

**FOLKESTONE & HYTHE DISTRICT COUNCIL**

**5<sup>th</sup> October 2021**

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**Martin McKay:  
Heritage Consultant  
Proof of evidence**

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**relating to an inquiry into an  
application under section 247 of the Town and Country Planning Act 1990  
for the stopping up and diversion of the highway known as Princes Parade Hythe Kent  
(Application reference NATTRAN/SE/S247/3254)**

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### Appendix 1

Cross Sections through New Road, the adjacent embankment and the RMC- to be submitted to discharge landscaping condition of Y17/1042/SH

## **1. INTRODUCTION**

- 1.1 This Proof of Evidence has been prepared by Martin McKay, Heritage Consultant, on behalf of Folkestone and Hythe District Council (“the Council”) in its capacity as promotor and landowner of the development at Princes Parade Promenade, Princes Parade, Hythe, Kent (“the Site”).
- 1.2 The Council has made an application to the Secretary of State for the Department for Transport (SoS(T)) under sections 247 and 253 of the Town and Country Planning Act 1990 (“the 1990 Act”) for the stopping up and diversion of part of the highway known as Princes Parade, Hythe (“the S247 Application”).
- 1.3 The S247 Application was made in relation to planning permission reference Y17/1042/SH (“the planning permission”).
- 1.4 The National Transport Casework Team, on behalf of the SoS(T), undertook its statutory consultation on the S247 Application which commenced on 10<sup>th</sup> May 2018 and closed 7<sup>th</sup> June 2018 under reference NATTRAN/SE/S247/3254 (“the statutory consultation”).
- 1.5 Public objections to the S247 Application were received by the Casework Team during the period of statutory consultation (“the Public Objections” and “Public Objectors” shall be construed accordingly).
- 1.6 Planning permission Y17/1042/SH for the development was granted by the Council in its capacity as local planning authority on 18<sup>th</sup> July 2019 (“the planning permission”).

## **2. PURPOSE OF THIS PROOF OF EVIDENCE**

- 2.1 In accordance with section 252 of the 1990 Act where the Public Objections are not withdrawn the SoS(T) will, before making a decision on the S247 Application, hold a local inquiry unless he/she is satisfied that in the special circumstances of the case the holding of such an inquiry is unnecessary.
- 2.2 The purpose of this proof of evidence is to set out for the inquiry my evidence in response to the Public Objections with regard to the effect of the diversion of Princes Parade on the Historic Environment in the vicinity of the Site as they are relevant to the S247 Application.
- 2.3 This proof of evidence has been prepared by me, Martin McKay, Heritage Consultant, Dip Arch, MScTP, ARB, RTPI. I am a Registered Architect and a Chartered Town Planner. I have 20 years’ experience as a Conservation Officer, Design and Conservation Manager, and Design and Conservation Team Leader at local authorities in Kent, Sussex and central London. I have represented local planning authorities at hearings and inquiries with regard to heritage and design matters associated with planning and listed building applications. I have ten years’ experience as a self-employed Heritage Consultant within the private sector, responsible for advising clients planning and listed building applications of all scales and for compiling heritage statements to accompany listed building and planning applications.
- 2.4 I compiled the Heritage Chapter of the Environmental Statement and Heritage Section 7.22 within the Planning, Design and Access Statement (PDAS) that accompanied planning application Y17/1042/SH. I can endorse the statements in that chapter and in the PDAS as being correct.

### 3. LEGAL TESTS OF SECTION 247

- 3.1 The legal tests and required considerations of the S247 Application for the SoS(T) are contained within section 247(1) of the 1990 Act. Section 247(1) provides that:

*“The Secretary of State may by order authorise the stopping up or diversion of any highway outside Greater London if he is satisfied that it is necessary to do so in order to enable development to be carried out—*

- (a) in accordance with planning permission granted under Part III or section 293A, or*
- (b) by a government department”.* [emphasis added]

- 3.2 As highlighted in the above quote, the courts have identified two separate and distinct legal tests for determination by the SoS(T) before exercising his/her powers for the stopping up or diversion of any highway pursuant to a planning permission. These two legal tests were recently called by the High Court in Network Rail Infrastructure Ltd, R (On the Application Of) v The Secretary of State for the Environment, Food And Rural Affairs [2017] EWHC 2259 (Admin) (“Network Rail”):

- A. the necessity test; and
- B. the merits test.

- 3.3 I understand that the ‘necessity test’ in simple terms requires the SoS(T) to answer the following question:

**Is it necessary to stop up and/or divert a highway to enable the carrying out of the development authorised by planning permission?**

- 3.4 I understand that the ‘merits test’ in simple terms is the discretionary power of the SoS(T) to not make an order under Section 247 stopping up and/or diverting a highway notwithstanding whether the ‘necessity test’ is satisfied. It requires the SoS(T) essentially to consider the following question:

**Are the disadvantages and losses, if any, flowing directly from a stopping up and/or diversion order of such significance that he/she ought to refuse to make the order?**

- 3.5 These tests are explained in detail in Buckles Solicitors’ response to statutory consultation report dated May 2021 (Core Document 66). The ‘necessity test’ is covered in some detail in that report and is not repeated in this proof of evidence.
- 3.6 This proof of evidence considers the second question with regard to disadvantages and losses in relation to the historic environment within the vicinity of the Princes Parade which could arise directly from the approval of the stopping up and diversion order. It does this by reference to the objections that have been made with regard to this subject.
- 3.7 This proof of evidence does not consider the disadvantages and losses that would arise from the full implementation of the Planning Permission Y17/1042/SH. The significance and importance of the development as a whole has been dealt with by the grant of planning permission. It is not an issue to be assessed by the SoS(T) or the Public Objectors. However, there are important advantages and gains flowing from the planning permission development which are dependent upon the diversion of the Princes Parade highway.

- 3.8 Neither does this proof of evidence directly address the disadvantages and losses that would be caused by the construction and use by development traffic of the new road near to the northern boundary of the site (the New Road). The construction of that road, and the use of it by traffic to serve the development, has been given permission by the planning permission.
- 3.9 Instead, this proof restricts itself to the effect of diverting traffic from Princes Parade (which is currently a through road) onto the proposed New Road as that is the effect of the stopping up and diversion order. This is in accordance with the guidance given by the Inspector in his 'Pre-Inquiry Meeting – Post Meeting Note' dated 23 September 2021, which advises that objections should "*be clearly related to the proposed stopping up, and not to the development itself*", and that impacts from the construction of the development including the road, such as street lighting, "*are not relevant considerations*". This reflects what was said in the Buckles Solicitors response to statutory consultation report dated May 2021 at paragraphs 7.26 and 7.28.
- 3.10 Planning legislation and guidance, in particular the up-to-date National Planning Policy Framework, uses the term 'harm' with regard to assessing the effect of planning proposals on heritage. This proof similarly uses these terms. 'Harm' in this sense can clearly be seen to be a disadvantage or loss under S247 of the 1990 Act, and public benefits an advantage.

## **4 PLANNING BACKGROUND AND DESCRIPTION OF THE DEVELOPMENT**

### **The Site and its surroundings**

- 4.1 The Site is a narrow linear site of just over 1 kilometre long between the scheduled ancient monument of the Royal Military Canal (RMC) and the beach.
- 4.2 Historically, the Site would have been low lying and kept clear of vegetation to allow for a clear field of fire from the defensive banks of the RMC. However, from the 1930s, gravel was extracted from the Site and in the 1960s and 1970s the Site was used as a refuse tip. This has resulted in it being raised by some 4m above the RMC, in marked contrast to the low-lying golf course that abuts the Site at its western end and which still remains at its original level. The Site is now covered in dense shrubs.
- 4.3 The Site is bounded on the east by the RMC itself where it turns towards the sea and by modern development beyond.

### **The Planning Permission**

- 4.4 The Planning permission (Y17/1042/SH) which necessitates the S247 Application was granted by the Council in its capacity as local planning authority on 18<sup>th</sup> July 2019.
- 4.5 The planning permission authorises a mixed-use development comprised of:

*an outline application for up to 150 residential dwellings; up to 1,270sqm of commercial uses including hotel use, retail uses, and/or restaurant/café use; hard and soft landscaped open spaces including children's play facilities; surface parking for vehicles and bicycles; alterations to existing vehicular and pedestrian access and highway layout; site levelling and groundworks; and all necessary supporting infrastructure and services; and a full application for a 2,961sqm leisure centre including associated parking; open spaces; and children's play facility.*

- 4.6 The Site will be developed with a leisure centre, public open space, housing and commercial uses. The concept is as follows:
- a) placement of the large leisure centre on the eastern portion of the Site so that its scale is mitigated by existing large buildings immediately to the east of the Site;
  - b) smaller scale housing development elsewhere on the Site, separated from the Leisure Centre into smaller parcels by substantial areas of open space;
  - c) maintenance of public footpaths across the Site from Princes Parade to the Royal Military Canal, within a green and open setting (albeit reduced openness as compared to the setting at present);
  - d) no development (other than parking) at the extreme eastern end of the Site so as to maintain views from the redoubt and Shorncliffe over the RMC to the sea;
  - e) creation of a large park at the western end of the site and new routes through the site;
  - f) the site will be raised by 450mm to provide protection from flooding;
  - g) **the Princes Parade Road** (the subject of the stopping up order) stopped up **so as to allow for a wide public pedestrian promenade along the sea front**. This is a key benefit that will not be implementable if this stopping up order is refused.
  - h) A new road built along the north of the site to provide access to the proposed development on the site and to the leisure centre and to take through traffic from the current Princes Parade, providing a buffer between the built development and the RMC and allowing Princes Parade to be traffic free.
- 4.7 In addition, the planning application (see the Chapter 6 Cultural Heritage of the ES and Section 7.2 of the PDAS- Core Document 7). proposed the following actions (both on-site and off-site) as a means of mitigating the heritage harm that would be caused by the development as a whole:
- Consolidation and repair of neglected but key parts of the RMC through vegetation clearance and stonework repair;
  - Better public access and interpretation of the RMC and wider area, emphasising connections between the canal and the sea, delineating lines of fire and maintaining openness;
  - Heritage trail between the RMC, Shorncliffe Battery and Martello Towers, interpretation boards and artwork, building on the findings of an archaeological study;
  - Environmental improvement scheme at the eastern end of the RMC to mark the site of the former drawbridge and canal arm leading to it.

- 4.8 These proposals were referred to by the Planning Committee Report and were picked up under Condition 32 of the Planning Permission (Decision Notice- Core Document 2). as follows:

*'Prior to the construction of the leisure centre hereby permitted above foundation level, details of measures to improve/enhance the Royal Military Canal, its setting and its interpretation, together with a timetable for their implementation, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall thereafter be implemented in accordance with the approved timetable and thereafter retained and maintained'.*

## **5 THE HISTORIC ENVIRONMENT IN THE VICINITY OF PRINCES PARADE**

### **The Royal Military Canal (RMC)**

- 5.1 The Site of the planning permission development including Princes Parade abuts the northern boundary of the early 19<sup>th</sup> C defensive line (built 1804-1809) of the Royal Military Canal (RMC). The RMC is a Scheduled Ancient Monument and is therefore by definition of national importance.
- 5.2 The RMC runs as a defensive barrier for 28 miles across Romney Marsh (where it was thought that a French invasion force might land) from Cliffs End in the west to its eastern terminus immediately adjacent to the Site at Princes Parade, Seabrook.
- 5.3 It was part of an integrated system of defences along the southern coast of England which included forts, towers, batteries and redoubts. It constituted a linear physical barrier to invading troops, but was also designed such that it, and the ground in front (including the site itself), could be covered by cannon and rifle fire from raised banks on its landward side.

### **The RMC in the vicinity of the site**

- 5.4 The Site runs for 1km at the eastern end of the RMC. Earth ramparts were formed from the excavations on its landward side to provide a defensive position commanding lower ground on the seaward side (including across the site which is the subject of this planning application). Behind the ramparts is a military road where defending soldiers could move without being seen.
- 5.5 In the vicinity of the Site at the eastern terminus of the RMC, a further very short arm (7m or 22ft in length) of canal was subsequently dug to connect with the gun platform of the Shorncliffe Battery immediately to the north. This was to enable the main road to Folkestone in front of the battery to be cut in the event of an invasion. A drawbridge carrying the road was constructed and a stone redoubt was built immediately to west to provide a location from which the drawbridge could be protected by covering fire and to provide a further position from which the seaward sluices could be defended from sabotage or attack.
- 5.6 From many viewpoints and places, the RMC is experienced as an impressive linear feature stretching across the landscape. More specific features at the eastern end, adjacent to the Site, are in a more variable state of completeness:
  - a) The ramparts are still extant but are eroded and rather overgrown;
  - b) There is still a track behind the ramparts although it is not evident whether this is on the exact line as the original military road;
  - c) The arm of the eastern terminus connecting to the Shornecliffe battery has been partially infilled and the drawbridge removed. There is now a sloping grass bank leading to a busy modern road with the wall of the Shornecliffe Battery beyond;
  - d) The terminus retains the stone wharf but historic sluices and sluice houses have been replaced; and
  - e) The redoubt that overlooks the former drawbridge and termination of the canal is intact although its stonework is in poor condition and its associated earthworks are largely missing.

These features are shown in map form on Page 172 of the PDAS that accompanies the planning application documents.

- 5.7 Although there has been damage to the integrity of specific parts of the RMC as outlined above, and parts of it are in poor condition, overall it remains intact and readily understandable as a unique defence from an important part of Britain's history.

#### **Associated defences**

- 5.8 To prevent an invading force from passing around the terminal, a complex set of defences was constructed, the surviving elements of which form part of the setting of this part of the RMC:
- a) the Shorncliffe battery and wall (NHLE 1005117)
  - b) the Shorncliffe redoubt (NHLE 1401815) and
  - c) the Martello towers No 8, listed grade II (NHLE 1017174) and No 9, grade II listed and scheduled (NHLE 1017226).

These and other defences are shown in map form in the Technical Annex 2, Cultural Heritage to the ES (Core Document 12), and on Page 170 of the PDAS (Core Document 7).

#### **Significance of the RMC**

- 5.9 Overall, the significance of the RMC can be described as exceptional. It is undoubtedly of national significance.

*'The Royal Military Canal was an important element in the Napoleonic defences of south-east England and is the only military canal in the country. It is a unique defensive work that bears significant testament to a period when modern Britain faced the most serious threat of invasion prior to the major conflicts of the 20th century...'*

Extract from Historic England list entry description:

<https://historicengland.org.uk/listing/the-list/list-entry/1003260>.

#### **The significance of the setting of the RMC (including the site)**

- 5.10 The setting of the RMC (including the Site) also contributes to the significance of the RMC. As built, the ramparts on the landward side of the canal would have provided a defensive firing position, not just over the RMC itself but over the low-lying land and beach on its seaward side. The Site was therefore a part of the function of the RMC.
- 5.11 However, the construction of the Princes Parade and the infilling of the Site with refuse has resulted in land raising of 4m. The RMC is enclosed within a trench such that the direct visual and functional relationship of the RMC ramparts commanding a 'field of fire' over lower ground in front has been lost.
- 5.12 Nevertheless, evidence of the defensive function of the Site is evident in that the RMC marks a division between built-up land behind it on its landward side and undeveloped land (including The Site) on its seaward side. This relationship continues to contribute to the significance of the RMC. This is reinforced by the continuation of open land across the golf course to the west of the Site. It is evident in middle and distant views towards the Site and the RMC, as shown in CGI's (*Landscape and Visual Impact Assessment views HE1, 2, 3, 4, 5, 6 and LVIA 1, 2, 3, 4, 5, 7*) and as analysed in the PDAS (table 7.6) (Core Document 7). and in the Chapter 6 - Cultural Heritage of the ES (Core Document 10).



## **Princes Parade**

- 5.13 Princes Parade was constructed as a sea defence and road in 1881 between Sandgate and Hythe. It was officially opened by the Prince of Wales in 1890. A horse drawn tram ran along it as a substitute for the stations of the Sandgate Branch railway line which were inconveniently suited for access to the seafront.
- 5.14 The tram enjoyed a certain amount of popularity in the summer months as a tourist attraction associated with the Hythe Imperial Hotel but closed in 1911. A single tram shelter remains adjacent to the site. Today the Parade remains as an impressively linear road with views over the sea.
- 5.15 Princes Parade is of local rather than national interest. Nevertheless, it has some interest, along with the seafront, the hotel and the RMC as part of the development of tourism and leisure in the area in a time when these were relatively new activities.
- 5.16 The building of the Parade at a higher level than surrounding land created a visual barrier between the RMC and the sea, and thus harmed an understanding of the historic functional relationship between the RMC, low ground to the seaward of it, and the sea.

## **6 IMPACT OF PLANNING PERMISSION Y17/1042/SH UPON THE SETTING OF THE RMC**

- 6.1 The harm to the setting of the RMC caused by the development as a whole is addressed comprehensively in the Cultural Heritage Chapter of the ES (Core Document 10) and Section 7.2 of the PDAS (Core Document 7) that accompany the Planning Permission (Y17/1042/SH) and in the officer's Committee Report to the Planning and Licencing Committee on 16/08/2018 (Core Document 3). They provide an evidence base which is important for this inquiry. However, it is also important to note that, whereas the planning application documents, consultations and the officer's committee report consider the development as a whole including buildings and the construction of the new road, this inquiry is into the impact of the highway diversion alone.
- 6.2 The section below quotes mainly from the officer report to the Council's Planning Committee Report upon which the decision to grant permission was based. It is worth noting however that its conclusions concur with my assessment as laid out in Section 7.2 of the PDAS (Core Document 7) and the Cultural Heritage Chapter of the ES.
- 6.3 The harm caused by the development and justification for it on the heritage asset of the RMC was judged in accordance with the National Planning Policy Framework (NPPF). The NPPF (2012 version - in place at the time of the application) makes it clear at paragraph 132 (now paragraph 195 - 2020 version) that significance can be harmed or lost through alteration or destruction of the heritage asset or through development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.
- 6.4 The Committee Report (Core Document 3). specifically recognised that the open and undeveloped nature of the Site contributes to the setting of the RMC (paragraphs 8.76, 8.77 and 8.78). This harm was also recognised and quantified by the Cultural Heritage Chapter of the ES and Section 7.2 of the PDAS (Core Document 7). The Committee Report specifically noted that the adverse impact of the development on the RMC comes from the introduction of the built development (paragraphs 8.87, 8.88) on previously open land. Paragraph 8.87 states:

*'...The impact of the proposed development would be to divorce the canal from the shore to a much greater degree than currently exists by the introduction of built development on the land between the two....'*

- 6.5 The Committee Report recognised that the relocation of the road was a part of the development (paragraphs 8.78, 8.90, and 8.262). It specifically noted its role, not in harming the setting of the RMC, but in providing a buffer between the RMC and the built development, and hence its role in mitigating the impact of the built aspects of the development on the setting of the RMC. Paragraph 8.90 states:

*'Steps have been taken by the applicant to minimise conflict between the heritage asset (The RMC) and the proposal, through the proposed re-routing of the access road to maintain some separation from the heritage asset and the built development; positioning the buildings with lower heights at the northern side of the application site to reduce the impact of built form...'*

- 6.6 The Committee Report agreed with Historic England and the Heritage Chapter of the ES that harm would not result in direct harm to the RMC nor that the whole of its setting would be destroyed (in that space and open views would remain). For this reason, again in line with Historic England and the Heritage Chapter of the ES, it concluded that harm would be 'less than substantial'.

- 6.7 In line with guidance in the NPPF, the Committee Report noted (paragraph 8.92):

*'...However, less than substantial harm does not mean less than substantial objection. In terms of the Framework, such an assessment requires a balancing act to be undertaken and consequently, very substantial public benefits must be demonstrated to be delivered by proposed developments.'*

- 6.8 The Committee Report laid out the substantive planning benefits of the scheme. These include the delivery of 150 homes on the site, economic benefits, and *'a substantial and needed public benefit in the form of a new leisure centre to serve the residents of the district'* In paragraph 8.93 it specifically noted:

*'...New road behind development would provide 'untrammelled' recreation use of the parade, increasing the area of car free public realm from 6,575 sqm to 11,190 sqm – an increase of 4,615sqm'.*

- 6.9 This refers to the road diversion that is the subject of this inquiry. Later on in the Committee Report (paragraph 8.262) the substantial public benefit of the new leisure centre is again mentioned. It further states that:

*'In addition to the leisure centre, the application would deliver the following public benefits over and above what the normal policy requirement would have been for the development were it not impacting on the setting of an SM:*

*....an enhanced seafront promenade provided an enhanced visual environment and car free space with improved connectivity between the public open space and the seafront, achieved by the repositioning of Princes Parade road to behind development;...'*

- 6.10 The Committee Report concluded with the following statement:

*'It is considered by officers that, with the mitigation proposed and the required conditions and legal agreement, the benefits do outweigh the harm to the setting the Scheduled Monument and that the balance is in favour of granting planning permission. In accordance with the NPPF it is considered that the proposed development constitutes Sustainable Development and that planning permission should be granted'. (Paragraph 9.8).*

- 6.11 The Committee granted planning permission subject to agreement on planning conditions and granted delegated authority to planning officers to finalise these conditions. Planning permission was granted on 18<sup>th</sup> July 2019.

### **Historic England**

- 6.12 In its role as statutory consultee, Historic England wrote a number of letters objecting to the planning application. Their initial letter of 26<sup>th</sup> October 2017 (Core Document 40) noted that the largely undeveloped nature of the site between the RMC and the beach helps in understanding how the RMC formed a barrier against an invading army. It also stated that the open seaward setting of the RMC makes a substantial contribution to an understanding and appreciation of the RMC. It specifically noted that:

*"The impact of the proposed development would be to divorce the canal from the shore to a much greater degree than currently. Were the canal to become a linear feature between two substantially developed areas, appreciation of its historic role as a barrier would be undermined and with this the ability to understand its design as a fortification".*

- 6.13 Subsequent letters (13/4/18 (Core Document 41), 13/07/18 (Core Document 42) dealt with minor changes and additional information submitted with regard to the application. HE agreed with the PDAS (Core Document 7) and the Cultural Heritage Chapter of the ES that the harm to the significance of the RMC as a result of the development would be 'less than substantial' but nevertheless thought that the level of harm was higher than outlined in these documents. HE thought that too much emphasis has been put on views, and not enough on the characteristic of openness on one side of the RMC. The mitigation measures were not enough to outweigh or balance the harm and were not relevant in that they were not specifically relate to the application. They sustained their objection.

- 6.14 However, in none of the planning objection letters did HE raise the subject of the road diversion (the subject of this inquiry), and instead concentrated on the key aspect of the effect of the built development on the openness of the site. The matter of the road was however directly discussed in their pre-application letter of 22/09/16 (PDAS Page 235 onwards- Core Document 7). It discussed two options:

- Option 1 –retention of road alignment as existing and the leisure centre building located towards the western part of the eastern end of the Royal Military Canal (RMC).
- Option 2 – new road alignment to the north of the site and the leisure centre located closer to the east end of the RMC.

- 6.15 With regard to Option 2 (which was pursued via the planning application) it stated:

*....we also talked about possible benefits if it (the road) was to create some form of buffer between the RMC and the start of new buildings. If the latter were to be set back from the seaward side of the canal by the width of a new road corridor and to step up in a southern direction towards the sea, this might assist in restricting any views of them from within the Canal Zone...' (page 236).*

6.16 The letter noted that visual effects are not the only consideration. It did note that noise could be an issue but there was no specific discussion of the effects of noise on the significance of the RMC. With regard to lighting, it concluded that:

*'...Use of the RMC by the public is mainly a day time set for activities and darkness is not a major contributor to its significance...'* (page 236).

6.17 It also specifically referred to the experience of a realigned road noting that:

*'...South of the canal there was historically a towpath and a footpath now remains. The raised land levels make it likely that users of this path would not experience a realigned road, unless they were to be able to hear it...'*

### **Kent County Council, Archaeology Section**

6.18 Kent County Council's comments (paragraph 5.6 of the Planning Committee Report- Core Document 3) were very similar to Historic England's. They again specifically noted that the change from undeveloped land to a character defined by development would be harmful to the understanding of the function of the RMC and therefore harmful to the significance of the designated heritage asset. Like HE, they stated that the heritage benefits proposed by the scheme would do little to balance the much greater harm of the proposed development.

6.19 With regard to archaeology, KCC noted:

*'Buried archaeology was not considered to be a major factor or constraint and therefore was largely scoped out of the environmental assessment process. Nevertheless the applicant has identified that the proposed development site may contain buried archaeological remains associated with the Royal Military Canal. In this instance the applicant has suggested that the direct impacts of the scheme on buried archaeological remains could be addressed through mitigation measures secured as part of any planning consent. We are satisfied with such an approach and would suggest that such mitigation measures could be secured by condition.'*

6.20 In accordance with KCC's recommendation, an archaeological condition has been applied requiring a programme of archaeological work along with details of the foundation design of buildings.

### **Conclusion**

6.21 The Committee Report reflected Historic England's and KCC Archaeology's comments (and the analysis of the Heritage Chapter of the ES) in concluding that:

- a) There was no direct physical harm to the Scheduled Ancient Monument of the RMC that would be caused by the development.
- b) The setting of the RMC, including the Site, is of significance. There would be harm to this setting by the development as a whole. This harm would be caused by the visual effect of buildings harming an understanding of the RMC as a barrier and the site as a field of fire overlooked by the RMC embankments.
- c) The harm of the development is reduced in that the significance of the Site has already been eroded by previous land raising of the site which has left the RMC, far from commanding land to the seaward of it, instead within a lowered trench. In addition, the development applies to only one stretch of the RMC and its setting, and

even within this stretch, areas of open space are retained.

- d) The overall harm of the development as whole would be 'less than substantial'.
- e) No suggestion that harm would be caused by the diverted road was raised in the assessment of the scheme by the Planning Committee Report, or by statutory heritage consultees. It was, however, mentioned as forming a buffer between the new buildings of the development and the RMC such that it would reduce the impact of the new buildings as experienced from the immediate environs of the RMC.
- f) The road diversion was nevertheless noted in the Committee Report as key part of delivering the public benefits of the scheme. In particular, it would enable the existing Princes Parade to become a car free area of public realm which would add to the leisure offer and concept of the area as whole.

This conclusion is endorsed by my evidence in this proof of evidence

## **7 OBJECTIONS TO THE HIGHWAY DIVERSION**

- 7.1 The Public Objections to the stopping up and diversion order with regard to the heritage and archaeology of the RMC, its setting, and the heritage of Princes Parade are summarised here. The Save Princes Parade Campaign's objections are more detailed and are considered separately.

### **Public Objections**

- 7.2 Over 180 objections were received with regard to the alleged effect of the stopping up order on the RMC and/or its setting. A substantial proportion were non-specific and most if not all did not distinguish between the planning permission development (including the construction of the New Road and the construction of buildings) and the effect of the stopping up and diversion order. Most were also non-specific in differentiating between the direct effects on the RMC, and separately upon its setting. General phrases like 'negative impact', 'devastating impact', 'detrimental to the scheduled monument' were used without explanation.
- 7.3 The proposal to move the road to the north was frequently mentioned as affecting the setting of the RMC, along with the position of the New Road spoiling the Canal's peace and tranquillity. Associated Infrastructure in the form of road lighting and alleged concrete embankments and land-raising were mentioned. In this regard it was argued that the road proposal was in outline form and details were yet to be developed.
- 7.4 The historic importance of Princes Parade itself was mentioned by over 25 objectors and the effect of the road/ planning permission scheme on archaeology was mentioned by several objectors.
- 7.5 With the possible exception of Save Princes Parade Campaign, only one of the objections really distinguished between the construction of the New Road (which has permission under the 1990 Town and Country Planning Act) and the stopping up and diversion order under the same Act which would divert traffic from Princes Parade onto the New Road. It suggested that the Princes Parade should remain as a shared space for pedestrians, cyclists, and cars. Other comments focused on the effect of the permitted New Road, especially its construction.

## Save Princes Parade Campaign (SPPC) objection

- 7.6 With specific regard to the stopping up order and the moving of the Parade, Save Princes Parade Campaign group objection (email 29/05/21) contends that the application is hybrid and so details of the road alignment (apart from adjacent to the leisure centre) are illustrative only. Nevertheless, they argue that the realigned road will create serious harm to the setting of the Scheduled Ancient Monument. The objection re-attaches the original objection to the planning application as a whole which with regard to the road states:

*'The construction of the buildings and their associated hard surfaces, the positioning of the road with its associated movement, traffic noise, and lighting in close proximity to the Canal will destroy that sense of openness and tranquillity, and therefore the setting of The Ancient Monument in this location.*

- *The Canal side is tranquil at all times of day and in all seasons. The repositioning of the road so that it is adjacent to the Canal, with its concomitant traffic, noise, the introduction of lighting and the erection of substantial buildings will urbanise the site, and destroy the open character of this part of the Canal, as well as its tranquillity.*
- *The road will be 3 m above the canal side path and its construction will alter the nature of the Canal side. The Applicant has provided no detail of this.*
- *The repositioning of the road to the Canal side will bring road traffic noise into close proximity with the users of the path. It will also bring street lighting to an area that is currently dark. These urban intrusions will destroy the existing character of the area and take away its tranquillity'.*

- 7.7 The re- submitted planning objection further states that:

*'...the detail of the alignment of the road, of its construction and lighting have not been submitted for the area where the housing and commercial uses are proposed... it is not possible to judge what impact;*

- *the position of the road has on the setting of the Canal,*
- *the height of the road above the canal has.*
- *any retaining wall or embanking to retain the road will have.*
- *its lighting has*
- *the landscaping between the road and the canal has, in terms of amelioration.*

- 7.8 SPPC issued a further response to the Council's response to the objections to the stopping up order (the Buckles Report of May 202- Core Document 66). This reply quotes from a 2016 design review of the overall scheme by the South East Design Panel (Core Document 112) which questioned the re-alignment of the road as follows:

*'It brings an intrusive roadway close to the scheduled ancient monument, and to the series of trails and paths which run alongside it, urbanising it and creating the need for it to be protected by a bund.... The character of this site is of a vibrant sea-front and a quiet canal area. The realignment proposal does not respect that character bringing a busy access and through road, which will be hard to calm, close to the canal. The strength of the straight road and the straight canal would be diluted'.*

- 7.9 The comment stated that the diverted road would have a substantial impact on the RMC (without being specific in this regard) and mentioned the planning objections to the planning application by Historic England. The Inspector's report into the 2004 Local Plan Inquiry is again mentioned with a quotation from the inspector stating that moving the road alongside the canal would *'compromise the quiet setting of the Canal'*.

- 7.10 The SPPC objections cover the construction of the New Road in this location (which has planning permission and can be built) rather than stopping up and diversion order. The objections are not by and large relevant to the specific effects of the diversion order from Princes parade onto the New Road.

The SPPC submitted a revised Statement of Case on 4<sup>th</sup> of October. This contains no new information with regard to Heritage other than re-iterating the need to consider the impact of additional traffic using the proposed diverted highway next the RMC upon the setting of the RMC with regard to noise, air, light pollution, and loss of tranquillity.

### **Hythe Town Council**

- 7.11 In response to the S247 application, Hythe Town Council re-issued their minutes of their meeting of 5<sup>th</sup> June 2018 which detailed their objections to the overall planning application. With specific regard to heritage and to the road proposal, to the planning application, Princes Parade was noted as 'iconic'. It was felt that it was unnecessary to divert the road and that the New Road would affect the RMC. A further note was added with regard to the S247 application which amongst other matters noted:

*'The new road, given its close proximity to the canal .... will cause harm to the setting of the Canal AND will cause harm to the setting of the canal as a Scheduled Ancient Monument... public interest is best served by the existing highway remaining as is and no new highway being built.'*

### **Councillor Rory Love**

- 7.12 Councillor Rory Love (letter 7<sup>th</sup> June 2018) objected to the S247 application on the grounds that the sounds and fumes from traffic of the relocated road would impact upon the tranquillity of the historic setting of the RMC. *'This is an unnecessary attack on the sensitivities of local residents and visitors and is an example of shifting from working with people to working against them'*.

### **Hythe Civic Society and Sandgate Parish Council**

- 7.13 Hythe Civic Society and Sandgate Parish Council objected to the S247 proposal on traffic grounds but did not object on heritage grounds.

## **8 THE INQUIRY: THE MERITS TEST**

### **Introduction**

- 8.1 This response theme is based on the contention of several objectors that the closure and diversion of Princes Parade will directly and adversely impact on the setting of the neighbouring RMC. It draws upon issues for the 'merits test'.
- 8.2 My assessment relies largely on the assessment work carried out into the scheme as a whole as a part of the planning application process, including the advice from Historic England and the assessment of the planning officers. This was thorough and comprehensive and remains relevant in its coverage and its reasoning to a consideration of the proposal under Section

247 of the Town and Country Planning Act 1990 for the stopping up and diversion of the highway known as Princes Parade, Hythe, Kent.

- 8.3 It is important to appreciate that any impact on the setting of the RMC is relevant to the 'merits test' only if it arises directly from the closure and diversion of the highway (as opposed to arising from the development generally or indeed the construction of the road under the planning permission). The proof therefore separates this aspect from wider planning considerations with regard to the whole site.
- 8.4 This proof breaks down the objections into several headings with regard to the stopping up order as follows: a) hybrid application, b) visual impact and character, c) peace and tranquillity, d) archaeology, and e) Princes Parade.

#### **a) Hybrid application**

- 8.5 Objectors point out the permission was granted on a 'hybrid' application, with full details of the proposed leisure centre and the adjacent portion of road but only outline proposals for the other buildings and rest of the road, and state that:

*'... the detail of the alignment of the road, of its construction and lighting have not been submitted for the area where the housing and commercial uses are proposed... it is not possible to judge what impact;*

- *the position of the road has on the setting of the Canal,*
- *the height of the road above the canal has.*
- *any retaining wall or embanking to retain the road will have.*
- *its lighting has*
- *the landscaping between the road and the canal has, in terms of amelioration.*

The implication appears to be that the road proposal could cause harm to the setting of the RMC over and above that considered in the planning permission already granted.

- 8.6 However, these matters have been adequately outlined in the planning permission documents. In this respect Section 4 of the Planning, Design and Access Statement (PDAS-Core Document 7) contains a series of parameter plans and diagrams to define the key spatial characteristics and relationships of the development proposals. Section 5 contains a Design Code. Condition 6 of the Planning Permission (Core Document 2) requires reserved matters details to comply with specified drawings and the Design Code in Section 5 of the PDAS.
- 8.7 The Site is relatively flat. The main promenade and road sit at approximately +6.8 metres (AOD) and the Site ranges between +6.5 metres and +8.0 metres AOD (PDAS paragraph 2.2.7, page 28). The Site drops sharply along the northern boundary, forming a vegetated embankment where it meets the canal tow path.
- 8.8 The parameter plans that accompany the planning application show that housing will be placed at 7.8m AOD (Figure 4.10, PDAS page 77 Core Document 7) and that the New Road will be slightly below this level at 6.65 to 6.75m AOD. The land will therefore only be raised by a marginal amount on parts of the Site. Furthermore, the present vegetated embankment is shown is being kept.
- 8.9 The position of the road is also shown on the Access and Circulation Parameter Plan PP-AC-04 (Core Document 79) listed in Condition 6. In line with the overall concept, it shows the road close to the top of the embankment towards the eastern end of the Site but set



considerably further back towards the west. The lighting and landscaping strategies are also set out.

- 8.10 This notwithstanding, the position of the New Road is now clearly shown on the stopping and diversion order. The position complies with the parameter plans.
- 8.11 In addition, design work to implement the permission has continued and shows heights and cross sections (Appendix 1). Having checked with the design team with regard to height, cross sections and road position, I can confirm that the detailed design proposals being developed show that the emerging detailed design for the New Road complies with the parameter plans.
- 8.12 Cut and fill analysis with regard to the embankment (i.e. the extent to which existing land levels need to change) indicates that minimal level changes are needed. Retaining walls or other structures will not be required.
- 8.13 The only exception to there being no change is a 213m section of embankment adjacent to the leisure centre which is to be excavated and recompacted to provide a stable bank for the road. This notwithstanding, ground levels in this area are to be altered to take the adjacent Seapoint Canoe Centre (Planning application Y14/1248/SH) which is to be built into the embankment at this point.
- 8.14 I am confident that no further change to the setting of the RMC, over and above that shown in the parameter or the Design Code, will result. This is anyway an issue that will be controlled under the planning permission's conditions and which is not a result of the stopping up and diversion order.
- 8.15 In conclusion, the application contained sufficient detail to judge the effect of the New Road on the setting of the RMC. Since the granting of permission, work has continued on the detailed aspects of the road design, including landscaping. This shows that the design continues to comply with the parameter plans approved by the planning permission. Retaining walls or other such structures do not feature in this design, road heights above the RMC are close to the present site levels, and the road alignment complies with that shown in the parameter plans.
- 8.16 All the above aspects were considered by the Committee Report (Core Document 3). No new issues therefore arise out of this objection which are relevant to the S247 Application.

**b) Visual impact on the RMC, its setting and character**

*The New Road as a part of the overall concept of the scheme.*

- 8.17 The assessment of harm arising from the development as covered in the Committee Report is relevant to the Inquiry. It covers the objections raised by Historic England and by other objectors with regard to visual impact and links between the RMC and its setting for the development as a whole, which includes the diversion of Princes Parade over the New Road. The assessment of harm is also covered within the PDAS (Page 51- consideration of options; Page 190- Maximising enhancement and minimising harm- Core Document 7). and the ES (Core Document 10). These documents again layout the function of the New Road as in separating the RMC from new built development.

- 8.18 As outlined in the previous section, although there were differences in opinion as to the degree of harm that would be caused by the planning permission development (beyond the basic assessment of 'less than substantial harm'), Historic England, the Committee Report, and the Heritage Chapter of the ES and the heritage section of the PDAS (as written by me) were all in agreement that the adverse impact of the development on the setting of the RMC would be from the buildings of the development. In my opinion, this remains the case.
- 8.19 Furthermore, the design concept of the scheme as a whole is a deliberate response to the setting of the RMC. The larger leisure building is to be placed at the eastern end of the site, close to existing recent large buildings, in order to reduce the impact on the setting of the RMC as experienced in distant views (see view analysis in the PDAS (Core Document 7) and the Heritage Chapter of the ES). Housing is to be arranged in 'clumps' surrounded by open space so as to sit within the space rather than taking away from it. In this way some understanding of the RMC as barrier between two different character areas will be maintained, and with it some understanding of the historic role of the site (see page 190 of the PDAS – Mitigation- for further details).
- 8.20 The New Road is a key positive part of this concept – it separates the buildings of the development from the RMC, and hence reduces the visual impact of the buildings of the development on the RMC. It also, along with the park proposed at the western end of the Site and the smaller central park between the two groups of housing, ensures the degree of spaciousness surrounding the built development that is an essential part of the concept.
- 8.21 It is also worth noting the landscaping regime for the embankment of the Site above the RMC. This will replace the dense and impenetrable scrub currently on the Site with native tree and shrub species to create a tall landscape/visual buffer, and under-seeded with a wildflower grass seed mix. The height will be curtailed by windy coastal conditions but will be taller than existing. The planting has a role in screening the road, including infrastructure such as lights (and to a degree, buildings) from footpaths within the trench of the RMC and in views across the RMC from south to north. This regime would not be implementable to same degree if buildings were in immediate proximity to the embankment (and hence trees and shrubs). It relies on the separation provided by the New Road.
- 8.22 For reference, the central park area (around the Seaview Bridge) and the Western Park area are designed as open spaces with low lying grass or wildflower meadows.

*The New Road as a standalone item.*

- 8.23 In granting permission, the Council as local planning authority weighed the balance of harm from the whole development to the setting of the RMC versus public benefits and also in the overall planning balance. This exercise is still valid to inform this Inquiry but the matters relevant to the balance are different in that in that the balance considers solely the direct impact of the proposal for stopping up and diverting Princes Parade. The New Road will be at grade, will not project significantly above existing site levels, will not impinge upon the immediate setting of the RMC (the embankment), will be relatively narrow and will be a linear feature that reflects the linear character of the RMC. It will also have an associated landscaping regime.
- 8.24 Although the construction of the New Road would change the character of the immediate part of the Site, it would, given the above, have relatively little visual impact in itself and hence relatively little if any impact on the understanding of the historic character and role of the Site as a field of fire. This reinforces the Council's and the statutory consultee's (Historic

England) views that

- a) it is the proposed buildings that, mitigation and design concept notwithstanding, would be the real cause of the 'less than substantial' harm of the overall scheme. These reduce the openness of the land to the south of the RMC (the Site) and thus harm the relationship between the RMC and the beach- in particular the legibility of the RMC as a barrier to an invader from the sea (HE letters 26/10/17- Core Document 40, 13/04/18- Core Document 41).
- b) There is a benefit in siting the road on the north of the site in that it will separate the development from the RMC and allow the buildings to be set back from the RMC (HE letter 22.9.16- PDAS P235- Core Document 7).

8.25 In this respect (1) the diversion of the Princes Parade highway in itself has no effect on the setting of the RMC, (2) the construction of the road is a mitigating element of the development, and (3) what affects the setting of the RMC is the construction of the buildings and not the road.

8.26 The largest visual impacts with regard to the New Road will come from streetlights and to a lesser extent from moving traffic. Neither will feature particularly prominently in long distance views. In shorter views the landscaping along the RMC / Site embankment would largely screen these. This notwithstanding, it should be noted that there is an existing width restriction on Princes Parade of 6'6" (1.98 m) that effectively bans HGVs (vehicles over 7.5T) except for access. There are no proposals to remove this ban from the unimproved sections of Princes Parade. Therefore the volume of large vehicles (HGVs) with their larger visual impact will continue to be minimal.

8.27 It should also be noted that the New Road has planning permission as a part of the overall scheme. The purpose of the S247 order is not authorise the construction of the New Road or the use of the New Road for development-related traffic. Those matters have been authorised by the grant of planning permission. I am advised by Mark Fitch, the highways and transport expert for the Council in this Inquiry, that the New Road would have the same dimensions, street lighting etc. whether it is just an access road for the development or whether it is a through road as currently intended with the stopping up and diversion of Princes Parade. The visual impact from the construction of the New Road would thus be unaltered by the stopping up and diversion of Princes Parade. However, the bespoke design concept of the overall scheme and its attendant relationship with the wider area (including the Promenade, beach front and RMC) could not be implemented in the same way if the stopping up order was refused and if Princes Parade remained as a through road.

#### *The Local Plan Inspector's Report*

8.28 The Council last year adopted a new local plan. This has a specific policy on the Princes Parade Hythe (including the Site), UA18. On 26<sup>th</sup> June 2020, the Inspector produced his report on the Examination of the Folkestone and Hythe Places and Policies Local Plan (Core Document 110).

8.29 With regard to Policy UA18, the Inspector stated:

*Paragraph 23: .... 'With regard to the allocation site the opportunity to experience the RMC as it was intended is greatly diminished due to the land being raised by municipal tipping in the 1960s and 1970s, resulting in this section of the RMC no longer having a clear line of fire to the seafront as was originally designed....'*

Paragraph 24: *'As such, I accept that the development of the site would be likely to result in a material change to the immediate character of the area, however, it would not appear incongruous in the context of the RMC as a whole. This is because there are numerous examples of development that adjoin the RMC but are located between the canal and seafront for example, Hythe Imperial, Moncrieff Gardens, and the predominantly residential area between West Parade, Hythe and the canal. Therefore, I consider that Policy UA18's criteria-based approach is justified by the available evidence and provides clear direction to the decision maker in relation to the assessment and statutory protection of the site-specific heritage issues. The policy is also clear in that it seeks to maximise opportunities to enhance key aspects of the heritage asset by improving connectivity between the RMC and the seafront...'*

- 8.30 The Inspector's Report is useful in that it recognises the change in character brought about by previous land raising of the site and the harm that this has done to the heritage aspects of the original setting of the RMC at this point. It is also useful in that it places the site within the context of the 28-mile long RMC as a whole, and in that it recognises that development between the RMC and the seafront is not uncommon and therefore not incongruous.
- 8.31 It should also be noted the design of the Planning Permission scheme takes account of site specific heritage issues, as outlined in this proof, and that, by way of footpaths across the western and central parks, the creation of the parks on hitherto inaccessible land, and by the stopping up of Princes Parade, it improves connectivity between the RMC and the seafront. There is therefore clear compliance with Policy UA18.

### **c) Peace and tranquillity**

- 8.32 Peace and tranquillity are not attributes which are related to the heritage significance of the RMC or its setting. The seaward side of the RMC in the vicinity of the Site had an open and functional relationship with the open space to the south and the sea beyond which depended upon a lack of development. However, this does not mean that it was intended to be tranquil. It would have been anything but tranquil if it had been used for the defensive purpose for which it was designed. Once its defensive function had become redundant, the RMC and its environs, including Princes Parade, became a tourist attraction, with boating on the RMC and trams running along the Parade. Whilst not noisy, nor was such activity intended to be particularly tranquil.
- 8.33 This leisure use of the RMC and its immediate area continues. Planning permission has been given for a canoe centre built into the embankment of the RMC at its eastern end. This will bring more of this traditional boating activity to the RMC.
- 8.34 The tranquillity of the RMC today, such as it is, is mainly attributable to the feeling of isolation of the RMC within a trench created by the land raising of the development site, rather than to the retention of undeveloped land. This is a negative in heritage terms for the setting of the RMC. The tranquillity is notably less towards the eastern end where the Site and the RMC give way to a car park serving the RMC and Princes Parade, to blocks of flats and to the busy main road of the A259. The rest of the RMC is similarly mixed - the majority of the 28 mile RMC passes through Romney March in very tranquil and quiet surroundings (much more so than in the vicinity of the Site), whilst other parts, for example at Hythe, and past the historic town of Rye, pass through or past built-up and trafficked areas.
- 8.35 Notwithstanding the point that tranquillity is not an attribute associated with the heritage significance of the RMC and its setting, much of the RMC adjacent to the site will remain

relatively tranquil. The embankment will remain, as will the RMC's position at a lower level. Towards the west (currently the most tranquil part of the site due to its isolation from existing development to the east) the New Road will be very well set back.

- 8.36 The landscaping regime will help in maintaining a feeling of isolation of the RMC from the land around it. It will mask views to the New Road itself, to vehicles and to streetlights in views from the RMC footpaths itself, both on the north side and across the RMC on the south side.
- 8.37 The New Road itself will have the same KCC Highways classification of 'locally important road' and will be a little wider than the existing Princes Parade, but its width is restricted such that it is designed to have a design speed of a maximum of 30mph. The current width restriction on Princes Parade of 6'6" will remain and will effectively ban HGVs from the New Road. Both the width restriction and the 30mph design speed will result in less noise as compared to a road that takes HGV's and which has a higher design speed.
- 8.38 It should be noted that the existing Princes Parade Highway itself is a popular place for walking, running and sitting such that it is evident that most people do not find it unduly traffic ridden and unduly noisy to the extent that it spoils their enjoyment of it. The same will be true with regard to the New Road and to the environs of the RMC.
- 8.39 The general issue of noise is addressed more fully by Matthew Woodhead in his evidence.
- 8.40 Road lighting will have an impact on the tranquil character of the RMC. During the daytime (when the canal-side walks of the RMC will be used) this will be restricted to the visual impact of the lights columns and fixings filtered through the trees and shrubs planted on the site embankments. Condition 49 of the planning permission requires details of the lighting to be submitted for approval so that their impact on the RMC can be controlled.
- 8.41 In addition, Historic England's previous comments on lighting and noise should be noted (paragraphs 6.12-6.14 above). These are that darkness is not a major contributor to the significance of the RMC, and that, from the southern path alongside the RMC, the road would not be experienced.
- 8.42 The baseline position of the planning permission is also relevant in considering the effects of the stopping up and diversion order. It is not the Site in its undeveloped state. Instead, it is the Site with the New Road and the buildings that have been given planning permission, as noted in Paragraph 8.26 above. The only real difference as a result of the stopping up and diversion order will be in the number of cars and light vehicles using the New Road.

#### **d) Archaeology**

- 8.43 Some objectors were concerned about the effect of the development (including the re-aligned road) on the archaeology of the RMC and its environs.
- 8.44 The original towpath and seaward drain of the RMC may still exist within the Site in the vicinity of the New Road. Similarly, the remains of the boathouses that once existed at the terminus of the RMC may remain under the present car park, as may the remains of pillboxes across the Site. However, it is equally possible that these were lost when the Site was used as a municipal rubbish tip.
- 8.45 These features have the potential to reveal more about RMC. However, they are minor

features, and, if they exist, they have been buried for many years. This will remain the case. They do not and will not contribute to an easily interpretable or obvious visual understanding of the RMC.

- 8.46 Since the granting of planning permission, an initial archaeological desk-based assessment (Archaeological Desk-Based Assessment: Land Near Princes Parade, Hythe, CT21 5FD: Icen Projects Limited on behalf of Hadron Consulting, June 2021) has been carried out for the Site as the first stage in discharging archaeological conditions 27 and 28 of planning permission Y17/1042/SH. This confirms that evidence relating to the construction of the RMC and to early to mid 20thC defences is considered to be of low to moderate (local area) significance. It also records that there is low to moderate potential for post medieval finds in the area.
- 8.47 The report notes that the scheme may have a potential impact on these remains. However, given their relatively low importance, Condition 28 of the Planning Permission (requiring the submission of foundation designs in order to minimise impact upon archaeological remains) will continue to suffice (Decision Notice- Core Document 2).
- 8.46 Any impact on archaeology will not be as a result of the stopping up and diversion order. The construction of the New Road is authorised by the planning permission and controlled under the conditions on the permission. Mr Fitch confirms that would be no difference in the depth of construction of the New Road due to its function as a through road (ie were the stopping up and diversion order granted). There would be no difference in the effect on buried archaeology as a result of the stopping up and diversion order.

#### **e) Princes Parade**

- 8.47 Princes Parade has some interest, along with the seafront, the hotel, and probably the RMC, as part of the development of tourism and leisure in the area in late Victorian times when these were relatively new activities. It was a popular seaside promenade served by a tram, one shelter of which remains on the site today. This is discussed on Page 178 of the PDAS (Core Document 7). and in the Heritage Chapter of the ES.
- 8.48 The historic interest of Princes Parade will not be diminished by the stopping up and diversion order. It will remain an impressively linear seaside promenade accessible by foot and by bicycle. The removal of traffic will increase its use for seaside leisure activities.
- 8.49 The removal of traffic from the existing Princes Parade route will allow it to fulfil its late Victorian / Edwardian function as a promenade dedicated to leisure use. This is a heritage gain.

#### **Conclusion**

- 8.50 The 'merits' test is one of two key legal tests of S247 as outlined in paragraph 3.4 above. It hinges on the following question:

**Are the disadvantages and losses, if any, flowing directly from a stopping up and/or diversion order of such significance that he/she ought to refuse to make the order?**

- 8.51 In this case, the stopping up and diversion order, as distinct from the planning permission, will not affect the significance of the RMC and its setting or the significance of Princes Parade. There are no additional heritage losses or disadvantages in this regard. There is therefore no reason why the order should be refused.

## 9. SUMMARY

- 9.1 In line with the rest of this proof of evidence, this summary considers the disadvantages and losses in relation to the historic environment within the vicinity of the Princes Parade which could arise directly from the approval of the stopping up and diversion order. It does this by reference to the objections that have been made with regard to this subject.

### **Objection theme A: Hybrid application – insufficient information to measure impact on the RMC; impact will be greater than that indicated by the Planning Permission.**

- 9.2 Sufficient information is available as a part of 1) the planning permission documents, 2) within recent submissions to discharge planning conditions, and within 3) the Stopping Up Order to fully measure the impact of the New Road on the RMC and its setting. The impact will be no greater than that shown at the planning application stage. Furthermore, the design and construction of the New Road in terms of road width, lighting, depth of construction, or other factors will be the same whether the stopping up order fails (in which case the new Road will just serve the development) or the stopping up order succeeds (in which case the New Road will be a through road).

### **Objection theme B: Visual impact on the RMC, its setting and character**

- 9.3 The main impact upon the heritage significance of the Site as a part of the setting of the Scheduled Ancient Monument of the RMC, specifically the key aspect of the RMC as a barrier separating built up development to the north and open land and the sea on the south, will be from the buildings permitted by planning permission Y17/1042/SH. The construction of the New Road will, in itself, have a minor impact, if any.
- 9.4 The New Road is a part of the mitigation strategy to reduce the visual impact of buildings on the immediate setting and character of the RMC. It, along with associated landscaping to the present embankment of the site down to the RMC, will form a buffer between the built-up parts of the site and the RMC.
- 9.5 In addition, the New Road is a key part of the overall design response of the permitted scheme to the setting of the RMC and to Princes Parade. Open accessible parkland between sets of buildings will reduce the impact of the built development on the setting of the RMC. The parkland will allow for direct connections across the hitherto mainly inaccessible site between the RMC and the sea, thus reinforcing historic connections between the RMC, the site as an open field of fire, and the beach and sea. This concept will be reinforced by the stopping up of Princes Parade to create a pedestrian and leisure seafront promenade that is closer to the original late Victorian concept of the Parade.

### **Objection theme C: Peace and tranquillity of the RMC**

- 9.6 Tranquillity is not a part of the heritage significance of the RMC and its setting (including the Site). Nevertheless, and to the extent that tranquillity exists at present (more to the west, away from the roads and flats at the eastern terminus of the RMC), it is a function of the modern position of the RMC within a trench. This a negative in heritage terms as the RMC was designed to be open, rather than enclosed, on the beach side.
- 9.7 This notwithstanding, much of the RMC adjacent to the site will remain relatively tranquil. The embankment will remain, as will the RMC's position at a lower level. Towards the west

(currently the most tranquil part of the site due to its isolation from existing development and main road to the east) the New Road will be very well set back. The landscaping regime for the embankment will help in maintaining a feeling of isolation of the RMC from the land around it.

- 9.8 Restrictions on HGV's and the low (30mph) design speed of the New Road will also help to limit the noise generated by traffic along the New Road. Planning conditions and landscaping will limit the impact of street lighting- which will in any case be the same whether Princes Parade is stopped up or not.
- 9.9 The baseline position of the planning permission is also relevant in considering the effects of the stopping up and diversion order. It is not the Site in its undeveloped state. Instead, it is the Site with the New Road and the buildings that have been given planning permission'
- 9.10 The general issue of noise is addressed more fully by Matthew Woodhead in his evidence.

#### **Objection theme D: Archaeology**

- 9.11 The likely archaeological remains on the site, if they exist at all, are minor features. Their protection is covered adequately by the conditions of the planning permission.

#### **Objection theme E: Princes Parade**

- 9.12 The direct benefits of the stopping up and diversion order are a traffic free, wider public promenade on the existing route of Prince Parade. This will make it more pleasant and safer to use for variety of leisure activities.
- 9.13 The removal of traffic from the existing Princes Parade route will allow it to fulfil its principal late Victorian / Edwardian function as a promenade dedicated to leisure use. This is a heritage gain.

#### **Final points**

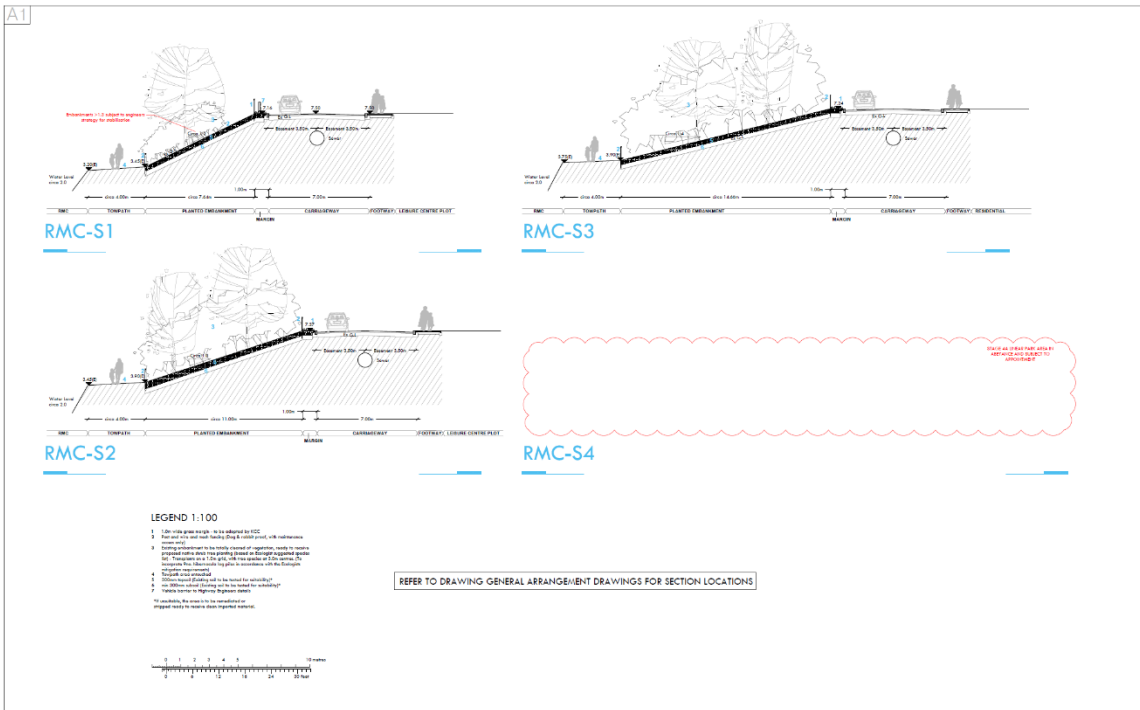
- 9.14 For this S247 Application, it is important to recognise that none of the adverse heritage impacts as laid out by objectors with regard to the visual impact on RMC and its setting, the archaeology of the RMC, and with regard to Princes Parade, are caused by the stopping up and diversion order. The heritage impacts arise from the development as a whole, including buildings and the New Road- all of which have already been granted planning permission. Following the Pre-Inquiry Meeting, the Inspector has confirmed that these impacts are not relevant considerations for the S247 Application. I have nonetheless addressed them above as they are raised by objectors, to explain that there is no substance to them anyway. Nor is the issue of tranquillity relevant with regard to heritage impacts, as stated above.
- 9.15 My conclusions reflect what was said in the Buckles Solicitors response to statutory consultation report dated May 2021, namely that any adverse heritage impact on the RMC or Princes Parade is not a direct consequence of the stopping up and diversion order.
- 9.16 In my opinion, and in conclusion, there are no disadvantages or losses flowing directly from the S247Application with regard to heritage and certainly none of such significance that the SoS(T) ought to refuse to make the stopping up and diversion order.



**END**

**The evidence which I have prepared and provide in this proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions**

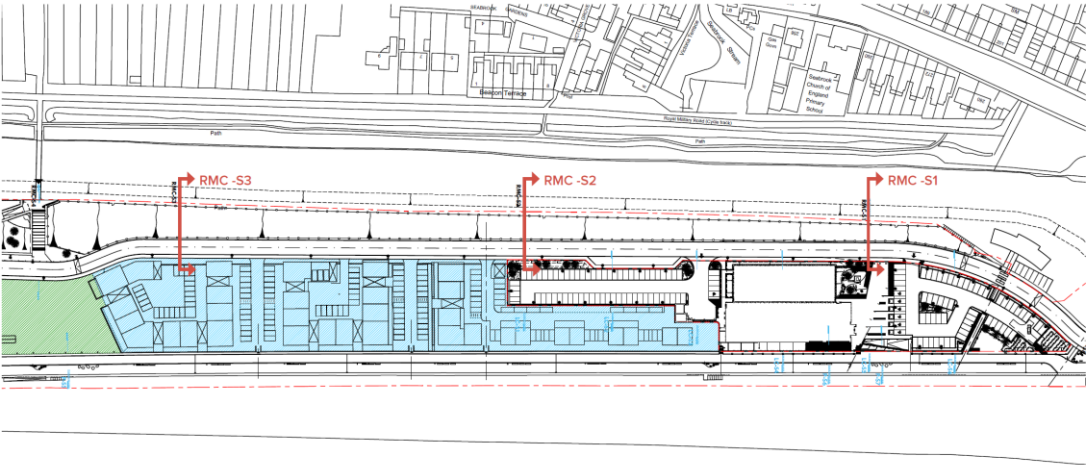
**Appendix 1:**  
**Cross Sections through New Road, the adjacent embankment and the RMC- to be submitted to discharge landscaping condition of Y17/1042/SH**



ROYAL MILITARY CANAL LANDSCAPE SECTIONS 1 OF 2

NO.	DESCRIPTION	DATE	BY	CHECK	PROJECT
01	Issue for Approval	08/03/20	Mark Hanton	Mark Hanton	ROYAL MILITARY CANAL LANDSCAPE SECTIONS 1 OF 2
02	Issue for Approval	08/03/20	Mark Hanton	Mark Hanton	ROYAL MILITARY CANAL LANDSCAPE SECTIONS 1 OF 2
03	Issue for Approval	08/03/20	Mark Hanton	Mark Hanton	ROYAL MILITARY CANAL LANDSCAPE SECTIONS 1 OF 2
04	Issue for Approval	08/03/20	Mark Hanton	Mark Hanton	ROYAL MILITARY CANAL LANDSCAPE SECTIONS 1 OF 2
05	Issue for Approval	08/03/20	Mark Hanton	Mark Hanton	ROYAL MILITARY CANAL LANDSCAPE SECTIONS 1 OF 2

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SECTION LOCATIONS ALONG REGRADED SECTION OF RMC  
 For sections, refer to MHS drawing PPLC-MHS-OS-ZO-DR-L-90204 - Stage 4A RMC Landscape Sections 1 of 2

MHS21019\_SK23  
 Section Locations Along Regraded Section of RMC  
 NTS @A3

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