brett's Statement of Case and even the General SoCG. No attempts to respond to concerns on pumping, the stand-off, the CBP or processing site area were made *at any stage.* No concessions to what we now know were justified concerns were made by Brett at any point until the last-minute changes in the run up to and during this inquiry (see below).

3. We now know that those 2016 Proposals as submitted and as argued for so recently *cannot be approved* because there is simply no evidential base in support of key elements of them.

4. Rather than seek to defend that which was sought until so recently, key elements are now (at the 12th hour) dropped. As to pumping, Brett's own expert describes the absence of pumping as "fundamental"[1], as to stand-off, the expert discussion proceeded on the basis of the 100m; as to CBP we have a UU which Brett positively invites the Inspector to accept as being necessary and as to the processing area (and haul roads and associated bunds/screening) we have conditions which seek to

[1] a "fundamental aspect of the operational plan … [is] that there will be no pumping of groundwater from the LMH…." [Rowland proof para 6.11 p18].

ensure they (rather than the application plans) are worked up to meet Mr Treacy's basic test for "appropriateness" – namely that they are designed to "minimise impacts": para 4.34.

C: Absence of a worked-up scheme in the light of the accepted need for changes

5. There is no scheme of drawings put forward which shows what is now proposed following all the concessions during the inquiry. As to the processing area there is no plan which shows the CBP removed, the processing area limited to 8.5ha and the southern bund in a way which minimises impacts on openness – it is all left to condition. Despite RfR1 there is no plan showing how the haul roads and working areas will be appropriately screened to minimise impact from within the Site.

6. Rather than start afresh to design a fit for purpose scheme in the light of the now agreed parameters, and come up with a scheme designed to minimise impacts (including crucially the need to minimise impacts from publicly accessible parkland at each stage ***within*** the Site) and maximise public access, the conditions will involve ***retrofitting*** basic protections and basic planning requirements into fixed plans with fixed phases. This is all the wrong way round.

7. It is clear that this scheme was designed to minimise impacts from ***outside*** or from the boundaries of the Site – not minimise impacts on openness ***within*** it and that no steps whatsoever were undertaken at the outset to address that aspect; or to shield the works from within it, or to come up with phasing and haul routes and screening which minimised impacts on openness, whilst maximising the quality and quantity of access for the public.

8. The lack of any haul road plans, any plans showing bunds to the south of the processing area (as amended[2]) and their specification; or screening whatsoever to minimise impacts from the work sites and haul roads is testament to a failure to address from the outset of the design the "elephant in the room" in the original design – namely the imperative to "minimise impacts" (Treacy) on openness from within the Site. The Council has come up with conditions to try to mitigate the impacts of this failure should permission be granted but the correct approach is to send Brett to come up with a properly designed scheme which recognises the need to minimise impacts internally and maximise access internally.

9. This is because the ability to do that exercise under the conditions when all key parameters are fixed by the approved plans is inappropriately curtailed. Designing a

[2] There is not even a sketch plan as to how the 5m bunds on the south would fit with the amended plan HQ3/3 and the trapezium cut into it whilst maintaining the stockpile locations. ID27 is not on the correct base plan.

scheme, phasing and processing area, to minimise impacts on the rest of the site and to maximise public access to it consistent with mineral extraction is a wholly different proposition from coming up with the details of a scheme to make the best of a bad job once the parameters are fixed by the "approved plans".

10. The appeal should be refused and Brett sent back to come up with a scheme which incorporates all the concessions made to date whilst designing it to achieve that which its own experts acknowledge must be delivered – minimising impacts and maximising public access both in terms of quality and quantity.

11. There is no difficulty with such a course. Brett has the 2021 Application with its up to date ES which can be modified to take on board the concessions wrought from it through this process. It can substitute plans to show appropriate phasing to minimise impacts on openness whilst maximising public routes in and through, show the haul roads and how their location is planned to minimise the impacts on openness of lorries running through the Country Park; design a processing area which takes up the minimum space necessary and being placed and designed to minimise impacts and maximise the quality and quantity of public access around it.

12. That can all be done in short order. It is not understood why that has not already been done in response to the reasons for refusal and in advance of this inquiry – and those plans sought to be substituted. It is not as if Brett did not know the areas of concern from RfR1.

13. There is no "supply" problem. There is currently a slight shortfall against the 7 years but no impediment to the s.106 being signed in respect of the new site and thus giving a window of 2 years to rectify the self evident problems with this scheme.

D: The Substitution: Changes to the Scheme

14. Subject to the above (namely the correct approach to rectify the patent flaws in this scheme), the Council has no objection to the substitution requested (although it is still unclear what that means in certain respects[3]). The appeal should be determined

[3] In Brett's 25th November 2021 Note (well after the end of the evidence), Brett finally set out precisely what substitution of plans it was seeking at para 4. HQ3/1 and HQ3/2 (2016) are replaced with HQ3/1 and HQ3/2 (2021) – to show the changed road alignment; and HQ3/3 (2016) is replaced by HQ3/3 (2021) to show the omission of the CBP and consequent changes to the Processing Area (for example the trapezium cut out of the Processing Area) and the reconfiguration of the stockpiles, lagoons and circulation areas). Yet those changes do not incorporate the changes to 5m in the height of the bunds which Mr Lowden was clear were the basis of his evidence (and hence his cross-examination). Mr Treacy confirmed at the outset of his XX that he was seeking to have the 2016 Appeal determined on the basis of

on the basis of those amended plans and proposals. All the above points are however repeated – the conditions are being used to try to retrofit essential protections into a scheme which has simply not addressed basic requirements at the outset.

15. The remainder of this Closing proceeds on the basis that the substitution sought is allowed. If not, of course, para 3 above applies.

16. The effect of the substitution is to all intents and purposes to substitute the 2021 Application proposals into the 2016 Appeal. The free 2021 Application is the correct route to determine the acceptability of that new scheme – see Costs Application.

17. Looking at the substituted scheme on its own merits, the first issue is to consider the extent of the changes (and what has not changed).

18. At the end of the inquiry there are multiple changes promoted by the Appellant to the 2016 proposals the subject of this appeal:
    a. no pumping;
    b. 100m stand-off;
    c. no CBP;
    d. reduction in size of processing area;
    e. increase in height of bunds; and
    f. requirement for bund to south of processing areas and measures to screen on site haul roads.

D1: Pumping:

19. *Introduction:* The Appellant seeks to downplay the significance of this change and implies that if Councillors were concerned about that they could have simply imposed a condition as now proposed. That position of the Appellant is to re-write history. It is clear that a key concern arising from bromate was the effect of pumping – see Dr Rivett's representations from the outset. If the answer to those concerns was simply to remove pumping why did Brett persist with pumping through all the detailed discussions in 2019 – 20 and when the Committee asked for the EA and Affinity to attend to explain their position including on pumping? Why was it not omitted in the SoC (by which point the 2021 Application was ready)? The short point

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the 2021 Plans and that the 2021 Application and the 2016 Appeal as amended were identical– the position in the Substitution Note is inconsistent with that. None of the Plans now relied on - even at this very late stage - reflect the necessary changes required by the agreed conditions.

is that the omission of pumping is a significant (and welcome) change – which was never on offer on the 2016 Application until half-way through this inquiry. Councillors were right to, and had to, refuse to achieve what is now proposed.

20. *Significance of Pumping to concerns:* Mr Treacy was correct to accept at the outset of his cross examination that pumping from the LMH was central to the concerns most clearly articulated by Dr Rivett from the outset. The plume is known to touch (or almost touch) the north-east corner of the extraction area. Pumping would necessarily draw water south/south-west and thus have the potential to draw bromate polluted water into the site and towards the public water supply abstraction points. Pumping was thus at the heart of concerns - providing the mechanism for several of the main routes to harm.

21. *The Proposals for Pumping* The campaign method *requires* the groundwater to be below the top of the inter-burden for prolonged periods of the year. Based on that operational need, at the outset the ES 2016 (appx 6-10) showed a need for pumping of huge volumes from phases E and G and potentially ("may or may not") from C, D and F (box 3b). A very large *lower* mineral horizon lagoon was provided to allow the volumes of pumped water to be discharged back to groundwater – its primary purpose was to accommodate pumped water from the LMH. The idea that this was just an emergency provision is simply wrong and contradicted by everything that was said at the time. The scheme (including the LMH lagoon) was designed around large scale pumping.

22. The pumping test was then carried out in 2018 and led to the 2016 ES figures being amended. After what we are told is hugely detailed work by hydrogeologists, that work led to the January 2020 GWMP v5 which was supposed to be the articulation of what would be done under the Groundwater putative conditions and to provide the detail as to what would be required. It was the final word on the issue from Brett before the Councillors.

23. *Emergency pumping only?* It contained no suggestion that pumping was for "emergencies" only[4], or that the EA had a veto[5] (they were only to be consulted); and would allow 2,500 – 4,500m^3 per day anywhere it was judged necessary for *operational*[6] reasons (i.e. to allow the extraction to continue), in any phase at any

[4] Compare Mr Mutch's attempts to limit the extent of proposed pumping in XX. On the detailed work of Brett's team, it was required and a huge lagoon to accommodate it was required

[5] Mr Mutch assumed such a veto but there is none. There are not even any parameters in the GWMP for the decisions by the Brett Managing Director as to whether to allow pumping and, of course, she/he would obviously be primarily concerned with operational efficiency

[6] There was no impediment in the GWMP as to when the pumping could occur or for what purpose and the decision would be wholly in the hands of Brett.

time without limit of the number of days and whenever the position in para 2.2.2.3 applied – namely LMA confined - subject only to the (huge) capacity of the LMH lagoon.

24. *Pumping volumes:* Para 2.3.4 sets out the then final word on "estimated water discharge volumes" using the refined predications of flow and set out the "predicted volumes" to be managed at Table 2 – 3. A permit was then secured from the EA allowing pumping from the LMH "for dewatering" purposes at 7400m^3/day – itself linked to the capacity of the LMH lagoon.

25. *Position at time of refusal:* The public position at the time of the determination by the Council was thus of the fully worked up GWMP showing predicted/estimated volumes of up to 4,500m^3/day without any EA veto. A large LMH lagoon was to be provided to accommodate this and a permit from the EA had been secured for well in excess of that volume of abstraction. The EA was apparently content with that position.

26. Despite the repeated concerns of residents through their representations (backed by Dr Rivett) there is not a single word in the material leading up to the resolution of the pumping being only "emergency", or any suggestion that it would/could be avoided. On the contrary, the approach was that the position was agreed with EA and Affinity (in a private document which still bizarrely has not been released) and that therefore there was nothing to worry about. Mr Treacy accepted that at that time it was regarded as a necessary part of the scheme.

27. *EA invited to the Council Meeting:* As it turns out members were correctly not satisfied. They tried to understand how the EA had the confidence it claimed and even invited them to a reconvened meeting to understand the EA's position but were not reassured for good reason. Councillors saw what everyone else[7] had missed – the basic unacceptability of pumping here.

28. *The 2021 Application - no pumping:* Subsequently, entirely contrary to their position on the 2016 Application, Brett submitted the 2021 Application with no pumping at all. Suddenly they could manage without the very thing that had caused such concern at the outset and which they had gone to such lengths to enable (lagoon, permit, GWMP, pumping test, thousands of hours of expert effort we are told).

[7] Except Dr Rivett – the EA, Affinity, the Appellant's experts. The Report to Committee followed the advice of the EA – we now know that it was wrong to do so given the consensus that has now emerged - but officers can hardly be criticized for following the consensus established at that time – indeed they were required to give great weight to the views of the EA unless they had good reasons not to. As it turns out, the members identified a very good reason not to follow the EA advice – a reason everyone now agrees with.

29. *Position on the 2016 Appeal:* Despite this, in the Appellant's Statement of Case there was no suggestion that the pumping would be excluded from the 2016 proposals and the GWMP 2020 was relied on [6.50 – 6.54]. Brett was still promoting pumping even though it knew it was not necessary.

30. It was only at proof stage that there was a complete turnaround. By the time Mr Rowland submitted his proof he understood that a "*fundamental aspect* of the operational plan … [is] that there will be no *pumping* of groundwater from the LMH…." [para 6.11 p18] – emphasis added. Instead, when the relevant groundwater conditions applied there would be no *abstraction* [para 6.13 third bullet]. Operations would thus be planned round water levels rather than water levels adjusted to allow operations – a fundamental change in approach.

31. *Absence of Pumping a fundamental aspect of the Proposals:* The Appellant's own expert was describing the absence of any pumping as a "fundamental aspect" of the operational plan. The refusal had secured that "fundamental aspect" of what was now being proposed. Even in the light of that Brett sought to retain pumping in phase G well into the inquiry.

32. *Pumping unacceptable:* Ms Lightfoot was appointed as an independent expert to test all the evidence and the conclusions reached. She was entirely clear that pumping in most areas posed an unacceptable risk. She was not challenged on that and the whole roundtable proceeded on the assumption of no pumping. There is no positive case before the inquiry that pumping is acceptable here. Nobody has sought to explain to this inquiry why pumping is acceptable.

33. The suite of conditions now secure no pumping. It is highly regrettable that the Appellant has allowed this issue to run on for nearly 5 years giving rise to very significant public concern (and cost) for no reason. It has been forced to change stance not because of the EA or Affinity but because of the position of Councillors and third parties.

34. The overall position is thus clear:
    a. the 2016 proposals as presented to the Committee in 2020 included pumping as described in the GWMP as a necessary element of the extraction – with the permit being secured on that basis and the LMH lagoon designed to accommodate that;
    b. the EA and Affinity agreed to that and they were all saying it was acceptable;

c. members refused because they were not satisfied including on the key element of pumping[8];
d. only at proof stage, pumping was dropped and the no pumping regime was said to be a "fundamental aspect" of operations;
e. nobody now supports pumping - there is no contrary evidence to Ms Lightfoot's evidence that pumping would be unacceptable.

35. Councillors were therefore on the Appellant's evidence necessarily correct to refuse on the basis of the pumping envisaged and to secure the "fundamental aspect" of operations now pursued namely no pumping.

D2: Stand – off

36. The 2016 proposals allow LMH extraction (and potentially pumping) up to the margins. A 100m stand-off has now been provided from the key borehole and no issue is therefore raised as long as there is no pumping. Obviously the GWMP may end up requiring a greater stand-off under its monitoring regime. No positive case is put in favour of the original proposals or as to why they provide adequate separate from the plume. Witnesses for Brett were clear they were promoting the 100m stand off. It was not therefore necessary to challenge them on the acceptability of, or evidence to justify, the original proposals.

D3: Concrete Batching Plaint

37. The CBP is included in the description of development on the 2016 scheme the subject of this appeal and was, thus, clearly not just an ancillary part of the proposal[9]. It is included and assessed in the ES (see e.g. LVIA appx 8.5). It takes up 0.5ha and is the tallest facility on the processing area. It is a manufacturing industrial operation[10] and is separate from "mineral extraction" so cannot be appropriate development in the green belt[11].

38. No attempt has ever been made to show that it is necessary to have it here for the mineral extraction (and the fact it is now sought to be omitted is fatal in that regard as is Mr Treacy's examination of what mineral sites need to include – para 4.33 – which does not include CBP) and no attempt to show there are no alternative sites

[8] The idea put in re-exam that pumping was not a key issue is wrong and was not put to any witnesses against the development. It is the pumping which was the main postulated mechanism to mobilise the plume southwards and so when the Council's SoC talks about the plume movement it is *obviously* referring to the impact of pumping.
[9] See CBP being listed in contradistinction to "ancillary" activities
[10] Accepted by Treacy in XX
[11] All this para agreed in XX of Treacy

for it (there obviously are alternative sites - see Treacy para 4.9). There has been no attempt to justify it here in operational terms[12].

39. CBPs are customarily found in industrial estates – not in the middle of a country park deep in the green belt. Its inclusion was flawed in principle.

40. There is no possible argument for it being in the GB and it should never have been included. Councillors saw this when everyone else had missed it. Indeed, no positive case for its inclusion has been made (in GB terms) in the evidence. No VSC case for it could be made and there has never been any attempt to make such a case.

41. Despite all this it was still promoted in the SoC (para 6.9). Its inappropriateness was raised in the Council's SoC (para 6.3) but the Appellant ploughed on with it being included – see SOCG CB8.1 para 2.10[13] (despite it being suggested for omission in the reg 22 response). No evidence in support of it was put forward. Everyone has proceeded on the basis that it is not part of the scheme[14].

42. Nothing relevant to the planning situation has changed – the fact that the specific operator has no need for it is of no planning significance. This is not a personal application or permission[15].

43. Just before the start of the inquiry the prospect of a unilateral was raised for the first time[16]. That is now unconditionally offered and relied on[17]. The CBP is no more. The stance of the Councillors has resulted in any (non-personal) permission omitting the CBP (no matter who later operates it).

D4: The Processing Area

44. The 2016 Proposals are for 11ha (excluding bunds). Nobody now supports the need for anything like that scale. The application plans involve a profligate use of GB and CP land for no reason. Councillors correctly called out what nobody else noticed.

[12] All this para agreed in XX of Treacy
[13] Please see the wrong paragraph numbering which confused me in XX – the paragraph is between para 3.3 and 3.4.
[14] All this para agreed in XX of Treacy
[15] All this para agreed in XX of Treacy
[16] The deletion of the CBP from the description is not possible and a condition cannot sensibly omit a key part f the development – it is agreed that a UU approach is required and is appropriate.
[17] Despite the clause in it allowing the Inspector to disapply the UU in his decision, no case to that effect has been put forward and there is no evidential base to support any such disapplication. Agreed in XX by Treacy

45. Even with the campaign method the requirements are: (1) as dug stockpile of 3ha; (2) processing area of 2.2 – 3 ha; (3) lagoons of 1.7ha; (4) weighbridge and parking of 0.5ha; and (5) if included, the CBP of 0.5ha[18].

46. That totals just 7.9 – 8.7ha (based on the range of sizes of the Processing Area) and so the application proposals are between 3.1ha and 2.4ha too large which means 2.4 – 3.1 ha[19] unnecessarily being taken from the GB and the Country Park for 32 years. No explanation for how it was ever thought acceptable to have such a large processing area in a CP has been provided.

47. CEMEX has a processing plant area of 2.2ha. There is no evidence that it is unable to manage activities safely in that space. It shows the area within which 0.25 mt/pa of processing can sensibly occur. The real requirement is thus 7.9ha for all operational needs but with the CBP and 7.4 ha without it. The total without the CBP is thus 3.6 ha smaller than that shown in the 2016 Plan[20] – or about 33% smaller.

48. The 2016 processing area bunds and site layout have not been designed on that basis. They unnecessarily enclose 11ha and will continue to do so under the Plans proposed to be approved.

49. The need for a southern bund does not explain this excessive scale – (inexplicably) none was proposed on the 2016 or even on the 2021 Application.

50. Despite the issue having been clearly raised in the Council's SoC we still have no plan as to an appropriate scale of processing area with its attendant bunds to minimise impacts including visual impacts on the GB – the test Mr Treacy correctly set himself - or maximising the quality and quantity of public access (accepted as the correct test by Mr Mutch). ID27 attempts to show a reduction in scale of just 1ha by virtue of the bund – not the necessary reduction in scale. Some of the 2021 plans (although others inexplicably do not – "must be a mistake" – XX of Lowden) show an indent reducing the site area to offset the CBP only but there is no explanation as to how a bund could fit with that plan [HQ3/3 2021].

51. None of the plans (even the substituted plans sought to be substituted) show a design starting from the needs for a 0.25mt/pa processing area (8.5ha max) on a campaign method or the total bunding to screen it.

D5: Height of bunds

[18] All ultimately agreed in XX of various Brett witnesses
[19] Or 2.9ha to 3.6 ha without the CBP
[20] All agreed by Mr Lowden in XX

52. There is a clear difference between the 2016 plans and the 2021 plans. The latter (which we are still unclear as to whether they are sought to be substituted) are 5m on the N/W/E. Mr Lowdon proceeded on that basis in XX – and it is inappropriate in principle for Brett to now seek to depart from what its own expert and own lead person said to the inquiry.

53. The increase in the number of bunds (for example, south of the processing area) will necessarily reduce the necessary width of the other bunds to hold all the material required to be hid. That is not shown on any of the plans – to the extent that this will reduce the width of the bunds it means that land is unnecessarily shown on the plans taken up by excessively wide bunds.

54. This issue of the CBP and the processing area was raised in the RfR and in the SoC and yet even now, many months later, there is no plan showing what the full effect of the now agreed changes will be.

55. There are no plans showing how the haul roads on site will screen the HGV traffic on them. The assertion that they can be accommodated in the voids is not explained and is not understood. Even though this issue was raised in the RfR many months ago there is no attempt in any of the evidence to demonstrate how this issue will be addressed. The same goes for screening of the workings.

D6: Matters that have not changed

56. I repeat section C above. Despite the very significant concessions made during this appeal, they are not reflected in any plans sought to be approved and it is assumed by Brett that an adequate response to them can be retrofitted into the set parameters fixed by the plans to be approved. That is the wrong way round and does not demonstrate minimisation of impacts or maximisation of quality and quantity of access.

The Report to Committee and the role of Councillors

57. It will be said that the report to committee did not make any of the above points. It is correct that the report to committee recommended approval of the scheme. However, the system of planning properly gives officers the role of advising and Councillors the role of deciding. They know their area, know of local concerns and are given the role of decision maker for very good reason. The fact that they disagree with officers and identify issues the officers did not is or reach different views on the merits of a scheme is *inevitably a potential corollary of the statutory decision making scheme.* And the merits of that statutory scheme and the role of Councillors are amply demonstrated here – nobody now defends the scheme put before councillors and then supported by Brett, the EA, Affinity and officers.

E: The Merits of the 2021 Scheme/Substituted Scheme

E1: Hydrogeology - RfR4

58. Members considered this to be so important to get right that they asked for the EA and Affinity to attend their 2020 Meeting [HCC SoC 5.6 – 5.8]. At the end of that meeting they were not satisfied that it had been demonstrated that sufficient information had been provided to allow them to be satisfied that the risks to the water environment and that all routes to possible contamination have been appropriately investigated and that all necessary mitigation against all risks has been included in the proposal and that the proposed mitigation will be effective [RFR4]. They were right.

59. At that point the proposals included potentially very significant pumping (and the huge consequential LMH lagoon to handle up to 4.5million litres per day). It is understood, of course, that the EA is the statutory consultee and statutory advisor on these matters and that its advice should be given great weight and not departed from without good reason. However, members were (as it turns out rightly) not persuaded by the EA.

60. Ms Lightfoot was thus appointed. She is eminently suitable qualified to examine this issue afresh to test the arguments raised by the Appellant, the EA and Affinity and Dr Rivett. She has done so and has engaged with them all to understand their position and to engage with their answers to her (and Dr Rivett's) concerns.

61. She examined in detail all the material in support of the 2016 Application and identified four potential pathways to harm which required further consideration. She counted out two of those for reasons she explained. She was therefore left with two issues namely: (1) the possible effect of pumping on the location of the plume; and (2) the potential barrier effect of the infill material and the diversion of flows away from Bishop Rise ("BR"). She examined these in her proof and explained what was needed to address her concerns.

62. There then followed detailed discussions as explained in her Note (ID3). She was presented with ID4 and a detailed presentation. Detailed questions were raised and answered. She effectively went through the process the inquiry went through on day 2 – testing all aspects and querying all data sources including the points previously raised by Dr Rivett.

63. In the light of that *and only on the basis that a "no pumping condition"*[21], she is "sure" that there is no route to harm and, in any event, is satisfied that the monitoring and compliance regime (properly embodied in conditions and the GWMP – with appropriate intervention thresholds) provides a further layer of protection.

64. Her advice was tested internally in the light of the correct approach to the precautionary test[22] with the team rigorously testing her position. Her advice (which had pushed knowledge and the scheme beyond that in the 2016 Application and which provided a very significant degree of added information and reassurance based on the full material now included in the SOCG [CD8.2]) was then adopted by HCC.

65. Not only did it *now* have a detailed SOCG signed by EA/Affinity and the Appellant – HCC had its own independent expert having done the very exercise the RFR envisaged and came to clear conclusions. Whilst the stance of HCC could not be taken back to Committee (there simply was not time) Cllr Boulton (who apparently had previously voted against approval) and leading officers agreed that the issue could be resolved on the basis of the no pumping condition and the development of the GWMP trigger criteria.

66. Dr Rivett now accepts that there is no pathway to harm to the other two public water supply abstraction points most notably *Roes but also Tytt.* He appears to accept the significance of the no pumping change.

67. The Inspector is respectfully also referred to Mr Tallents' question and the answer to it – the voids will fill with water but, absent pumping, there will be no significant "pull" effect.

68. Dr Rivett's concern is thus focussed on: (1) the gradual southward "pull" of the plume (by virtue of existing abstraction at BR) which is not caused by the mineral works but which could on his thesis then mean that the extraction has some (unspecified) knock on effect on the plume; and (2) (perhaps linked with (1), the

[21] At that time it was still proposed that there could be some pumping from Phase G with which she was comfortable in scientific terms given the distance, the timing and the data sources before that point is reached. She was not of course considering compliance with the EIA Regulations or the new position of the Appellant that there will not be pumping from Phase G.

[22] The precautionary princjple requires a cautious approach but even in the context of HRA the necessary certainty (from *Waddenzee)* cannot be construed as meaning absolute certainty since that is almost impossible to attain. Thus the precautionary principle is met if the decision maker is sure that there will be no adverse effects even though, from an objective point of view, there is no absolute certainty": see Advocate General Kokott's Opinion in Waddenzee at [107], applied in R. (Champion) v North Norfolk District Council [2015] UKSC 52, [2015] 1 WLR 3170 per Lord Carnwath at [41].

potential effect on groundwater flow direction by virtue of the inert fill acting as a barrier.

69. As to the former, Ms Lightfoot is clear that the evidence shows that the lateral movement of the plume to south was stabilised as shown by Fig 7 of the Statement of Common Ground which shows the full- time sequence (not the truncated version relied on by Dr Rivett in ID 15) including the period of stabilised abstraction at BR. She has considered the concerns of Dr Rivett and does not agree with them. She is joined by the EA and Affinity.

70. As to the latter, Ms Lightfoot is clear that the evidence is that the whole area around the site is currently drawn to BR and, for the reasons discussed in the round table, that will not change in the LMH with the development in place. Dr Rivett's "blue lines" are not justified -they assume that water will bypass BR when there is no reason to suppose that it would.

71. In any event, if contrary to that the lateral movement continues to the south, then the monitoring will pick that up and, with the appropriate triggers ***she*** (and nobody else – not the EA or Affinity) has required to be included in the conditions (and which are now agreed despite the rather surprising paper attached to Brett's Costs Application), the GWMP will have appropriate contingencies. There are thus multiple levels of protection – first the plume is not here; second it will not be drawn by pumping, third, it is stable and no reason it will move; fourth if it does move there will be triggers, fifth the inert fill at phase A and B will act as a block to its further lateral movement in any event. This has been the subject of a justified (given the context and public concern) and extremely detailed analysis by a number of experts – the Inspector can now have confidence that there is no route to harm.

72. Even if all this does not work, Affinity Water is clear that bromate levels in water would not be allowed to come to anything like the legal standard – it would and could be blended and there are contingency plans. That highly residual risk exists anyway and there is no reason to think (even on a precautionary basis) that there is a route to harm here.

73. The result is that *if but only if* the no pumping condition and appropriate triggers for interventions are imposed, then HCC is now satisfied that there is no RFR based on groundwater impacts and the safety of the public water supply.

74. It is telling that it has required Ms Lightfoot's robust intervention to secure the now agreed position. Her entirely reasonable request for triggers resulted in robust push-back from Brett (appendix note to its Costs Application) but is now agreed. It seems

that Brett has had to be dragged to make the most obvious and basic of necessary concessions. No wonder the public (and councillors) were so concerned.

75. If, despite the agreed position, there was to be pumping or there were not appropriate intervention triggers the Council continues to consider that permission would have to be refused on this ground alone (as confirmed by Ms Lightfoot orally). There is no question that the creation of a risk to the public water supply could be tolerated on the facts here and it is understood that nobody so contends. The working of the LMH would have to be omitted (as for all those sites above the plume).

The Consequence

76. Contrary to the express position of Brett on the 2016 Application until half way through this inquiry, there will be no pumping and contrary to its position on triggers right to the end, a scheme of conditions is now agreed which it is accepted resolve HCC's RfR4.

E2: Green Belt Impact

77. Of course, mineral extraction and associated processing can be appropriate development in the GB. The terms of the NPPF are clear.

78. The question here is whether the "tipping" point is reached. Mr Treacy adopted a correct approach – that which is necessary for mineral extraction may be appropriate as long as it is designed to minimise impacts on the openness of the GB. Now that the CBP is omitted and the processing area is to be restricted in size, that is the issue for the Inspector to consider on the revised plans and conditions. It is, by definition, impossible for that test to be met on the original plans. The headline position of the Council is set out in section C above. Brett has failed to adopt the correct starting point and has thus failed to design to minimise impacts on openness from within the Site resulting in a need to inappropriately retrofit by condition. This reason for refusal thus remains.

79. *The Context in which the Mineral works will operate:* The starting point is that the whole Site is a country park with unfettered rights of access. It is well used with a network of formal and informal paths across the whole. The boundary paths (outside the proposed bunds) are not anything like the totality of the public access. The Country Park is very large, open, quiet, spacious, largely secluded (especially in the middle and the further north and west one goes – so the more into the mineral workings) and save for some trees with very long vistas through it and limited development (especially to north and west) intruding above the skyline. There is an agreed requirement to maintain as much public access as possible to the Site during

the works (meaning not just on its boundaries but throughout the whole) – see clause 4.83 of the 2000 s.106 Agreement and XX of Mr Mutch and thus the public will have access to and use of most of the phases including those closest to the processing areas for most of the 32 years.

80. The operations will involve about 100 days of extraction per annum over 28 years[23] (compare the 10 years in Ware). The machinery will at times be operating in a relatively deep void but not for the UMH or initial site preparation. No internal screening of the working areas is proposed. The processing plant will operate all year round – no plans showing any screening of any of this have been provided even now. With 2500t/d being extracted that equates to 200 HGV movements on the internal haul roads – or one every 3 minutes or so. When infilling is also being undertaken there will be at least double[24] that number of HGV movements per annum (although apparently spread more evenly over the year). Despite the clear concern in the RfR there is still not a single plan showing where those haul roads will be, how they will be accommodated in the void (as Mr Mutch assumes) during the works or how they will be screened to minimise the impact of lorry movements on openness.

81. The phases are arranged in such a way that users of the Country Park (when they can get access to areas of the Park at all – see the obvious deficiencies in the path plans) much activity will be focussed very close to the edge of working areas with the position getting progressively worse over time – see the process gone through with Mr Mutch in XX going through the phases in turn and seeing how the available areas and the "openness" are progressively curtailed. It is difficult to imagine a worse arrangement over 32 years for minimising the impact on openness from within the Site.

82. The combination of those features – the public access in the Site, the nature of the operations in the Site and the need to minimise the impact on openness from *both* within and outside (or on the boundaries of) the Site – create a very significant design challenge.

83. However, we know that the design has not addressed the openness impacts from within the site – see section C above. Those impacts can thus hardly be said to have been minimised. Section C is repeated here. All the viewpoints assessed in the LVIA are from outside the bunds and rely heavily on the bunds to mitigate impacts. There is no equivalent exercise from within the Site and nobody has been able to point to

[23] The 32 years less the final 4 years of infilling only

[24] The HGVs delivering infill may carry smaller loads than the quarry lorries taking material extracted – see XX of Mutch

any detailed consideration from within the Site[25] or how that consideration has been reflected in the design, the phasing, the bunds or the position of haul roads.

84. *The Impact of the Hydrogeology Conditions*. The conclusion on the hydrogeology part of the case, has obvious consequences for the GB case because, if there is to be no pumping, the water level in the LMH will not be controlled (as it was originally proposed to be) and thus the campaign method is required. HCC accepts that, given the primacy of safety concerns on bromate, the acceptability of GB impact, if the LMH is to be worked at all, must be based on the campaign method.

85. The GB analysis (on the 2021 Application and on the 2016 Application if the condition is imposed) therefore has to reflect the combination of the accepted need to extract this mineral (given the conclusion on the safety issue, HCC does not contend that the LMH should not be worked) and the need to do so safely which dictates the absence of pumping as its essential starting point.

86. Those points have the following consequences:
    a. the campaign method of working at times when the water table is below the relevant areas of the LMH is necessary;
    b. therefore the 3000m^2 stockpile (at height of 5m) is required to ensure a year round supply; and
    c. the suggested conveyors cannot be used and even if they were the overall GB impacts would not be significantly different (given the loading and unloading areas required[26]).

87. The Council's RfR1 (adjusted to take account of the removal of the CBP) therefore focusses on the processing area and the haul roads impact on openness.

Unjustified impact on openness

88. As to the processing area, HQ3/3 is sought to be substituted with no CBP. It still is much more than 8.5 ha and shows no bunding to south (or even space for bunding). It has not been redesigned in the light of the agreed conditions. There is no evidence that the size and impact on openness (spatial and visual) has been sought to be minimised – indeed it is quite clear that there has been no consideration given to that at all from the outset. There is no plan showing how the location, layout and

[25] The attempt to do so in re-examination was misplaced – the paragraphs referred to were (with one very slight exception) all outside the bunds thus providing the Council's point.

[26] if conveyors were to be provided they would have to be served by their own stockpile, hopper and loading machine with further impacts on GB. The haul road would be needed anyway including for inert fill material. Given all that, zsxsthe overall GB position is agreed to be neutral as regards the use of conveyors

screening of the reduced area has been undertaken to minimise the impact on openness.

89. As to the haul roads/working areas and screening, there is no evidence before the Inquiry as to how the phasing, working areas, haul roads have been designed to minimise the impact on the openness of the green belt. All this is to be left to condition. Section C above is repeated. There is still no plan showing any haul road, or how the workings and haul roads will be arranged to minimise impacts on openness.

90. As things stand those impacts could be very significant indeed. One could have unscreened workings (just below ground level), unscreened haul roads running at ground level alongside the main paths through the Site; lorries running every 90 seconds or so through the centre of the country park; areas of it being heavily enclosed by workings at various stages – see HQ3/9; 10; 11; 12; small areas being isolated from the rest by workings removing much of the openness (HQ3/11; 12; 13 and 14). None of those impacts on openness have been designed out and there has been no attempt to design them out. It is difficult to conceive of a design and phasing arrangement which could be more harmful to the openness of the GB from within the Site.

91. It is accepted, of course, that if proposals are developed which minimise the impact on the openness of the GB then the development would be appropriate development and there would be no policy breach on that score. However that has not been done and any attempt to do so will be to retrofit such considerations into the approved plans. That is the wrong way round.

92. The attempt to demonstrate in XX of Mr Tunnell that the visual aspect of openness in the GB is somehow not engaged in mineral permissions was odd given that the approach of Brett's own witnesses who under the rubric "GB" addressed visual openness – see e.g. Treacy para 4.31. It is, in any event clearly wrong – see SoS's approach in Ware @ [18]. HCC awaits to see how this point is developed and reserves its position. The suggestion that the visual aspect of openness is not relevant to mineral works is wrong in law.

E3: Other Matters

93. *Transport/HGVs and Impacts – RfR3*: HCC as highway authority did not object but required conditions and s.106 obligations [CD1.4 p21 – 23 (all of which are included in the s.106 draft). Councillors however refused on RfR3. That was then subject to detailed consideration by HCC internally. *Given that* it was concluded that subject to appropriate controls in any permission, there was no other means to remove the

mineral and that, in the light of the highway authority's position, the routes were acceptable and did not cause unacceptable impacts subject to appropriate mechanisms for route enforcement, the RfR was not pursued in the SoC. HCC had no reason to doubt the air quality, dust and noise assessments in the ES (7.197 – 7.205 ES2 – CD2.2) despite being aware of the rule 6 parties concerned and HCC concluded that the RFR3 should be withdrawn. The (5m amended) junction scheme should be approved[27] (there is no need for a change to the 2016 Red Line because the ghost island is within highway land – HQ7.1).

94. *32 years – RFR2:* Councillors were concerned about the duration of the extraction meaning there would not be restoration within a reasonable time. This raises two questions – namely the justification for the period of 32 years and the effect on the restoration and consequent availability of the country park. As to the former, there is a substantial (allocated) mineral resource here (8mt) which can and should be extracted if that can be done safely and with appropriate controls and protection of GB. The 1/4mt per annum is judged appropriate - being consistent with the rates elsewhere, having been assessed in the ES and providing an appropriate balance between getting the mineral out whilst ensuring impacts are not excessive year by year - and that dictates the 32 years. As to the latter, the country park is secured by an existing s.106 ("the 2000 Agreement") subject to *necessary* exclusion of the public for mineral working: clause 4.83/4.87. Thus it is fundamental that phasing plans are secured by condition which define the *necessary* mineral areas and ensure public access is only taken when necessary and is restored as soon as practical after expeditious restoration. HCC cannot therefore proceed with RfR2.

F: Conclusion

95. The bromate issue has (finally) been resolved in favour of the position of the Council on all points. RfR4 has thus been resolved through major and very late concessions by the developer.

96. RfR1 remains – whilst necessary elements of mineral working can be appropriate development in the GB that depends on appropriate design. We know that the 2016 scheme includes unacceptable elements and that even when they are omitted the design has not been undertaken to minimise impacts on openness of the necessary elements.

97. No VSC for that failure or to grant permission without requiring correction of those failures can be put forward. The VSC justifying mineral extraction can all be secured without accepting the plans as submitted but requiring that Brett redesign.

[27] To reflect the new development to the west.

98. If Permission is to be granted it must be on the basis of a robust set of conditions which allow the retrospective retrofitting of basic design requirements into the approved plans.

David Forsdick QC

Landmark Chambers

6th September 2021