Extraordinary Council Meeting – Monday 26th February 2024 **Agenda Item 3)**

To consider requests for grant funding and recommendations of Grants Panel

Members of the Grants Panel met on 24th January 2024 to review in detail further Swanage Town Council grant applications received for the 2023/24 financial year. All applications received are set out in the table below (Appendix 3). This also indicates the sum requested, the recommended size of the grant from the Grants Panel, a summary of the project that will be funded by the grant, and the reason for the Council's support/grounds for refusal.

Also attached is a copy of the Council's grant criteria (Appendix 1), adopted by Council in February 2021. This states that in order to ensure a wide distribution of funds, grants will usually be for sums of less than £500, and would typically only support festivals and events whilst they are being established.

Background

The Council has agreed a grants budget of £10,000 for the 2023/24 financial year. This is separate from the support for Purbeck and East Dorset Citizens Advice which has been given its own budget line. This sum also excludes the Council's support to partner organisations including Dorset Council, through which the Town Council funds the Mount Scar School Crossing Patrol.

In addition to the above, during the year a donation of £1,000 has been made to the Portland Association towards legal and technical expert support costs in relation to the planning appeal in respect of the proposed development of an Energy Recovery Facility in Portland Port, Portland.

Details

A total of £5,850 has been awarded to date (Appendix 2). A further total of £2,440 has been requested, and it is proposed that £1,150 be awarded. The balance of £3,000 will be available for applications received for the remainder of the financial year (year-end 31st March 2024).

During discussions at the Panel meeting, a question was raised as to whether consideration should be given to regular/annual donations to local volunteer/community groups (similar to those above to Citizens Advice and the school crossing patrol), subject to appropriate eligibility guidelines being met, to help protect the invaluable services provided by these groups in the future. It is therefore proposed that a review of the Council's donations policy be undertaken at a future Panel meeting, and any recommendations will be presented to the Finance and Governance Committee for further consideration at a future Committee Meeting.

Details of the Council's grant scheme has again been circulated to the Swanage Town and Community Partnership, and highlighted at the Partnership meeting held on 31st January 2024, and the Council will continue to increase awareness of the scheme with local charitable/ community groups accordingly.

Decision required:

To approve the recommendations of the Grants Panel made at its meeting held on 24th January 2024.

Niki Clark
Planning and Community Engagement Manager
February 2024

Appendix 1

GUIDELINES FOR APPLICANTS

Please read these notes carefully before completing the application form.

1. Swanage Town Council provides an annual budget of £10,000 available for grants and donations. In order to ensure a wide distribution of funds, grants will usually be for sums of less than £500. Larger grants may be considered in exceptional circumstances. In all cases applicants will be required to demonstrate financial need, and the sum requested must be commensurate with the direct benefit obtained.

2. Please complete the attached application form as fully as possible. If there is insufficient space on any part of the application form, please attach a separate note. The Council welcomes any additional supporting information that you believe will assist your application. Any application not on the approved form cannot be considered. Applications that are applying retrospectively cannot be considered.

Applications will only be considered from community groups and organisations that are a properly constituted body. This may include a group or organisation with charitable purposes, a charity, or a not-for-profit company.

Applications will not be considered from grant-gifting organisations, i.e., those who allocate grants to others, profit-making organisations and companies, or individuals.

3. Requests for grant aid should be consistent with the Town Council's statement of policies and objectives (see www.swanage.gov.uk/Policies.aspx) and will normally only be considered from the following:

3.1 A charity based in and/or operating within the boundaries of the civil parish of Swanage. National and regional charities must demonstrate direct local benefits.
3.2 A non-profit making organisation serving the needs of Swanage or its residents.
3.3 Residents of Swanage requesting grant aid with a capital project to provide benefit to a wider group.
3.4 A club, association or organisation serving all or part of the Swanage community.
3.5 Organisers establishing new festivals and events, which will bring an economic, cultural, or other demonstrable benefit to the town.
3.6 The Council will not provide grant aid to individuals, for the support of any political group, or to organisations that are socially exclusive (i.e., where there are restrictions on membership inconsistent with equal opportunities).

4. Applications for grant aid that do not meet the criteria set out in 3.1 to 3.6 above may be considered in special circumstances, but the Council cannot make grants retrospectively. If you wish to discuss a potential application please contact the Town Clerk either by telephone on 01929 423636, or e-mail admin@swanage.gov.uk

5. Together with this application form you should also supply the following information:

- A copy of the last audited annual accounts or, in the case of smaller organisations, a recent income and expenditure statement authorised by a qualified accountant.
- A business plan or strategy that includes a clear understanding of the organisation's operating environment, risk exposure, and projected income and expenditure.
- A minute of the meeting of the organisation stating the purpose of the funding request and authorising the application.
- Payments will not be made to individuals or private bank accounts. Please include the name and details of the account that any grant will be paid into (must be in the name on the application form).
- Applications must take into consideration the impact on climate and environment and show a commitment to comply with the Town Council's Environment Policy and Action Plan.

6. Applications will normally be considered annually as part of the Council's budget setting process. The deadline for submission is the **31st December** for grants to be paid in respect of the forthcoming financial year, from 1st April. However, if funding remains available, requests may be considered at any stage during the financial year.

7. Applications will be assessed on the basis of the information supplied, against the following criteria: whether the grant will support the Town Council's policies and objectives; how well the grant will meet the economic, cultural, environmental, social or other needs of the community; availability of alternative funding; extent of fundraising activity by the applicant(s); previous grant aid from the Town Council.

The Council reserves the right to request further information and supporting evidence.

Grants may be paid over a three-year period.

The length of the grant period will be at the discretion of The Council.

8. The decision of the Town Council is final. If your application is successful you will receive written confirmation of your award. You must sign a form accepting the Council’s terms and conditions and will be expected to acknowledge Council support in all communication with the media.

9. Any grant not utilised within 12 months for the original purpose must be returned to the Town Council.

Appendix 2

Swanage Town Council - grants awarded to date

Grants and Donations Summary 2023/24

Grant applications already approved as at 26th February 2024:

Friends of Swanage Bandstand	£ 350 *
The Mowlem Institute Charity	£ 5,000
#Willdoes	£ 500
	======
Total awarded to date:	£ 5,850
	======

* N.B. The Swanage Bandstand centenary concert did not go ahead and the funds have now been returned to the Town Council.

Grant applications to consider on 26th February 2024:

Friends of Swanage Primary School	£ 500
Home-Start Wessex	£ 900
Life Education Wessex & Thames Valley	£ 350
Swanage Skatepark Community Project	£ 500
Swanage Town Band	£ 150
	======
	£ 2,400
	======

Appendix 3

Swanage Town Council - Grant applications received

Applicant	Sum Requested	Recommended grant	Summary of project	Reason for support
Friends of Swanage Primary School	£500	£500	PTA – Friends Group. To provide a pond area within the school grounds to give children the opportunity to get close to nature, to learn about wildlife and pondlife, and observe how this changes with the different seasons. The aim is to create a calm area to help with the emotional support of children, which they can use to reflect, as well as learn. Also install storage around the pond to store pond dipping equipment. The children currently visit other schools in the area to do their field studies, but this incurs a charge, and not all parents are in a position to be able to pay for their child to take part. Total estimated cost of project £6,000. The Group has already raised over £5,000 towards this through its own fundraising efforts.	Recommend approval. Benefit to local community's/children's health and wellbeing, social activities. The PTA's determination and fundraising efforts are to be congratulated.
Home-Start Wessex	£900	£0	Registered charity based in Kinson, Bournemouth, offering support, friendship, and practical help to vulnerable and disadvantaged families with at least one child under the age of five in the East Dorset area - supported for a period of at least six months. Specialist staff run several family groups within the community which provide welcoming venues for parents/children to meet and gain	Recommend decline - in line with the Council's existing grant policy, Points 3 to 3.6

			support in a safe and nurturing environment (Wimborne/Ferndown/Boscombe/ Bournemouth). Advised that three Swanage families were supported by home-visiting volunteer in 2023. Statutory annual funding awarded from Dorset Council, other grants received from local and national sources, Grant of £900 required to cover the costs of volunteer support for one family for one year. (Minutes of Charity not provided - advised that individual grant applications are not minuted)	
Life Education Wessex	£350	£0	Registered charity. Undertakes range of fundraising events/applications. Delivery partner of the UK's leading health, drug, and emotional well-being education programme 'Coram Life Education' to children aged 3–13 years across: Devon, Cornwall, Dorset, Hampshire & Somerset, and Berkshire, Buckinghamshire, Oxfordshire & East Swindon. The charity helps to effectively communicate healthy lifestyle messages and empower children aged 3-13 with the knowledge, skills and self-confidence to make positive healthy decisions and stay safe in school. The charity advised that it delivered a two-day programme at St Mary's RC Primary School in 2023. Total costs £1,080, of which the school paid £730 - schools contribute approx. 66% of the charity's costs.	Recommend decline - in line with the Council's existing grant policy, Points 3 to 3.6

			(Minutes of Charity not provided. Annual Accounts 2022/23 found online)	
Swanage Skatepark Community Project	£500	£500	Community group/project. Raising funds to be able to host a ‘Skatepark Community Day’, the first of its kind to be held in Purbeck. The one day event will provide focused physical activity and encourage new hobbies for the younger generation, and will include: - Workshops and lessons, hosted by King Ramps, featuring pro riders - Three x 20 minute shows from three of the UK’s top professional skateboard and BMX riders - Competitions, judged by the pro riders - MC’s - to make the event fun, orderly and structured. Safety gear and skateboards will be provided by King Ramps. The event will promote use of local resources, and encourage more young people to take up a positive activity, which has been shown to combat antisocial behaviour. Total cost of event £2,300. The Group has also applied for a £1,500 grant from Dorset Council.	Recommend approval. Benefit to local community’s/children’s health and wellbeing, social activities. The Group’s drive and fundraising efforts are to be congratulated.
Swanage Town Band	£150	£150	Committee run (by members) The Town Band provides the local community and visitors alike with live music at local events, promoting the practice and enjoyment	Recommend approval. Benefit to the local community’s health and wellbeing (free events/social activities). In support of funding the capital purchase (of

			of music. Providing opportunities for the local community to join the band, and support provided to younger band members. Membership fee currently £60 per annum, looking to raise to £105 to cover increased revenue costs. They also raising funds at concerts to assist local charities – this year the Herston Village Hall refurbishment, and Purbeck Youth Music. Cost of two new pieces of music (@ £75 each).	new music).
Total:	**£2,400.00**	**£1,150**		

Extraordinary Council Meeting – Monday 26th February 2024 **Item 4)**

Sandbanks Ferry proposed increase in tolls – To consider making representation to Secretary of State for Transport

On 8th February 2024 the Bournemouth-Swanage Motor Road and Ferry Company published notice of their intention to increase the tolls for all classes of vehicles and reduce the discounts available on bulk ticket purchases. A copy of the proposals is attached to this briefing note at Appendix A, together with the Company's press release at Appendix B. The Company's full submission can be found via this link - Toll Application 2024 – Sandbanks Ferry

The Town Council is required to consider if it wishes to lodge an objection with the Secretary of State for Transport no later than 22nd March 2024. A copy of the initial objection lodged by the Town Council in response to the last proposal to increase tolls in April 2020 can be found at Appendix C, for information.

In 2020 the Town Council jointly funded legal representation with Dorset Council and Bournemouth, Poole and Christchurch Council. Dorset Council has indicated that it is willing to explore a similar approach to this application.

During the 2020 toll application, the 'consortium' of Councils put forward an alternative fee structure, and the Ferry Company adopted elements of that in its final proposed toll structure that was subsequently approved by the secretary of state, following a public inquiry. The Inspector's Report is set out at Appendix D.

Neighbouring parish Councils are also considering this matter. A recent resolution from Studland parish council is attached at Appendix E.

Decision required

To determine whether the Town Council considers that there are grounds on which it wishes to object to the application from the Bournemouth-Swanage Motor Road and Ferry Company to increase its tolls.

If so:
To consider granting delegated authority to the Planning and Consultation Committee to agree the grounds for objection and consider a draft submission to the Secretary of State for Transport.

To indicate whether or not consideration should be given to working with Dorset Council, BCP Council and other partners to oppose the application and potentially to jointly fund legal representation at any future public inquiry.

Martin Ayres, Town Clerk
February 2024

THE BOURNEMOUTH-SWANAGE MOTOR ROAD AND FERRY ACTS 1923 & 1986 AND TRANSPORT CHARGES &c. (MISCELLANEOUS PROVISIONS) ACT 1954

NOTICE IS HEREBY GIVEN that The Bournemouth-Swanage Motor Road and Ferry Company has applied to the Secretary of State for Transport for an Order to revise the maximum toll charges for the use of the ferry between Sandbanks and South Haven Point.

The revised tolls will take effect from the date the Order is made.

The Company seeks a retail price index ("RPI") adjustment from the date of the last fare order until the Order is made. An illustrative RPI adjustment up until 01/04/23 is shown below.

After the Order is made the Company then seeks an annual consumer price index ("CPI") adjustment. An adjustment in April of any year after 2023 to the maximum amount of tolls charged with any such adjustment being no more than the percentage difference between the CPI for January of that year and the CPI for the month of January 2023.

Class of Traffic	Toll £	Illustrative RPI increase to 01/04/23	After the Order is made
Pedestrian (one way toll from Sandbanks)	**1.00**	**1.66**	Annual CPI increase
Pedestrian (one way from Shell Bay)	**0.00**	**0.00**	0.00
Pedal or motorcycle (bikes)	**1.00**	**1.66**	Annual CPI increase
Passenger vehicle ≤ 16 persons (cars)	**5.00**	**5.97**	Annual CPI increase
Passenger vehicle > 16 persons (coaches)	**10.00**	**11.94**	Annual CPI increase
Goods vehicle ≤ 3,500kg (vans)	**5.00**	**5.97**	Annual CPI increase
Goods vehicle 3,501kg – 20,000kg (trucks)	**10.00**	**11.94**	Annual CPI increase

Full details of the Application which includes a reduction in the levels of discount for bulk purchases of passes for motor vehicle travel to 15% for 10 passes and 20% for 50 passes, as well as increases in discounts relating to advance bulk ticket purchases for bikes and pedestrians to 15% for 10 passes and 20% for 50 passes, are available from the Company at the Ferry Office, Shell Bay, Studland, Swanage, Dorset, BH19 3BA and on **www.sandbanksferry.co.uk/application**

Any person having a substantial interest may, by 22 March 2024 object to the application by sending a notice with the grounds of their objection by email to **nationalcasework@dft.gov.uk** or by letter to the Secretary of State, Department for Transport, Tyneside House, Skinnerburn Road, Newcastle Business Park, Newcastle upon Tyne, NE4 7AR, marked for the attention of Sandra Zamenzadeh (Casework Manager, National Transport Casework Team).

A copy of the objection should also be sent to the Company to **email@sandbanksferry.co.uk** or to the Ferry Office, details above. Please note that a copy of the objection may be shown to third parties.

Dated 08 Feb 2024, C. R. Leach Secretary, The Bournemouth-Swanage Motor Road & Ferry Company Inc.

THE BOURNEMOUTH-SWANAGE MOTOR ROAD AND FERRY COMPANY
(INCORPORATED BY ACT OF PARLIAMENT, 31st JULY, 1923)

PRESS RELEASE 8th February 2024

Inflation & Tax Rises Put Sandbanks Ferry Service in Jeopardy

The Sandbanks Ferry Company has announced today that due to rising costs in running the ferry operation coupled with the additional pressure of increased corporation tax and lower than projected income, a heavy financial strain has been put on the company. The ferry company is hoping that, with the support of the Department for Transport, it is able to align tolls to inflation and reduce some of the unsustainable discounts currently available whilst increasing others.

At a meeting, which included Councillors from both BCP and Dorset Councils, the ferry company agreed with stakeholders that should inflation ever become negative it would mean a reduction in tolls. Given this undertaking the initiative received unilateral support.

Managing Director of the ferry Company, Jason du Toit, said “The costs of running the ferry service have risen exponentially whilst income has fallen in real terms. To ensure the continued operation of the ferry service beyond the next decade we have explored all options open to us.”

Full details of the proposed increases can be found at http://www.sandbanksferry.co.uk/application/

Visit the Sandbanks Ferry Company at www.sandbanksferry.co.uk, on Twitter @sandbanksferry and on Facebook at www.facebook.com/sandbanksferry .

ENDS

For media enquiries, contact:

Ferry Office: 01929 450 203

The Ferry Team: email@sandbanksferry.co.uk

Dr Martin Ayres
Town Clerk

Tel: 01929 423636
Fax: 01929 427888
E-Mail: admin@swanage.gov.uk

TOWN HALL
SWANAGE
DORSET
BH19 2NZ

23rd April 2020

Dear Ms Hoggins

Bournemouth-Swanage Motor Road and Ferry Company – application to the Secretary of State for Transport for an Order to revise the charges for the use of the ferry between Sandbanks and South Haven Point

On behalf of the residents of Swanage, the Town Council wishes to formally object in the strongest possible terms to the application for an Order to increase the tolls for the use of the Sandbanks to Shell Bay ferry by the above company.

The proposed increase in ferry tolls would see a 50% uplift in fares for pedestrians and cycles, from £1 to £1.50, and also in the single crossing toll for cars, from £4.50 to £6.75. The submission seeks to justify these increases by reference to the Retail Price Index, with the financial appendices assuming an average annual increase of 3 per cent. The Retail Price Index is a discredited index, which is no longer recognised as a national statistic. If inflation is to be used as the basis of future toll increases then the lower Consumer Price Index should be applied; in the last 8 years CPI has only been at or above 3 per cent for five months.

The ferry is used regularly by local residents, many of whom commute to work, college and university on a daily basis to the larger neighbouring towns of Poole and Bournemouth. When combined with the payment of parking fees, residents in this position are subject to considerable costs, and the proposed increase in ferry charges would seriously impact on the viability of their employment/studies.

Another group affected will be local students who drive to college in Bournemouth and Poole, a position that they are increasingly likely to find themselves in following recent reductions in local bus services. The fare increase will also impact on the emergency services, which are also subject to the ferry tolls.

It should be noted that, whilst Swanage is widely seen as a well-heeled seaside town, it does have pockets of hardship. Herston is among the most deprived neighbourhoods within the former Purbeck District and a significant proportion of households in Swanage South ward are defined as either hard pressed or on modest means. It is not hard to imagine the significant impact of a 50% increase in ferry tolls on the budgets of households in this category.

The chain ferry is a vital link to the conurbation, and the importance to tourism cannot be emphasised strongly enough. The increase in charges is likely to have a significant deterrent effect on potential day visitors to Purbeck from Bournemouth/Poole and also make it harder for local businesses in the traditionally lower-paid hospitality sector to attract staff. It is also noted that the charge for coaches will increase to £13.00, potentially deterring tour operators from visiting the area. Taken together, these outcomes would have a significant detrimental impact on the local economy.

The deterrent effect of significant price rises also risks greater congestion and damage to the natural environment. If commuters increasingly utilise the road network via Wareham to access Poole and Bournemouth as an alternative to using the ferry then congestion along the A351 will intensify, as will air pollution, and emissions of damaging greenhouse gases will also increase. This is in direct contravention of government policy which seeks to reduce congestion and improve air quality.

The sharp increase in fees for cyclists also stands in direct contravention of government policy to encourage environmentally friendly forms of transport. As noted by Mr Stone in paragraph 159 of his report dated November 2018 a sharp increase in fees for pedestrians and cyclists 'seems to conflict with the wider aspirations of the transport, sustainability and health agendas'. These remarks were made prior to the wider recognition of the environmental crisis facing the world that has taken place in the last year.

At past public inquiries reference has been made to a 'price ceiling point', at which the number of users will decrease. Figures supplied for the 2014 inquiry suggest that that ceiling was already being breached, given that the average number of annual car users in non-refit years had declined by 48,000 (comparing 2004-08 with 2010-14). Since that time there has been a further decline of 46,000 car users. Therefore, as prices have steadily risen following the successful toll applications of the early years of this century average annual car users have declined by 11%. The table below highlights that the combined numbers of coach and truck journeys are also exhibiting a downward trend.

Non-refit Years	Average Annual Car Users	Average Annual Coach and Truck Users
2004/06/08	838,148	17,236
2010/12/14	790,631	14,369
2012/14/16	774,384	14,373
2014/16/18	744,775	13,731

This data strongly suggests that the proposed increase in tolls will not achieve the income projections set out in the toll increase application as ever-increasing numbers of drivers are deterred from using the ferry. This is even more of a challenge in the current circumstances, given that very many people have got used to using the road during the recent succession of closedowns of the ferry service. Indeed, a further toll increase could threaten the long-term sustainability of the service. In paragraph 155 of his report Mr Stone noted this as a relevant factor stating that the ferry company's failure to identify a price ceiling point 'draws questions as to the reliability of the company's forecasts'. Despite this, paragraph 4.1 of the ferry company's submission explains that their financial projections are based on traffic volumes remaining static over the course of the next 12 years.

The Town Council disputes the ferry company's core financial justification for a toll increase, i.e. that the increase is required to fund the cost of a new ferry when the current one is to be replaced at a stated cost of £12.8m. There is almost no parallel in commercial business life to justify an approach that results in the fee-paying public providing the money in advance for a company's main asset. Furthermore, if this is the principal justification for the price rise, it would be interesting to learn whether the company would commit to reducing the fees payable by the public once its new asset has been acquired. This point was raised by Mr Stone in paragraph 157 of his report, in which he notes that if tolls did not reduce in such circumstances then a consequence of lower operating costs and the removal of the need to funnel large funds towards a ferry replacement ‘could result in revenues substantially more than adequate to meet the statutory requirements’.

The ferry company is already a highly profitable business. In 2019/20 the company was projected to make £1.25m profit before tax on a turnover of £3.03m, a rate of 41%. The company’s submission in respect of the proposed 2018 price rise stated ‘the data table at appendix 5.1 shows that the company’s profit before tax as a percentage of sales is much more favourable than other companies in similar industries’ (Page 8, Paragraph 3.3.12). If the Directors wish to build up reserves for replacing the ferry in the early 2030s, they should urgently consider investing more of this profit into their reserves.

I would draw the Secretary of State’s attention to the appendices included as part of the ferry company’s submission, which show that significant dividends have been paid to shareholders over the years; in fact in the six years 2013-18 dividends of £4.3m were paid out, with no prudential allocation to a ferry reserve, despite the company at that time anticipating that the ferry would reach the end of its useful life in 2026.

This practice of taking excessive dividends has resulted in the company only holding approximately £2.1m in cash at March 2019, some 25 years after the current ferry was purchased. With a new boat now anticipated in 2032, this leaves a shortfall of £10m to be funded in only 12 years. Despite this, although the directors are to forego a dividend in 2019 and 2020, the financial projections predict that the company will continue to pay out a further £4.6m of dividends in the years 2021-26.

As noted in paragraph 143 of Mr Stone’s report, the company has justified previous applications for increases in tolls by reference to similar arguments regarding the ferry replacement. Applications in 2004, 2006, 2009 and 2014 each proposed different dates for the ferry replacement, varying between 2017 and 2024. Each time the lifespan of the ferry was extended, but the amount of the ferry replacement reserve did not increase, and was in some years depleted. In paragraph 144 the inspector stated ‘Given the previous applications I have no confidence that this would not move again’.

The Town Council notes that the ferry company has still not proposed a mechanism to adequately ringfence the replacement reserve. Instead the company remains free to lend the cash to the other activities of the parent company. The submission in support of the toll increase shows that the reserve stood at £2.6m on 31st March 2019, whilst available cash stood at £2.1m, demonstrating that the company was already using £0.5m of the reserve to fund its trading and dividend policy. This is not an auspicious start, and leads the Town Council to conclude that the inspector’s concerns of only 18 months ago remain entirely justified.

A further concern held by the Council regarding the company’s financial calculations is the basis on which they assess their investment and overstate the rate of return that is reasonable. If this toll increase is permitted the public will pay more, thereby enabling the shareholders to invest less. Interest rates have remained at historically low levels for more than 12 years and have dropped even further since this toll application was published. All investment comparables would reflect this. Therefore, the reference in paragraph 3.3.2. of the company’s submission to returns on low risk bonds being 6.1% appears wholly unrealistic; a figure closer to half that level might appear more appropriate.

Given that the company has been able to prioritise shareholders in the way that it has, it is the opinion of the Council that there is a very strong argument that the effect of the proposed increases in the tolls would be that the company received an income that exceeded by a wide margin what was adequate. As such, were the Secretary of State to agree to the ferry company's latest proposals, he would be acting unreasonably and beyond the power given by section 6 of the Transport Charges etc. (Miscellaneous Provisions) Act 1954 which states:

> 'the Minister shall have regard to the financial position and future prospects of the undertaking and shall not make any revision of charges which in his opinion would be likely to result in the undertaking receiving an annual revenue either substantially less or substantially more than adequate to meet such expenditure on the working, management and maintenance of the undertaking and such other costs, charges and expenses of the undertaking as are properly chargeable to revenue, including reasonable contributions to any reserve, contingency or other fund and, where appropriate, a reasonable return upon the paid up share capital of the undertaking'.

In conclusion, the Town Council strongly objects to the proposed increase in ferry tolls for the reasons set out above. The Council requests that the company re-submit their application with revised annual fare increases that are no higher than the prevailing rate of CPI inflation, and with more of the costs for the new ferry financed by a reduced dividend to the shareholders. No increases should be introduced for environmentally-friendly forms of transport, such as foot passengers and cyclists. If no such re-submission is forthcoming then the Secretary of State is requested to call a Public Inquiry accordingly.

Yours sincerely

Dr M K Ayres

Town Clerk

cc Rt Hon Grant Shapps MP, Secretary of State for Transport
Richard Drax MP for South Dorset
Mr M Kean, Bournemouth-Swanage Motor Road and Ferry Company

Ms D Hoggins
Casework Manager
National Transport Casework Team
Department for Transport
Tyneside House
Skinnerburn Road
Newcastle Business Park
Newcastle upon Tyne
NE4 7AR

The Planning Inspectorate

Report to the Secretary of State for Transport

by Mrs J A Vyse DipTP DipPBM MRTPI

an Inspector appointed by the Secretary of State

Date: 15 February 2021

THE BOURNEMOUTH – SWANAGE MOTOR ROAD AND FERRY COMPANY ACTS 1923 TO 1986

AND THE

TRANSPORT CHARGES &C. (MISCELLANEOUS PROVISIONS) ACT 1954

APPLICATION MADE BY THE BOURNEMOUTH – SWANAGE MOTOR ROAD AND FERRY COMPANY (INCORPORATED BY ACT OF PARLIAMENT 1923)

FOR

PROPOSED REVISION OF TOLLS

The Inquiry opened on 16 November 2020

Site visit carried out on an unaccompanied basis on 7 December 2020

File Ref: DPI/G1250/20/9

CONTENTS

ANNEXES

File Ref: DPI/G1250/20/9
Bournemouth - Swanage Motor Road and Ferry, Studland, Swanage, Dorset

- The application is made by the Bournemouth-Swanage Motor Road and Ferry Company under Section 6 of the Transport Charges &c. (Miscellaneous Provisions) Act 1954.
- The Bournemouth-Swanage Motor Road and Ferry Company has applied to the Secretary of State for Transport for a Toll Revision Order, by an application dated February 2020.
- The effect of the proposal, if approved, would be to increase the tolls chargeable for use of the ferry operating between Sandbanks and Shell Bay at the entrance to Poole Harbour.

Summary of Recommendation: I recommend that a confirmatory Tolls Order be made as proposed, subject to the maximum rates in any year as set out in Annex C to this Report.

1. PROCEDURAL MATTERS AND STATUTORY FORMALITIES

1.1 Documents handed up during the Inquiry are listed as Inquiry Documents at the end of this Report. They are prefixed with 'ID'. Unless otherwise stated, other document references, including the cases for the various parties, are to the two paginated volumes that comprise the Inspector's Folder listed at the end of this Report (in the format Volume No./Page No e.g. I/156 or II/23-35) and to the paginated Supplemental Bundle listed as Inquiry Document ID6 (in the format sb/Page No e.g. sb/62).

1.2 An Order revising the tolls that the Applicant may demand for the use of its ferry service was last made on 23 February 2015.[1] A subsequent application for a further increase was rejected on 12 December 2018.[2] On 24 February 2020, the Ferry Company again applied for a revision of the toll charges.[3] The application proposed incremental increases over the next 12 years.

1.3 As required by s.6(4) of the Transport Charges &c. (Miscellaneous Provisions) Act 1954 (the 1954 Act), notices of the application were published in the Bournemouth Daily Echo, the Dorset Echo and the Swanage and Wareham Voice. A total of 13 separate objections were received within the prescribed consultation period.[4] None was withdrawn subsequently. In light of those objections, the Secretary of State caused this Inquiry to be held.

1.4 On 1 October 2020, details of the Inquiry were published in the same newspapers that carried notice of the application. That resulted in submissions from a further six parties. All the representations from interested parties in response to the application itself, and following confirmation that an Inquiry was to be held, are contained in Volume II of the Inspector's Folders listed at the end of this Report.

1.5 Shortly before the Inquiry opened on 16 November 2020, two 'counter' fare proposals in the form of spreadsheets, were submitted by objectors – one from a Consortium of local Councils (Dorset Council, Bournemouth, Poole and Christchurch Council and Swanage Town Council)[5] and one from The National Trust.[6] Having regard to the provisions of s.6 of the 1954 Act, I considered that those documents could be accepted to the Inquiry.

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[1] ID23 and ID24 (application No DPI/G1250/14/10)
[2] ID25 and ID26 (application No DPI/G1250/18/10)
[3] I/4-11
[4] Dossier 4
[5] II/70-81
[6] II/131-134

1.6 Being mindful that the evidence may have implications not only for the case made by the applicant, but also for others who may have an interest in the outcome of the application, including local residents and local businesses, and bearing in mind that the Secretary of State would need to be fully informed about those schemes, I took the view, in the interest of natural justice, that interests would be best served by adjourning the Inquiry to allow all parties to consider the counter proposals before giving their evidence. I provided prior notification of that intention to the parties. After running through the formalities and taking appearances, I adjourned the Inquiry in order to allow for consultation on the counter proposals. The consultation responses are also included in Volume II of the Inspector's Folders.

1.7 Whilst Mr Parsons, who is a member of the working party formed by Studland Parish Council, raised concerns about the notification procedures, it was confirmed for the Applicant at the beginning of the Inquiry that the statutory formalities had been complied with. As far as I am aware, the procedures followed are the same as those that took place in relation to the previous application. The Inquiry Notice gave rise to a number of further objections being received which were admitted to the Inquiry. Indeed, it is the content of some of those later submissions that gave rise to the need for an adjournment to allow for further consultation.

1.8 Whilst Mr Parsons opined that the number of objectors is less than was the case with the previous application, that could be for any number of reasons. It might be, for instance, that people consider that their views are sufficiently represented by the significant number of local Councils who have chosen to submit evidence to this Inquiry. Suffice it to say that I find no impropriety in terms of the notifications and statutory formalities that have been carried out and am satisfied that those with an interest in the proceedings had sufficient and proper notice of the arrangements.

1.9 I carried out my site visit on an unaccompanied basis during the adjournment, taking in the various points of interest suggested by interested parties. In taking in the approaches and surroundings on both sides of the water I saw among other things, as requested, Studland Stores, the Pig Hotel and Restaurant, the route through Corfe Castle and the approach along the length of Ferry Road on the Studland peninsula. My visit also included a crossing on the ferry as a member of the public.

1.10 The Inquiry resumed on 5 January 2021. We sat for a total of four days: 16 November 2019 and 5-7 January 2021.

1.11 After reflecting on the 'counter' fare proposals, the Ferry Company revised its proposed schedule.[7] In summary, the cash and book ticket rates for pedestrians and cyclists/motorcyclists would be kept at the current rate for the next 12 years, the discount rates for books of tickets for motor vehicles are enhanced and the proposed initial increase for motor car cash tolls is reduced. The same principles for book tickets and cash tolls have been applied to goods vehicles, buses and coaches. The resulting changes in income adjust the transfers to/from the Ferry Replacement Reserve (FRR) and reduce the dividends payable to investors to an average of 2.96% over the period 2019-

[7] I/169-170, 186, 190-191 see also Annex C at the end of this Report

2032 from an average of 3.51% in the original submission.[8] None of the parties to the Inquiry raised any objection to it proceeding on the basis of the revised application. Since the revisions reflect elements of the Consortium's scheme which was consulted on, and bearing in mind that any comments thereon could be discussed at the Inquiry, I had no reason to take a different view. The revised schedule is set out at Annex C to this Report.

1.12 In light of the continuing concerns of objectors in relation to the 'security' of the FRR, the Applicant provided, at my request, a Position Statement in relation to possible means of 'ring-fencing' it.[9] After hearing closing submissions on 7 January 2021, I adjourned the Inquiry in order to provide all those with an interest the opportunity to submit any rebuttal Statements in relation to this matter. My Report takes account of the responses.[10]

1.13 Mr Boulter for Studland Parish Council made comments that went to the disparity of resources available to it in relation to access to legal advice to inform its response. However, fairness in events such as these means equality of opportunity rather than resources. The matters to which that Position Statement relates were discussed at length at the Inquiry, including considerable evidence, both oral and written, from Messrs Stobart and Tice for the Parish Council. I am content, therefore, that the interests of the Parish Council have not been unduly prejudiced in this regard.

1.14 In the adjournment following closings, a further Position Statement[11] from the Applicant was submitted (again at my request) in relation to confirmation of the statutory requirements for scrutiny of the Ferry Company accounts on an annual basis by the Secretary of State, a matter that had been referred to by Mr Kean in answer to questions during the Inquiry. That those provisions exist was not contested at the Inquiry. The Statement clarifies where those provisions are to be found. Whilst Mr Parsons (for the Parish Council) referred to the difficulties he had had in being able to access those accounts from the Department for Transport (DfT) even via a Freedom of Information request, that has no bearing on the provisions of the Act, which was the information that I sought.

1.15 I closed the Inquiry in writing on 21 January 2021.

2. THE FERRY AND ITS SURROUNDINGS[12]

2.1 The current ferry, the Bramble Bush Bay, was brought into service in 1994. It is a diesel-hydraulic powered, chain-link drawn vessel which crosses the mouth of Poole Harbour, a distance of some 350 metres. On the southern side of the crossing is the approach road, Ferry Road, which leads to the tollbooths and associated traffic barriers and a roundabout, themselves located at the tip of the Studland Peninsular. The slipways on both sides were widened in 1994 to accommodate the new ferry and were completely rebuilt in 2008. The slipway on the southern side is connected to Ferry Road by a causeway.

[8] I/20 and I/178
[9] ID10
[10] ID17, ID18, ID19
[11] ID16
[12] I/4-11, 148-150

2.2 The planned maintenance regime results in the ferry being out of operation for six weeks every four years, when the craft goes into dry dock in Falmouth, and for two weeks in every other four years when she is inspected afloat. In July 2019, the in-harbour drive shaft failed, taking the ferry out of service unexpectedly. Complications in fitting the new shaft led to a decision to order new couplings and a new drive wheel assembly, which led to further delays. In order to make best use of the extended outage, the decision was also taken to replace the outer-harbour drive wheel and shaft assembly so as to mitigate, as far as possible, the risk of a similar failure in the future. The ferry returned to service at the end of October 2019. The work undertaken, combined with the planned major and interim refits in future years, has extended the life of the ferry to around 2034.

2.3 Poole and Bournemouth lie to the north and east of the Harbour respectively. The village of Studland lies about 5 kilometres to the south of the ferry, with Swanage lying some 5 kilometres beyond that. Studland Stores (and post office) the Pig on the Beach Hotel and Restaurant and the Bankes Arms public house are located in Studland. The journey from Swanage to Poole or Bournemouth using the ferry, involves a distance of some 14 kilometres or 21 kilometres respectively. It is possible to avoid using the ferry by driving round the western side of Poole Harbour via Corfe Castle and Wareham, using the A351. That involves a journey of some 31 kilometres to Poole, or around 38 kilometres to Bournemouth.

3. THE PROPOSAL

3.1 The arrangement proposed (as amended) would see the cash charges for foot passengers and pedal/motorcycles retained at their current rates until 2032. Prices for single crossings for cars, trucks and buses/coaches would all be subject to incremental increases over each of the next years until 2032, up to a maximum. [13]

3.2 The proposed price increases are set out in full at Annex C at the end of this Report. In summary, however:

Class of Traffic	Current maximum toll	Proposed maximum toll
Pedestrian (Sandbanks to Shell Bay)	£1	£1
Pedestrian (Shell Bay to Sandbanks)	nil	nil
Pedal or motorcycle	£1	£1
Passenger vehicle < 16 persons and goods vehicle <3,500kg (cars/light vans)	£4.50	£6.75
Passenger vehicle > 16 persons (buses/coaches) and goods vehicle 3,500-20,000kg	£9	£13.50

3.3 The Company would continue to offer discounts for the bulk purchase of tickets in advance, also referred to as the Swanage Ferry Ticket Card (SFTC). The discounts relate to books of 50 and 100 tickets for pedestrians and cycles, and

[13] Appendix 8 to the evidence of Mr Thomas at I/186

books of 10 and 50 tickets for cars < 16 persons/3,500kg, goods vehicles 3,500-20,00kg (trucks) and buses/coaches > 16 persons. Prices for those would also increase incrementally until 2032.

3.4 The bulk purchase prices for foot passengers and cycle/motorcycles would be retained at the current rate, representing a discount of 10% for books of 50 tickets, 15% for books of 100 tickets. The discounts for the bulk purchase of other tickets range generally between 28-32%.

3.4 Previously, the bulk purchase system comprised physical books of tickets that could be split for use, for instance by friends, members of the same family, organisations etc. In answer to my questions at the Inquiry, it was confirmed by Mr Reynolds for the Applicant that, whilst the physical books were being phased out in favour of the SFTC, use of the ticket is not confined to a single person or vehicle – it can be shared so that others can also use it, although the ticket would need to physically passed across each time.

4. THE CASE FOR THE FERRY COMPANY (THE APPLICANT)

The case for the Ferry Company is reported substantially in the form of its closing submissions read together with its final comments on the responses to the Position Statement on ring-fencing etc.[14]

4.1 By its original application dated February 2020,[15] as revised in December 2020,[16] the Company seeks to vary its tolls. The stated objectives of the application are to:

(i) ensure that the income from the tolls rises with inflation, meeting the increasing costs faced by the Company;

(ii) ensure that sufficient reserves are built up to replace the current ferry at the end of its serviceable life in 2034;

(iii) ensure that regular users are protected from significant rises in tolls, with projected less than inflationary increases; and,

(iv) seek to allow a reasonable return on investment to the ferry owners.

4.2 In light of the proposal advanced by the Consortium,[17] the Company revised its original proposal. As amended, it promotes environmentally-friendly travel by maintaining pedestrian and cycle tolls at their current level for the next 12 years. It includes more gradual price rises and higher discounts for regular users than does the Consortium scheme.

<u>The legislative framework for the Inquiry</u>

4.3 The central provision, as set out at s.6(3) of the Transport Charges &c. (Miscellaneous Provisions) Act 1954 (the 1954 Act) as amended by the Bournemouth-Swanage Motor Road and Ferry Act 1986 (the 1986 Act) provides materially that:

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[14] ID15 and ID18 The company's written submissions can be found at Volume I of the Inspector's Folder listed at Annex B to this Report.
[15] I/4-80
[16] I/169-170 and I/190-198 See also Annex C
[17] II/70-81

"In making any order on an application under this section, the Minister shall have regard to the financial position and future prospects of the undertaking and shall not make any revision of charges which in his opinion would be likely to result in the undertaking receiving an annual revenue either substantially less or substantially more than adequate to meet such expenditure on the working, management and maintenance of the undertaking and such other costs, charges and expenses of the undertaking as are properly chargeable to revenue, including reasonable contributions to any reserve, contingency or other fund and, where appropriate, a reasonable return upon [the investment of the Company in the motor road and the ferry as defined in section 2 of the Bournemouth-Swanage Motor Road and Ferry Act 1986]"[18]

4.4 Thus the three primary matters for the Secretary of State (SoS)[19] when determining this application are:

(i) the expenditure required on the working, management, maintenance (etc) of the Company;

(ii) reasonable contributions to any reserve, contingency or other fund; and,

(iii) where appropriate, a reasonable return on investment.

4.5 Contrary to the submissions of Mr Dubin (for the Consortium) there is no order of priority expressed in the statute. Nor is it implicit somehow, that because the return on investment is listed last it is to be taken as being considered less important by Parliament. There is no such principle. Were it otherwise, Parliament could never list two or more factors to which a SoS or Minister should have regard without either choosing between their priority, or stating expressly that they are to be considered equally. Rather than assuming factors are to be ranked in terms of priority by the order in which they happen to appear, the proper inference is that, unless stated otherwise, relevant statutory factors listed are to be considered equally.

4.6 First though, the overarching considerations to which the Act requires the SoS and Inspector to have regard, are the 'financial position and future prospects of the undertaking'. The language is of the present and the future. There is no instruction to scrutinise the historic management of the Company. Rather, the SoS is to look to its current financial position and its future prospects.

4.7 Read together, the three statutory considerations listed above, and the focus on the present and the future, rather than the past, set out the proper scope of this Inquiry.

<u>Expenditure required on the working, management, maintenance (etc) of the Company</u>

4.8 The Inquiry heard detailed evidence from, in particular, Mr Hope (Naval Architect) and Mr Thomas (Accountant) relating to the costs involved in the

[18] the words in [brackets] are substituted for '*the paid up share capital of the undertaking*' by s.23(2)(b) of the Bournemouth-Swanage Motor Road and Ferry Act 1986 (the 1986 Act)
[19] **Inspector's note** - whilst the reference in the Act is to the Minister, that role is now embodied by the Secretary of State for Transport

running and maintenance of the Company. In short, they are significant. Among the most significant are the maintenance of the ferry and the addressing of mechanical faults as they occur.

4.9 The Company takes the maintenance of the Bramble Bush Bay seriously. Though not required by statute, it chooses to keep the ferry 'in Class' with Lloyd's Register.[20] This imposes independent scrutiny and safeguards by which the Company would not otherwise be bound, including detailed requirements as to maintenance and inspection that '*provides a third party assessment that helps ensure the ferry is kept in sound condition and is being operated safely'*.[21]

4.10 This high level of inspection and maintenance brings with it significant costs. For example, the costs arising out of the 2018/19 major refit, as well as additional ferry maintenance costs during that year, came to £1,087,367. The major refit itself was in the region of £945,000.[22] Costs in minor refit years are less expensive, but still very considerable - based on historic costs, Mr Thomas states they are roughly one-third of the cost of a major refit, i.e. around £315,000.[23]

4.11 While consistently expensive, the maintenance costs, and periods of time when the service cannot run, are otherwise not very predictable. This follows from the nature of the ferry as a complex mechanical craft. Outages of service caused by mechanical problems carry unpredictable high costs, as well as resulting in a complete loss of income.[24]

4.12 In his written[25] and oral evidence, Mr Hope stated that there is really only one suitable dry-docking facility on the south coast, at Falmouth. Moreover, with the contraction of the ship-repair industry and associated reduction in competition, the remaining repairers are '*increasing their prices slightly above the rate of inflation*.' That is unlikely to change in the future. In addition, the Ferry Company does not benefit from any grants or other sources of external public funding.

4.13 So, when regard is had to the day to day expenditure on the ferry's running and its maintenance, it should be borne in mind that:

a. the Company has gone beyond the standard of maintenance required of it;

b. that this carries significant costs;

c. that the maintenance costs of the ferry are very significant;

d. that those maintenance costs (beyond being consistently high) are unpredictable in their timing and their magnitude; and,

e. that ship repair costs are increasing above the rate of inflation.

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[20] I/148
[21] evidence of Mr Hope I/148 last paragraph
[22] evidence of Mr Thomas at I/13 paragraph 1.2.3 and the 2019 accounts at I/51
[23] I/13 paragraph 1.2.3
[24] see Mr Thomas' evidence of downturn caused in 2018/19/20 owing to major refit, then drive shaft failure, and then Covid-19 at I/160
[25] I/62

4.14 All of this calls for the SoS to seek to err on the side of caution, ensuring that the tolls remain adequate to meet the significant and unpredictable demands on the Ferry Company's resources without compromising the other two relevant considerations, namely the ability to build up a reserve and, where appropriate, a reasonable return.

4.15 The revised application makes sensible and realistic allowance for ferry maintenance, and in particular major refits, based upon the historic experience of these costs. It also takes account of the absence of any income during both major and minor refits. It is notable that the Consortium's proposal does not take into account the income reductions during refit years,[26] with the National Trust's proposal making no allowance for ferry refits at all.

The Ferry Replacement Reserve (FRR)

4.16 Mr Hope confirmed that the end of the viable life of the Bramble Bush Bay as a working craft will be 2034 at the latest. Beyond that, it is likely to be uneconomic to run and will become increasingly unpredictable in its performance. Given its age, and environmental concerns, there is also the increasing spectre of regulatory change by the Maritime and Coastguard Agency.[27]

4.17 Objectors expressed some consternation that the proposed date of replacement, i.e. 2034 (with a new ferry being ordered in 2032) is different from that referred to at the previous Inquiry (when it was indicated that a replacement would need to be ordered in 2026). The 2034 date is the product of Mr Hope's expert opinion, as set out in his report produced for this Inquiry, informed by the extensive works carried out during 2018/2019 during the major refit, the replacement of the drive shafts (and ordering of spares) and from the non-destructive testing (likened by Mr Hope to an x-ray) being carried out quarterly and demonstrating no developing faults. His was the only expert or informed evidence on this matter before the Inquiry.

4.18 Similarly, the cost of replacement of the ferry is the subject of Mr Hope's expert evidence, with a like for like replacement being £8.44 million + professional fees of £273,000 at 2019 prices.[28] Over the 13 years between 2019 and 2032 (the anticipated purchase date) it is projected by Mr Thomas, that the replacement ferry cost would be £12.795 million.[29]

4.19 It is notable that the 1954 Act expressly contemplates the building up of a reserve fund. It is also significant that, by s.11 of the 1986 Act,[30] Parliament chose to limit the Company's borrowing powers to £5 million. Taken in combination, these matters are a strong indication that the Company's future expenditure was contemplated by Parliament to be met in at least significant part, by the building up of a fund over time. Indeed, the imposition of the statutory limit on borrowing makes it inevitable that a replacement ferry can only be bought by building up a replacement fund.

[26] see Mr Thomas I/168 paragraph 5.1.2
[27] I/59 third and fourth paras
[28] I/58 and I/63
[29] I/14 paragraph 1.4.5
[30] sb/93

4.20 Studland Parish Council in particular (most notably Mr Stobart) argued that the ferry replacement should be financed by other means, notably by taking on more debt beyond the statutory limitation. However, recommending or achieving a change of legislation is plainly beyond the remit of this Inquiry, a point that was accepted by Mr Stobart. Given the need for a replacement ferry to be ordered by 2032 (for delivery by 2034) the inability of the Company to borrow in excess of £5 million, and the absence of any grants,[31] the only means through which the Company can permissibly finance the ferry is through the building up of a ferry replacement reserve fund (FRR). At the centre of the Company's application is the desire to build up that FRR in order to be able to afford to replace the ferry in 2034, at a point in time when the current craft will have reached the end of its economic life.

4.21 The 2018 Inspector had concerns that while the application was intended to fund a ferry replacement, payment into the fund was not properly prioritised. The evidence of Mr Kean (Company Director)[32] is that the Company has taken that on board and has changed its formal policies relating to the FRR. In any given year, profits are now paid into the FRR first, up to the instalment required that year as set out in the Company's projections.[33] Only after that, would there be consideration of paying out any residual profit as dividends. Mr Thomas confirmed that this change in policy is now set out in the accounting policy note in the published audited accounts.[34]

4.22 In addition to that prioritisation, the directors will only consider the payment of a dividend to the investors once the FRR has reached the required level so that, in any one year, it is at least equal to the then current cost of the ferry plus the £5 million maximum loan.[35] This seeks to meet the concerns of interested parties that the fund would be depleted over time. Consequently, dividends will only be considered provided the FRR is in a strong position.

4.23 Whilst the prioritisation of the FRR has been dismissed by some as an arcane accountancy tool, the implication being that it is not worth much, such a view does not hold up to scrutiny. The effect of the prioritisation can be seen to be real by looking at the current and previous two financial years, going back to its introduction at the beginning of the financial year 2019.

4.24 The financial year 2018/19 was impacted by an extended major refit with complications, costing £945,000, with the year 2019/20 being impacted by the drive shaft failure. The year 2020/21 has been impacted by Covid-19. These issues have had a significant impact on passenger volumes[36] and, consequently income, which was therefore below the projected levels in those years. The result has been that all of the profit after tax has been placed into the FRR in each of those years. Nothing at all has been paid out by way of dividends to the investors for those three years. Far from being an arcane accounting tool, it has meant that rather than money being in the pockets of investors as dividends, it is being held for the ferry replacement.

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[31] Oral evidence of Messrs Hope and Kean
[32] I/91
[33] I/174
[34] I/163
[35] I/163 paragraph 2.2.3
[36] Mr Thomas' statement at I/159

4.25 The Company has committed publicly to this policy at this Inquiry, which shall become a matter of public record. It is also written into the parent Company's accounting policy[37] and is the subject of a written undertaking from the directors of the Fairacres Group to the SoS.[38] The Company also has an obligation to provide its annual accounts to the SoS, which provides further scrutiny.[39] This significant change of policy (and the fact it can be shown to have resulted in a real difference in non-payment of dividends) is a major change in approach since the 2018 application.

4.26 A question arose as to what the Company can do, if anything, to guarantee that the FRR will be used for the purchase of a replacement ferry. However, this is not, in fact, a question which features as a matter to which the SoS is to have regard by s.6(3) of the 1954 Act (as amended). Nowhere is it stated that regard is to be had to any means by which the Company has sought to ring-fence or prioritise the fund in order to ensure or seek to promote its use only for one purpose. Rather, regard is to be had to the need for the Company to build up a reserve or contingency. Those words are not qualified, save that it is implicit that any such fund must be at least intended to be to further the '*future prospects of the undertaking*'. This is a broad objective. There is no mention of segregation or ring-fencing in the Act, nor can it be implied into the statutory language.

4.27 In changing its basic principles regarding the priority between the FRR and dividend payments, the Company has done all that is possible, and likely has done more than could be said to be required of it by the Act. In this respect, it is noted that the Consortium agrees that '*it seems to the Respondents that there is no way to make ring-fencing the FRR legally enforceable.*'[40]

4.28 Representatives on behalf of Studland Parish Council made a number of suggestions as to how, in their opinion and (respectfully) without the benefit of legal opinion, they consider the FRR could be ring-fenced. They appeared to suggest that it could be put into some legal mechanism, such that the Company could not use it save for the ferry replacement and, perhaps, it could even be withheld from the liquidators should the Company ever fail.

4.29 No such legal mechanism exists. The Ferry Company refers to its Position Statement provided at the request of the Inspector on this point.[41] Basic principles of trust law, escrow accounts, company law and bankruptcy law all render their suggestions legal impossibilities. In short, a trust would fail because here, the Ferry Company would be both the settlor and sole beneficiary of the trust fund. As the sole contributor to the trust fund, it would also be its sole beneficiary and the trust would be deemed to be a sham, i.e. a legal creation that is more form than substance, since the Ferry Company would be wanting the benefits of a trust without divesting itself of the ultimate benefits of the fund. It would be void.

4.30 A trust cannot be limited by purpose, save where this purpose is charitable. As such there cannot be a trust, the purpose of which is to build the ferry.

[37] I/163 paragraph 2.2.2 and I/95
[38] I/67
[39] s.35 1923 Act (sb/13) see also ID16
[40] page 4, paragraph 5(b) of Consortium's opening submissions (ID4)
[41] ID10

Moreover, the trust fund could not be for the benefit of all passengers of the ferry, as suggested by Mr Stobart. Trusts must be defined in a manner that allows their constituent elements to be certain upon formation of the trust. Such a class of beneficiaries would not provide this certainty.

4.31 An escrow account only operates to keep monies from the sponsor of the fund, or from any liquidator, where backed by a trust. The above problems apply. Moreover divestment of the fund to another company, would be contrary to the fundamental duties of the Directors, as described in the Position Statement. Any such transactions could be unwound by the High Court.

4.32 In doing what it has done to date by way of its prioritisation of payments, its change in accounting policies, its undertaking to the SoS and its public commitment in this Inquiry, the Ferry Company has done all that can be legally done to see that the money is applied towards the replacement of the existing ferry as intended.

Where appropriate, a reasonable return upon the Investment of the Company

4.33 There are two elements to this consideration - '*where appropriate*' and '*a reasonable return'*. Neither of these is defined in the statute. It follows that they fall to be defined by the normal meanings of those words, bearing in mind both the purpose of the Company and the mechanism which Parliament has chosen to deliver the ferry service. Parliament's objective behind the 1923 to 1986 Acts was undoubtedly first, by the Bournemouth-Swanage Motor Road and Ferry Act 1923 (the 1923 Act) to create the ferry service and then, by the Bournemouth-Swanage Motor Road and Ferry Act 1986 (the 1986 Act) to support the existing service for the benefit of its passengers.

4.34 It is significant that Parliament chose to have the motor road and ferry provided through the establishment of a private company, rather than by a public or non-profit body. This choice was reaffirmed in the 1986 Act, when Parliament confirmed that the Company would continue to hold its existing assets and provide the motor road and ferry service. The choice was significant, because provision of the motor road and ferry service by a private company carries with it significant benefits. The significant outlay and, over the years, many millions of pounds of ongoing maintenance costs for the road, the slipways, the causeway, and the ferry, does not come at any expense to the public purse and so does not come at the expense of local and national taxpayers. Instead, it comes at the private expense of the Ferry Company.

4.35 However, inherent in any private company, is the objective of achieving at least a reasonable return - a company would not be a company if that was not amongst its objectives. S.172 of the Companies Act 2006 imposes on directors the duty to promote the success and viability of the company. A company will only be successful, and will only be viable, to the extent that it is able to enjoy a reasonable return. The directors' duty is nothing more than the statutory crystallisation of the pre-existing common law principle of a director's duty to promote this Company that has existed since at least the Victorian era. This is relevant because, in 1923, Parliament must be taken to have understood that, in legislating for the provision of the motor road and ferry service by a private company, comes the inherent objective of achieving a reasonable return on investment. This is of course expressly referred to in the 1954 Act (as amended by the 1986 Act).

4.36 Parliament will have understood that the provision of the ferry service for the benefit of passengers, and the pursuit of a reasonable long-term return, were not in any way opposed, but in fact were complimentary if properly judged. The Ferry Company's financial health is to the benefit of its passengers. A company that is financially sound, with reasonable returns, will be in a position to meet unexpected high costs that may, and do, occur as detailed above.

4.37 Moreover, a company that is enjoying sound financial returns will find it easier to attract investment and to acquire loans, which are a necessary part of the life of any company. Most fundamentally, a company will only have long-term viability to the extent its investors receive a reasonable return. A company that does not enjoy a reasonable return will not be a viable company. The future security of any company, and the reasonableness of a return its investors receive, go hand in hand.

4.38 In coming to a view on the application, Parliament's election to have the ferry and motor road service provided by a private company need to be borne in mind and must inform the question of what is meant by *'if appropriate, a reasonable return'*.

4.39 *'If appropriate'*: Ordinarily, where a company is able to generate a profit, then at least some return on investment would generally be appropriate as a basic rule. The Company's accounting policies since 2018 go beyond this. As detailed above, they will only permit the consideration of payment of dividends to investors where the FRR has been topped up to the required level that year to enable the cost of the ferry to be met (less the maximum loan). In other words, only once the full projected payment into the FRR has been made for that year will there be consideration of payment of a dividend. This can mean that, even where there is a fairly significant profit generated in any given year but it is not sufficient to fully top up the FRR, no dividend will be paid. Instead, the investors will only see a return on their investment where the Company has a successful year in line with the projections. In this manner, the prioritisation of payments ensures, in effect, that the investors will only receive any return at all, let alone a reasonable one, when appropriate, since they can only possibly receive any return once the FRR is at the level it needs to be that year.

4.40 '*Reasonable return on investment'*: There was some debate over how this should be measured. There are several components to this:

a. Should return be measured by reference to profit (even when that is not paid out to the investors but is instead paid into the FRR) or by reference to dividends paid to the investors?

b. Should the *return on investment* be measured by reference to the Net Asset Value of the Company (NAV) or by reference to some other metric, such as turnover of the Company that year?

c. If measured by reference to the NAV, should this include the value of Ferry Road?

4.41 These same questions were dealt with by previous Inspectors. The last three Reports from 2009, 2015 and 2018 have been reviewed. All three Inspectors dealt with these questions in the same way.

4.42 In the 2018 Report, the Inspector's conclusions addressed the question of whether there was a reasonable return all by reference to the dividends paid to investors.[42] He also measured the '*reasonable return on investment'* as being the value of the dividend payments against the value of the net assets, stating that '*Whilst the objectors are right that the net asset value is not directly investment, it is the result of the investment of the Company and not an unreasonable measure to use'*.[43] Finally, in the 2018 Report, the Inspector stated that '*the road is an integral part of the business and it is not unreasonable to include its value as part of the overall net asset value of the Company'*.[44]

4.43 In the 2015 Report, that Inspector also measured return on investment by reference to the dividends paid out, as against the net value of the Company's assets.[45] He also thought the value of the land should be included in the net asset valuation.[46]

4.44 Finally, in the 2009 Report, that Inspector also measured return on investment by reference to the dividends paid out as against the net value of the Company's assets.[47] The issue of the road being included in the net assets appears not to have arisen on that occasion.

4.45 While the factual evidence before this Inquiry will have been different to that before the previous Inspectors, the statutory framework is the same. It is respectfully submitted that all three previous Inspectors were correct in their interpretation of the statutory wording '*return on investment'* as meaning dividends received measured against the Company's net asset value. Similarly the 2018 and 2015 Inspectors were correct to conclude that the rights the Company has over the road are a valuable asset which ought to be included in its valuation. There is no good reason to depart from the interpretation of the statutory language used by the previous Inspectors. Whilst their interpretation of the legislation is not binding, it is highly persuasive. As such, it should only be departed from where there is good reason to do so.

4.46 However, considering each briefly in turn:

<u>Return as dividends paid on profit before tax (even where not paid to investors but held in the FRR)</u>

4.47 The Inquiry heard from Mr Thomas, whose written evidence plainly contemplates that only dividends paid out could be considered to be a '*return on investment'.*[48] He confirmed in evidence that in general, investors are not interested in whether they can simply build up the assets held within the Company, but rather on receiving the benefit of those assets as dividends. He

[42] ID25 paragraphs 148 to 154
[43] Ibid paragraph 152
[44] Ibid paragraph 149
[45] ID23 paragraph 71
[46] Ibid paragraph 76
[47] ID20 paragraphs 5.7 and 5.8
[48] I/166

used the analogy of a shareholder with shares in a public company: that investor is not interested in knowing that the company has lots of assets, but rather what s/he will receive in their pocket by way of a dividend.

4.48 Mr Tice, on behalf of Studland Parish Council, argued to the contrary. He maintained that what mattered was the Company's profit before tax, regardless of how that was spent, and regardless of whether it was ever paid out to investors. However, in response to questioning, he agreed that logically, this would mean that he would still consider the investors to be having a '*return on investment',* even in a scenario where the Ferry Company paid out no dividend to its investors in any of the next 12 years and instead put all of its profits into an FRR and spent all of that on a new ferry. This is despite the fact that this would mean that the investors would receive no dividend payment at all, i.e. zero personal enrichment. This cannot have been what Parliament meant by '*return on investment'*. The view of the three previous Inspectors is to be preferred.

Net asset value or some other measure

4.49 Whilst the statutory test is '*reasonable return on investment'*, none of those words are defined. As observed by the 2018 Inspector, the Company's net assets are the product of its investment over the years. As has been made clear, but for the Company, the Ferry Road, slipways, causeway, buildings, and ferry etc would not exist. They exist only because of the investment of the Company.

4.50 Just as a personal saver measures his or her return on savings against the sum of their principal sum in the bank, so too does any company measure its return against its assets. Mr Thomas confirmed this was standard financial practice for companies.

4.51 The only other suggestion that has been raised as to how return should be measured, most notably by Studland Parish Council, is by reference to turnover. However, the statutory test is '*reasonable return on investment*'. While there is no perfect proxy for investment in an absolute sense, turnover of a company, i.e. income received before deductions for expenses, is simply unrelated to investment. It cannot be the correct barometer against which reasonable return is measured.

4.52 In his submissions, Mr Dubin noted for the Consortium that a measure of return '*might fall out of favour with members of the financial professions'*. Whilst this is perhaps true as a theoretical possibility, the Inquiry has heard no evidence to this effect at all.

Inclusion of the road

4.53 As found by the 2018 Inspector, '*the road is an integral part of the business.'*[49] It allows customers to access the ferry. Indeed, without control of the road, the Company could not exist. The extent of the Company's legal rights over the road are detailed in the related Position Statement.[50] In short, the Company enjoys the statutory right to freehold over sections of the road, as

[49] ID25 paragraph 149
[50] ID1

set out by the 1923 and 1986 Acts. As such, by operation of statute, the Company is the freehold owner of the slipways and ferry office sites and either is, or is entitled to be, freehold owner of the wide section of the road on the Studland site. In respect of the remainder of the road, the Company enjoys full rights of user in perpetuity, along with rights to build on and improve the road with additional facilities to further the Ferry Company's interests, and various powers to control the use of the Ferry Road.

4.54 Whilst the Company may not have the same power to dispose of the Ferry Road land separately from its other assets through sale of the Company, the owners do have the power to transfer their rights and powers over the motor road and other land to the new owners. Moreover, all the rights which the Company enjoys over the road, are rights designed to promote the effective and smooth running of the ferry operation. As such, the land supports the Company's commercial purpose.

4.55 Having been appraised of the detailed position in relation to the Ferry Road during the course of the Inquiry, Mr Glenwright (Valuer) made clear that this did not change his position on the value of the land, or its inclusion in the valuation of the Company's assets. In his oral evidence, he confirmed that a valuation of the Company's assets would be incomplete without inclusion of the land.

4.56 It has been suggested in this regard, that the Company received the road 'for free'. This is based on an overly simplistic notion of the statutory arrangements. While no money changed hands in return for the transfer of rights in the road, the Company took on new and significant legal obligations to construct and maintain the road and to run the ferry service. On any view this would constitute good consideration and is undoubtedly the giving of something valuable by the Company in return for the road.

4.57 Mr Glenwright also confirmed that the Depreciated Replacement Cost (DRC) methodology used in his valuation was the only appropriate valuation methodology for infrastructural assets. He was guided by the RICS guidance in selecting that method.[51] While Mr Street for the National Trust appeared on the one hand to criticise the choice of valuation method, on the other hand he confirmed that he himself had used that method to value infrastructural assets.

4.58 Mr Kean confirmed that the Company has been able to make improvements to the road over the years, in exercise of its statutory powers. It has been able to do all a reasonable company could wish to do in relation to the road to promote the furtherance of the ferry service. As such, it is undoubtedly an integral part of the Company's assets. The Company's rights over the road are valuable and any valuation of the Company would be incomplete should it exclude the road.

<u>What is reasonable</u>?

4.59 The forecast dividends (as a percentage of net assets) are set out in Appendix 4.2 to Mr Thomas' updating report.[52] These show 0% return for the years

[51] I/155
[52] I/178

ending 31 March 2019-2021. Thereafter, they show a range from 0.6% to 5.6%, such that the average from the years ending 2019 to 2032 is 2.96%, or purely prospectively from 2021 onwards, is 3.46%. However, Mr Thomas explained that these figures were calculated before the most recent lockdown. It appears likely (insofar as it can be known) that the lockdown will, at the very least, endure for most of this current financial year. We all know that there is very likely to be at least some residual impact of Covid into the next financial year. Mr Thomas advised that as a consequence, the predictions for 2021 will very likely be less than stated and thus the average return of 3.46% is likely to be greater than what will actually be realised.

4.60 As noted by Mr Thomas, the reasonableness of a return must consider the risks and difficulties involved in the investment.[53] The last three financial years demonstrate that investment in the Company carries considerable risks, given the nil return. It demonstrates that the risks include mechanical problems (despite the Company maintaining the vessel to the standard set out independently by Lloyd's Register) and changes in passenger demand outside of the Company's control. Similarly, the unpredictability of the cost (and downtime) of major refits constitutes a significant risk. In connection with this, by its nature (as determined by statute) the Ferry Company's sole income stream is the ferry. This is inherently risky. If the ferry's operation is suspended (e.g. by mechanical problems) then so too is the Company's sole income stream.

4.61 Moreover, it is incorrect to conclude that because the Company is the only Company with rights to operate the ferry service, that it is free from competition. Passengers have a choice whether to use the ferry or the road. They are not a captive audience.

4.62 The Company also faces significant external controls. While giving the Ferry Company important rights, the various Acts of Parliament also impose considerable restrictions. Self-evidently for instance, in order to alter tolls the Company must obtain approval following an Inquiry.

4.63 Mr Thomas contrasts the position of two sets of investors: one, investors in the Company and two, shareholders in a publicly-traded company. He noted that global stock markets have delivered a real return of 7.6% over the past decade,[54] and that investors in global stock markets can easily sell some or all of their shares if they are unhappy with the returns. By contrast, Mr Kean confirmed that there is no market for shares in the Ferry Company. If the investors in the Company are unhappy with their return, they either have to simply tolerate it, or sell the entire Company (which assumes a buyer can be found, which would not be guaranteed if the Company was underperforming) with all of the expense and complexity that that would involve.

4.64 In light of all that, the proposed return, being significantly less than that advanced in previous Inquiries, is a reasonable one. It is all the more reasonable given the prioritisation arrangement now put in place, such that any return will only be received once it is certain that the FRR is in the position it needs to be in any given financial year.

[53] I/166-7
[54] I/166

The toll scheme – revised proposal

4.65 Strictly speaking, affordability and compliance with national policies relating to environmentally sounder modes of transport are not amongst the statutory criteria that the Inspector must consider, but the SoS may have regard to both these factors. In particular, by requiring that the SoS is to be satisfied that the relevant tolls are neither '*substantially less nor substantially more*' than required, the desire for affordability is implicit. However, it is not express, unlike the three relevant considerations detailed at length above. This would generally indicate that less weight should be given to it ordinarily.

4.66 In any event, affordability is at the heart of the Company's revised proposal. By freezing pedestrian and cycle costs, the Company is guaranteeing their affordability. Moreover, by the books of multi-purchase tickets for cars (in addition to all other modes of transport) the Company is offering discounts that are far greater than it has offered before. In particular, the pricing of the multi-ticket books are kept below Mr Thomas' long term estimate of inflation of 3% throughout the 12 years, sometimes significantly below this rate.[55] In this manner, the Company seeks to preserve the affordability of the service to its users, in particular its frequent users who rely on it most.

4.67 In addition, the Company's proposed increments and the proposed prices for all classes of ticket, both individual and books, are lower than and less than that suggested by the Consortium in its counter proposal, save for the very final increment in 2032. That the Consortium felt able to put its proposed pricing slightly higher than that of the Company for all increments save the final one, surely illustrates its view that those levels are reasonable and affordable. It is important to note that the constituents of the three large Councils of the Consortium constitutes the large majority of the Company's passengers.

4.68 The Ferry Company agrees with Mr Dubin that the SoS can have regard to the national environmental policies, that he should seek to advance those national policies and that he should not do anything that is directly contrary to those policies. In this regard, the revised proposal clearly advances the environmental policies that have been put before the Inquiry.

The Consortium's counter proposal

4.69 The Company considers the Consortium's objection to the final incremental price rise to be misplaced. In effect, this price rise balances against the fact that the Company has introduced price rises on a more incremental and heavily discounted basis than the Consortium for all other periods in its counter proposal. The Consortium cannot criticise the final increment without also proposing its steeper increments. The revised proposal, with more gradual increases, is likely to be more affordable than that advanced by the Consortium.

4.70 Mr Dubin submitted that the final instalment represented a return that was not reasonable, which is surprising given that the Consortium's counter proposal would in fact generate slightly more income than the revised proposal. Whilst

[55] as demonstrated at I/187

the Consortium had some qualms about the final instalment, it does not follow that the return on investment is unreasonable.

The National Trust's proposal

4.71 The National Trust's proposal[56] is premised on an unevidenced basis. The assertions made within the document, that over 100,000 additional car journeys could be achieved and also that discounted tickets would be used at certain times of day and full price tickets at other times of day, is without foundation. In fairness, Ms Churcher confirmed, in cross-examination, that her submissions were not advanced as a 'worked-out' proposal, but rather were advanced to 'generate discussion'.

The powers of the Inspector and the SoS

4.72 In respect of the relevant powers to respectively recommend and implement a staged, incremental, pricing model, the Company adopts the opening submissions of Mr Dubin on behalf of the Consortium.[57] This could be achieved by way of setting out maximum tolls chargeable in the body of the Order, and stating that these are subject to the Schedules of the Order which each would then set out the fare regime for the years 2021 to 2032.

4.73 The Company notes that in previous applications (e.g. 2014) it was given the power to raise tolls to a maximum across the full period, but in fact brought in the rises on an incremental basis that was in fact slightly slower than it had indicated it would at the Inquiry. As such, given its past form, the incremental approach suggested by Mr Dubin is not necessary. However if it allays concerns, then the Company supports the approach advocated by Mr Dubin.

4.74 It was suggested by Mr Dubin in opening that, if the Inspector has doubts about the application, she should recommend refusal. It is respectfully submitted that this approach is not quite that advanced by the statutory criteria. S.6(2) of the 1954 Act gives the SoS not merely the power to approve or reject an application, but he may '*make an order revising [any application] in such manner as he may think fit*'.[58] In addition, s.6(3) of the same Act states that '*in making any order on an application under this section, the Minister shall have regard to the financial position and future prospects of the undertaking and shall not make any revision of charges which in his opinion would be likely to result in the undertaking receiving an annual revenue either substantially less or substantially more than adequate*'.

4.75 Given the extensive powers of the SoS, and the duty to make allowance for neither substantially less or substantially more than adequate, even if the SoS was not persuaded that the application advanced was properly judged as between the three statutory elements (working costs of undertaking, any reserve or contingency, and reasonable return on investment) he would still have to consider whether he should exercise his power to vary that application. In having regard to that, consideration would need to be given to the financial position and future prospects of the undertaking. He would also need to be satisfied as to whether leaving the pricing as it is, would be likely to result in

[56] II/134
[57] ID4
[58] sb/61

the undertaking receiving an annual revenue either substantially less or substantially more than adequate.

Conclusions

4.76 This application is advanced on a very different basis from the application in 2018. The last application was refused largely because there was concern that the FRR was not properly being prioritised, but was instead being used occasionally to pay dividends. It was also felt that dividends were not properly responsive to the financial performance of the Company in a given year. The Company has made very significant changes in this latest application. It now prioritises the FRR and only considers paying a dividend when the Company has performed well.

4.77 This is a real and meaningful change as the last three years, in which nil dividends have been paid, demonstrates. Moreover there is now a firm timeline set out for the replacement of the existing vessel, based on expert evidence which has stood up to scrutiny at this Inquiry.

4.78 The return made by the Company under the projections is significantly less than can be made in many other, arguably less risky, and certainly more liquid investments. There are undoubtedly significant risks in investment in the Company, as the last three years demonstrate. All taken together, the toll proposal now advanced achieves the three key objectives of allowing neither too little nor too much for the maintenance and working of the business, the building of the reserve and, where appropriate, a reasonable return.

4.79 Studland Parish Council's response[59] to the Applicant's Position Statement on ring-fencing etc contained a proposal that the named beneficiary for any escrow account or trust arrangements be the SoS. It is submitted that it is not lawfully possible to create a private purpose trust, that is, a trust set up for a specific purpose. A private trust must be set up for the benefit of a beneficiary rather than for a purpose. It is not possible, therefore, for the Applicant to place the FRR into a trust for the specific purpose of buying a new ferry, regardless of the identity of the beneficiary.

5. THE CASE FOR THE OBJECTORS

THE CONSORTIUM (comprising Dorset Council, Bournemouth, Poole and Christchurch Council and Swanage Town Council)

The case for the Consortium is reported substantially in the form of its closing submissions and its response to the Applicant's Position Statements on ring-fencing etc and on scrutiny of the accounts by the SoS.[60]

Preliminary matters

5.1 Having heard the evidence as it emerged during the Inquiry, the Consortium now better understands the basis on which the Ferry Company presents its revised application and, broadly, does not object to it except in respect of the toll charge maxima for private vehicles (single trips and discounted tickets).

[59] ID17
[60] ID14 and ID19. The original objections of the constituent Councils to the application are items 4j, 4k and 4m of Dossier 4. Subsequent written evidence of the constituent Councils, including the Consortium's counter fare proposal, can be found at II/65-67, 70-84, 203-210.

5.2 Mr Jack Wiltshire, Head of Highways at Dorset Council, presented evidence on behalf of the Consortium and was cross-examined on behalf of the Company.

Legal background

Toll charge revision

5.3 The Company was incorporated pursuant to s.4 of the Bournemouth-Swanage Motor Road and Ferry Act 1923 (the 1923 Act).[61] The power to demand and receive tolls was granted by s.79 of the 1923 Act,[62] with s.81 providing for an increase in tolls from 1933 onwards,[63] permitting the Company to:

> *"…make a representation to the Minister of Transport that in the circumstances then existing all or any of the tolls which may be demanded and taken by the Company … should be revised the Minister of Transport may (if he thinks fit) direct an inquiry to be held … and if it is proved to the satisfaction of the Minister that all or any of the said tolls should be revised the Minister may by order in writing alter modify reduce or increase all or any of such tolls …"*

5.4 The power to revise the tolls following an Inquiry under the 1923 Act, was substituted[64] by s.6 of the Transport Charges etc (Miscellaneous Provisions) Act 1954 'the 1954 Act).[65] The relevant provisions of s.6 of the 1954 Act (emphasis added) are:

> *"(2) An application may be made to the Minister at any time—*
>
> *(a) by the undertakers; or,*
>
> *(b) by any person, or any body representative of persons, appearing to the Minister to have a substantial interest,*
>
> *for the revision of any of the charges which the undertakers are for the time being authorised to demand and take in pursuance of any statutory provision; and if on any such application the Minister is* ***satisfied that under the circumstances then existing it is proper so to do****, he may, subject to the provisions of this section, make an order* ***revising in such manner as he may think fit, with effect from such date as may be specified in the order, all or any of the said charges, whether or not the subject matter of the application, including any classification by reference to which the amount of any of those charges is to be determined****; and any such order shall have effect notwithstanding anything in any statutory provision relating to the subject matter of the order:*
> *Provided that—*
>
> *(i) the Minister shall not vary any charge other than those to which the application relates except after consultation with the undertakers and such other persons, or such bodies representative of other persons,*

[61] sb/4
[62] sb/34
[63] sb/35
[64] s.14(3) of the Transport Charges etc (Miscellaneous Provisions) Act 1954 repealed s.83 of the 1923 Act.
[65] sb/61

appearing to him to have a substantial interest as may appear to him appropriate;

(ii) where on any application under this section for an increase or a decrease in any charge the Minister has made an order or has decided that it is not proper to make an order, the Minister shall not entertain an application for a further increase or, as the case may be, a further decrease in that charge, or for a further revision of any other charge revised by the order, if any, so made, if that application is made before the expiration of a period of twelve months from the date of the making of the order or, as the case may be, from the date when the Minister gave notice of his decision not to make an order; …

(3) In making any order on an application under this section, the Minister shall ***have regard to the financial position and future prospects of the undertaking*** *and shall* ***not make any revision of charges which in his opinion would be likely to result in the undertaking receiving an annual revenue either substantially less or substantially more than adequate to meet such expenditure on the working, management and maintenance of the undertaking and such other costs, charges and expenses of the undertaking as are properly chargeable to revenue, including reasonable contributions to any reserve, contingency or other fund and, where appropriate, a reasonable return upon [the investment of the Company in the motor road and the ferry*** *as defined in section 2 of the Bournemouth-Swanage Motor Road and Ferry Act 1986]:*[66]

Provided that where the Minister is satisfied that, in view of the financial position of the undertaking during such period immediately preceding the application as may appear to him appropriate, there are special circumstances affecting the undertaking, the Minister may make such revision of charges as he may consider just and reasonable in the light of those special circumstances, notwithstanding that it is in his opinion likely to result in the undertaking receiving an annual revenue substantially less than adequate for the purposes aforesaid."

5.5 The principal purpose of an increase in tolls is to fund '*expenditure on the working, management and maintenance of the undertaking and such other costs, charges and expenses of the undertaking as are properly chargeable to revenue, including reasonable contributions to any reserve, contingency or other fund*'. It is only then, '*where appropriate*', that the increase in tolls should be '*adequate to meet … a reasonable return*' on the Company's investment.

5.6 There is also a statutory disregard, pursuant to s.26 of the Bournemouth-Swanage Motor Road and Ferry Act 1956:[67]

"In making any order under section 6 of the Transport Charges etc (Miscellaneous Provisions) Act 1954 in respect of the Ferry Tolls the Minister shall disregard any investment or loan made any financial

[66] Words in [brackets] substituted for *paid up share capital of the undertaking* by s.23(2)(b) of the Bournemouth-Swanage Motor Road and Ferry Act 1986.
[67] sb/81

assistance given by the Company under section 18 (Power to invest in other companies) of this Act and any payment made under section 25 (Power to grant pensions &c) of this Act to or on account of any person in respect of his office as a director of or his employment with an associated company and in estimating under subsection (3) of the said section 6 the financial position and future prospects of so much of the undertaking as is the subject of the application for the order no profits or losses which the Company may have made or be likely to make from any such investment or loan made or financial assistance given under the said section 18 and no such existing or contingent liabilities of the Company under the said section 25 of this Act as are hereinbefore in this section referred to shall be taken into account."

Road ownership

5.7 The Consortium has read the related Position Statement presented by the Company.[68] The Consortium takes a neutral view on the question of true legal ownership of Ferry Road and other land over which the Company has or exercises rights. Fundamentally, the question does not affect the Inspector's role under s.6 of the 1954 Act, because the key provision is s.4 of the 1986 Act,[69] vesting the Road in the Company in perpetuity so long as the Company operates the ferry. Control of the Road and operation of the Ferry are indivisible. Consequently, as demonstrated by the evidence of Mr Glenwright, the Company's rights are 'akin to freehold' for valuation purposes. Additionally, his evidence under cross-examination was that, for sound valuation purposes, there has been no double counting of the value of the Road (for instance by valuing the land under the Road, the Road itself, and the right to control the Road separately). The Consortium cannot contradict this approach on the evidence. The view of the Consortium therefore, is that the legal technicalities of Road ownership do not undermine Mr Glenwright's valuation of the Company's Net Asset Value (NAV).

Guidance, policy and weight

5.8 The Consortium relies upon policies that promote the use of sustainable, active travel modes in its Local Transport Plan 2011-2026, adopted in April 2011 (LTP)[70] and the DfT's policies set out in its publication *Gear Change – A bold vision for cycling and walking 2020* (July 2020).[71] The Consortium has legal obligations to have an LTP and to apply *Gear Change*, subject to and in accordance with standard public law principles.

5.9 There is no statutory obligation for the Inquiry to take into account the national and local policies and guidance upon which the Consortium relies, and to which its members must have regard. As to weight, it is clear from Mr Wiltshire's evidence, that both local and national policy are material considerations for the Consortium, though in guiding the Consortium's response to the application and the Inquiry, the LTP has greater weight. The Consortium submits that the Inspector should have regard to the LTP and *Gear*

[68] ID1
[69] sb/89
[70] II/76-77
[71] II/77-78

Change, and take account of the fact that the Consortium is obliged to follow them so that they have some weight, though in the context of the Inquiry the degree of weight is a matter for the Inspector. Nevertheless, it is submitted, the Inspector cannot make a recommendation to the Minister which would of itself breach those policies or cause the Consortium members to do so.

The revised application and the counter-proposals

The original application

5.10 The Company's original proposal[72] provoked objections from the three Consortium Councils.[73] It did not accord with their strategic objectives and obligations for their Districts. They presented their objections separately but, as explained by Mr Wiltshire, it became clear that they had common ground in seeking to protect the interests of their residents and in promoting their LTP (which they were obliged to do, as well as follow national guidance on sustainable transport, as above).

The Consortium's counter-proposal

5.11 The Consortium's counter-proposal[74] sought to adjust the Company's application so that proposed fare increases could enable a new ferry to be purchased in 2032, but would not conflict with the Consortium's strategic objectives and obligations. For that reason, as Mr Wiltshire explained, the financial data supporting the Company's application were taken at face value.

5.12 The Consortium's counter-proposal has since been 'bettered' in most respects, by the Company's revised application.[75] With one critical exception, the Company's current position now appears largely to address the Consortium's primary concerns and dovetails with the LTP and national guidance on sustainable transport. Therefore, save in respect of that critical exception set out below, the Consortium does not object to the Company's revised application.

5.13 That said, it should be stressed that this is not an unqualified acceptance of the revised application:

a) It is submitted that the Company must adhere to the phased increments, and bulk-purchase discounts, presented in its revised proposal. The principal mechanism to ensure this would be the 1954 Act (argument enlarged below). Otherwise, the fall-back is based on the Company's evidence to the Inquiry that it will keep to this incremental projection as it has to past projections.

b) In default of those increments and discounts, should they not be acceptable to the Inspector, the Consortium reverts to its counter-proposal as an appropriate scheme for increments and discounts.

c) Issue is taken with the final increment for car journeys. This is the key criticism. On this point, the Company's dividend policy conflicts with the

[72] I/28
[73] II/65, 70, 206
[74] II/71
[75] I/186

Consortium's aim to protect the interests of its residents. The Consortium rejects the Company's final toll charge of £6.75.[76] The highest it should be is £6.50 – in line with the Consortium's counter-proposal,[77] as explained further below.

The National Trust's variable pricing model proposal

5.14 The Consortium believes that, in principle, the National Trust's desire to see some form of off-peak scheme, combined with 'local' discounts, has much to recommend it. However, for the purposes of the current Inquiry, the Consortium understands that the National Trust does not put forward its model as a complete counter-proposal,[78] save in respect of the £2.00 local discount fare. Nonetheless, the document can inform future formulations of transport strategy and negotiations with interested parties (including the Company). The Consortium regards the proposal as an important discussion document, but hesitates to endorse the £2.00 discount fare for cars without a firmer evidence base and methodology.

The final car charge

5.15 This is the key point of difference between the Consortium and the Company. As the Company accepted in evidence, both through Mr Kean and Mr Thomas, the single car toll for year ending 31 March 2032, is the point where it raises its charges beyond the ceiling set in the Consortium's counter-proposal. The Company does so, because to do otherwise, it is argued, would be to deny the Company's investors a reasonable return on investment - without this additional amount, the figures wouldn't add up for the Directors. It is this point that engages the Consortium's concerns about the Company's financial data, the practice of its dividend policy, and any argument about '*substantially less or substantially more than adequate to meet*', and '*a reasonable return'* in the statutory test, and ring-fencing and valuation models.

Dividend policy

5.16 The Consortium entered the Inquiry with significant concerns about the implementation of the much-heralded dividend policy. The projected target replacement ferry cost[79] is stated in the application as £12.8 million. The Company's expressed dividend policy, in the evidence of Mr Thomas,[80] was that:

a) [the Directors] *will now only consider payment of a dividend when the Ferry Replacement Reserve (FRR) together with the maximum loan finance they may obtain, exceeds the predicted ferry replacement cost*;

b) *if the Ferry Company's application is granted, no dividend will be paid to shareholders unless the balance on the FRR plus £5 million (being the maximum amount the Ferry Company can raise) exceeds the forecast cost of a new ferry.*[81]

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[76] I/186
[77] II/74
[78] See II/132, 134 and oral evidence of Ms Churcher
[79] I/8 paragraph 2.4
[80] paragraph 2.2.3 of his additional statement at I/163
[81] Mr Kean supplementary statement at I/191 paragraph 16

5.17 The application itself suggested, that a 'straight line' investment of £426,000 per year was required.[82]

5.18 The forecast profit and loss accounts at revised Appendix 2.2[83] show that, although the FRR will stand at only £4,520,930 at the end of 2022, the Directors would take a dividend of £520,771. However, the target cost of £12.8 million, less £5 million borrowing, is £7.8 million, not £4,520,930. So *the FRR, together with the maximum loan,* did not seem to *exceed the predicted ferry replacement cost*.

5.19 Similarly, Appendix 2.2 did not appear to show a straight-line investment of £426,000 per year, or anything like it. Rather, the forecasts show dividends in the region of £900,000 for many of the projected years, even when the contributions to the FRR fall well below £426,000.

5.20 On the face of those projections, the Consortium was therefore concerned that in practice, there had been no change to the dividend policy. The figures seemed very similar to those in the spreadsheets at the 2018 Inquiry.

5.21 Helpfully, Mr Thomas' oral evidence clarified this. Though it is nowhere expressed, the policy in fact is that *in any year* the total of the FRR plus permitted borrowings must match the projected cost of the ferry *for that year*, before dividends will be paid. The figures, though opaque, do demonstrate that the policy is in place.[84] It would have been better though, if an explanatory note had been put to the documents to that effect.

5.22 This gives the Consortium some comfort that, if an increase is granted at this Inquiry, the FRR will contain sufficient funds in any given year to purchase a replacement ferry (although maybe not for a couple of years yet) and that the FRR will not take second place to dividends as it has done at each previous Inquiry. The FRR will therefore increase steadily.

5.23 This is a highly significant change from the position at the last Inquiry in 2018. It lends further impetus to the Consortium's qualified acceptance of the revised application.

Continuing financial concerns about the 'return on investment'

5.24 The Consortium remains concerned at the level of dividend payments, and that the Company adopts a 'total distribution' model of accounting.[85]

5.25 Messrs Thomas and Kean accepted that it would be possible, in theory, for the Company to pay out a lower dividend in some or all years to accelerate the growth of the FRR and thereby accommodate a reduced car fare in 2032 (or to bring that top rate forward by some years and keep it there). However, Mr Kean in particular rejected the idea that it would be appropriate to do so, notwithstanding, the Consortium says, the public purpose and benefit of the Ferry. Mr Kean says that the revised proposal is beneficial to customers in many ways (smaller and lower increments, increased discounts) but that any

[82] Application para 2.5 [1/8]
[83] I/174
[84] It would have been helpful for instance, for the projected ferry replacement cost to be included in the figures, for instance in the explanatory boxes at the foot of Appendices 2.1 and 2.2, and for the explanation of the policy to make reference to an ability to fund the replacement in each financial year.
[85] Oral evidence of Mr Tice.

reduction in the final-year charge for cars would reduce the Directors' investment yield to below what he called the 'derisory' or 'meagre' 3.7% (average over 12 years).

5.26 The Consortium relies on s.6(3) of the 1954 Act. A reasonable return on investment is the last of the list of expenditure, so of lowest priority, and follows the proviso 'where appropriate'. So in principle, an increase in charges pursuant to the section does not guarantee a reasonable return on investment. The Consortium further argues, that if the Inspector does not cap the car fare for 2032, the Company is likely to receive an annual revenue which, at least in some years, will be substantially more than adequate to meet the expenditure. It is beyond the Minister's power to allow such an increase.

5.27 The Consortium submits that it would be appropriate to cap the final year's car charge at £6.50 (or less) notwithstanding that this will reduce the yield on investment (as calculated by the Company). There are two reasons for taking this position: the effect of higher prices on residents, and the effect of higher prices on the Company's return on investment.

5.28 *Effect on residents*: The higher car charge in the final year of the revised application engages the concerns of many of the objectors (and elected Members and officers of the Consortium) that the higher cost of commuting will prejudicially affect residents, particularly lower-income employees in the service and tourism sectors, and the elderly (such as those in Studland).[86] The evidence from objectors suggests (and one may also infer) that the consequences of such prejudice may be increased congestion and pollution on the A351 route to Swanage, increased (but hidden) car running costs for those who reject the ferry route, loss or change of employment for employees, loss of staff or limited staff recruitment for employers,[87] loss of educational opportunities for young people, and a general dampening of skills and business health in the wider community.[88]

5.29 *Effect on the Company's return on investment*: The Consortium reaches this conclusion because the overall financial issues ventilated at the Inquiry suggest that the Company can still receive a return on its investment which would be 'reasonable', even if that assessment of reasonableness does not accord with the Company's view. Factors informing this conclusion are:

a) The Directors of the Company and of Fairacres Group are not identical to the shareholders of the Company. Nevertheless, the Directors do receive a commercial-rate income from their directorships within the Group, so that the dividend is additional income beyond their salaries. This sets the context for any discussion about the dividend: the Directors/shareholders are not dependent upon the dividend income for their living.

b) While no point is taken on Mr Glenwright's valuation, at least in principle, the Consortium shares objectors' concerns that some aspects of the Company's assets may be over-valued, leading to an unrealistic

[86] Oral & written evidence from Studland PC witnesses, for instance.
[87] Oral evidence from Ms Crabb, Pig-on-the-Beach Hotel.
[88] Wider economic view provided by Mr Bowyer in oral evidence.

assessment by the Directors of their yield and therefore of a reasonable return on investment:

(i) Mr Wiltshire points particularly to the Road maintenance costs, projected to be in the region of £96,000 over the application's 12 projected years, as against the asset value of about £3 million.[89] The disparity between cash *investment* in the Road and 'asset value' *investment* is stark.

(ii) Mr Street, for the National Trust, made cogent criticisms of the 2015 valuation going to its usefulness for the purpose of this Inquiry. The Consortium has considerable sympathy with the Trust's position, argued as it was from a valuer's perspective.

c) The Inspector has no jurisdiction over the way the Company is structured or which accounting policies it adopts. But the objectors' evidence shows that there are several alternative methods of calculating the 'reasonable return on investment':

(i) The Company has chosen to adopt the method that relates yield to NAV, thus arithmetically returning lower yields than other methods. For instance, the NAV method returns yields of less than 7%, whereas one suggested alternative measuring return against turnover, might return a yield of 25%.

(ii) The Consortium further contends that it is for the Inspector, exercising her judgment, to determine what is a 'reasonable return on investment'. The Consortium takes the view that it was only in the 2018 Inquiry that the definition of 'reasonable return on investment' was properly challenged and argued. In that case, the former dividend policy combined with the yield measured against NAV was not considered to be 'reasonable'. In previous Inquiries, for various reasons the Inspector has adopted the NAV approach of the Company, but that does not mean that the Inspector is bound in *this* Inquiry to agree with the Company on the measure of return. Statute does not specify the measure of return. It is reasonable, therefore, for the Inspector at each Inquiry to determine what is reasonable in all the circumstances. For instance, a particular method of calculation may fall out of favour with a substantial body of professional opinion.

d) There seems little to be done about ring-fencing the FRR, save to rely upon the undertakings given to the Inspector and the Secretary of State.[90] The Inspector has no power over this aspect of Company business. But it remains the case, that the FRR is an accounting tool which can be accessed for running and capital expenses (conceded by Mr Thomas) particularly as the Company has no other contingency fund (the total distribution problem). The Consortium reserves its position on what might be done lawfully to protect the FRR (mindful of the opportunity to respond to the Company's further Note) but the

[89] Oral evidence of Mr Wiltshire.
[90] I/67

cleanest solution might be to institute an additional 'contingency reserve' and to hive the FRR funds off into a separate account. This would reduce dividends available to the Directors, but the Consortium believes it might alleviate concerns about ring-fencing and would still produce a 'reasonable' result within the meaning of the statute.

5.30 Against that background, and in light of the purpose of the Ferry as enshrined in the 1923 Act,[91] the Consortium argues that:

a) first, the dividends forecast at Mr Thomas's Appendix 2.2[92] do not represent a reasonable return on investment in all the circumstances; and, consequently,

b) the Company should take a lower dividend in one or more years, in order to reduce the final year's car charge and thereby mitigate the prejudicial effect of the rising car toll.

How the increases should be implemented

5.31 In its opening submissions, the Consortium argued that the Minister has the power to order phased increments up to a maximum. There has, at past Inquiries, been some discussion, at least within the objectors, about how phased increases might be implemented and in general, with this ferry (and with other ferries who's toll rates are governed by statutory instruments) this tends not to happen. But for reasons set out below, the Consortium says it is entirely possible to set a rising charge card.

5.32 The Minister's power is to revise in ***such manner as he may think fit***. This is a very broad discretion. One should recall the wording of the predecessor section (s.81 of the 1923 Act) i.e. *alter modify reduce or increase all or any of such tolls*. The result of the Inquiry may be neither binary (i.e. grant or refuse application) nor singular (i.e. to allow only an increase).

5.33 *All or any of the said charges* may be revised *with effect from such date as may be specified*, but this does not mean that the Order need state only one date.[93]

5.34 The words '*including any classification by reference to which the* ***amount*** *of any of those charges is to be determined*' are sufficient to cover, for instance:

a) different modes of transport – e.g. pedestrian, bicycle, car, coach; or

b) discounted or 'standard' tickets; or

c) books of discounted tickets of a certain number, which number determines the amount to be paid.

5.35 The Schedule attached to these submission shows how this proposal might be implemented in the Schedule to a statutory instrument in practice.[94]

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[91] i.e. *a more direct means of communication between Bournemouth and Swanage and be of public and local advantage*
[92] I/174
[93] Singular including plural and vice versa: Interpretation Act 1978.
[94] ID14 pages 15- 22

Matters outside the scope of the Inquiry

5.36 As set out in the Consortium's opening submissions and above, there are interesting aspects of the Company's operation which are not relevant to the Inquiry or lie outside the Inspector's remit, but which have been raised. These include:

a) any issue over road or land ownership, save as it affects valuation, except that this has become irrelevant to valuation as the Company's statutory rights are tantamount to ownership in fee simple/freehold;

b) ring-fencing the FRR: the Minister cannot order the Company to do any particular thing with its money (such as to put the fund in escrow). Ring-fencing is relevant only if and to the extent that it has an impact on the Inspector's determination of whether the Company's financial position and future prospects persuade her to allow the application (applying s.6(3) of the 1954 Act);

c) what kind of ferry the Company should order in, say, 2032: The Consortium encourages the Company to continue its investigations into sustainable methods of propulsion, which would tally with its Councils' own sustainable transport obligations. The key fact for the Inquiry, is that if the tolls increase in line with the revised application, the Company is, in practice, as likely to be able to afford a 'green' ferry as a diesel-hydraulic replacement.[95]

Response to the Applicant's Position Statements on ring-fencing the FRR and on scrutiny of the accounts by the SoS/rights to reduce tolls[96]

5.37 In relation to ring-fencing, no issue is taken with the legal principles relied on by the Applicant. In practice, the application of those principles would properly be a matter for analysis and argument on any set of facts that might arise in the future, should the Company attempt to ring-fence the funds in the way suggested by others. If such a ring-fencing measure existed, it would be widely used in commercial practice. Moreover, it would only further delay the conclusion of the Inquiry and increase the expense if any alternative ring-fencing measures were introduced at this stage.

5.38 S.35 of the 1923 Act (as amended) obliges the Applicant to furnish the SoS with the Company's accounts on an approximately annual basis. Pursuant to s.6 of the 1954 Act,[97] the SoS has the power to reduce the toll charges, as expressly provided for by s.6(ii) which refers to an application for an increase or decrease. Charges may therefore be reduced if the SoS is satisfied that it is proper to do so. However, the power to vary the charges is triggered only by an application made to the Minister (i.e. the SoS) as per s.6(2). This is reinforced by the opening words of s.6(3) which speak of '*making any order on the application under this section*.' The SoS cannot initiate a fare revision and there is therefore no power for the SoS unilaterally and of his own accord, to reduce toll charges.

[95] Oral evidence of Mr Hope.
[96] ID19
[97] sb/61

5.39 Before making any revisions, the SoS would need to consult with the Company and any other persons who appeared to him to have a substantial interest (s.6(2)(i)) and need only hold an Inquiry if objections are received (s.6(4)).[98] So, a reduction could be made without an Inquiry if, following statutory notification procedures there were no objections. This is quite conceivable: the only objector would be the Company, so that an application to reduce tolls by the Company might well be allowed by the SoS without an Inquiry. That said, the SoS has no power or obligation to initiate a reduction of toll charges.

Conclusion

5.40 The Consortium contends that it is proper to allow an increase, but only insofar as any such increase is incremental, as in the Company's revised proposal, and only where the final, 2032 year end charge for a single car journey is no more than £6.50. The Consortium therefore respectfully requests the Inspector to make a recommendation to the SoS in those terms.

STUDLAND PARISH COUNCIL

The case for the Parish Council is reported substantially in the form of its opening and closing submissions and its response to the Applicant's Position Statement on ring-fencing etc.[99]

Introduction

5.41 The Inspector dealing with the 2018 Inquiry rejected the application for three main reasons:[100]

- no visibility or assurance as to when the ferry would be replaced;
- no assurance that the Ferry Replacement Reserve fund (FRR) would be safeguarded and would rise to levels required such that the Company would be in a position to procure a replacement vehicle; and,
- he was not convinced that the proposed rate of return on investment was reasonable or appropriate, given that it is secured above the FRR and is maintained at an artificial level not directly linked to performance of the Company's profits.

5.42 Nothing material has changed since then:

- the date set for a replacement ferry could easily change – as it has in the past;
- there is no sound mechanism for securing the FRR and stopping the money being transferred to other parts of the Fairacres Group, as has happened for many years; and,

[98] sb/62
[99] ID3, ID13 and ID17 The original objections of the Parish Council to the application, and those of the witnesses it called, comprise items 4c, 4d 4e, 4f, 4g and 4h (plus supplementary statements) of Dossier 4. Subsequent written evidence of the various persons called by the Parish Council to give evidence, can be found at II/7-64, 85-95, 100-119, 139, 186, 202-205. See also ID17.
[100] ID25 paragraph 163

- the rates of return forecast are excessive, beyond that needed for the operation of the ferry or for its replacement.

5.43 The objectives of *this* Inquiry are to decide if the tolls and revenue are sufficient to provide for:

a. the working, management and maintenance of the ferry;

b. charges to revenue for the provision of contingencies/capital sums; and,

c. to provide an adequate rate of return.

5.44 The analyses submitted by the parties and discussed during this Inquiry, indicate that the existing toll levels are already sufficient for the Ferry Company to meet all these objectives in the short term, with only minor adjustments possibly needed in the future, depending on levels of inflation.[101]

<u>Supporting comments</u>

Peak fares have already been reached:

5.45 Existing fares provide levels of profitability that exceed operational needs. As such, there is no need for fare increases at all. This was dealt with in more detail by Mr Tice.[102]

5.46 The analyses provided by Mr Thomas for the Ferry Company,[103] showed that the peak year for car usage, which provides approximately 90% of all revenues, was 2011/12, since when the numbers of users are declining. This is over a period when DfT data shows road traffic growth of some 17%.

5.47 The Ferry Tolls have already achieved a 'peak' price, and price elasticity has kicked in. This high pricing is causing distress to local businesses[104] as well as residents, as evidenced by the survey conducted by Studland Parish Council and objections from residents.

5.48 The current pricing structure is already forcing more people to drive around through Corfe Castle, Wareham and Sandford, causing greater congestion and pollution for the residents there. Commercial vehicles already largely boycott the ferry due to the high tolls. Instead of being an essential, everyday service, the Ferry is becoming a luxury, mainly used by visitors and holiday makers, hence the high seasonality of traffic.

5.49 Of significance to this Inquiry, higher fares will further reduce usage meaning lower revenues, with the result that the budgets/forecasts provided, which are based on constant numbers of users, will not be achieved.

5.50 There is a lot of merit to the National Trust counter proposal. It would also merit the Ferry Company to commission market research on user patterns and needs, and to develop a new fare structure that takes better account of the

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[101] See Appendix MT3 (as amended) to the evidence of Mr Tice (ID8)
[102] II/100-119
[103] I/159
[104] II/122-138, 179-180, 211-392

needs of users and environmental considerations, as well as the financial requirements of the Ferry Company.

The increases proposed are well ahead of inflation:

5.51 The Ferry Company uses the out-dated Retail Price Index (RPI) which provides for higher levels of inflation than CPIH.[105] CPIH has been the Bank of England's main inflation measure since 2003. Indeed, the Chancellor has now switched from RPI to CPIH for calculating the indexation of gilts from 2030, which have a major impact on pensions.

5.52 The Ferry Company has also adopted a level of inflation of 3.0%, well above the Bank of England central forecast of 2%. Whilst this may sound like a small difference, a 2% per annum increase over 12 years gives an overall increase of 26.8%, whilst 3% gives 42.6%. The difference would mean increasing fares from £4.50 to £5.70 rather than to £6.41 (which is still below the £6.75 sought by the Ferry Company.[106]

Operating forecasts and dividends will be excessive:

5.53 If the toll application succeeds, profitability after tax will average 39.2% over the 12-year period, with dividends averaging 23.6% pa over the 12-year period.[107] This is excessive.

Returns will be much higher than for comparable companies:

5.54 Data submitted by both the Ferry Company and the Parish Council shows, in relation to comparable companies, profitability/return on sales to be much higher in the Ferry Company. As set out in the application,[108] the Company admits that its '*profit before tax as a percentage of sales is much more favourable than other companies in similar industries*'. The Company justifies this by saying that this suggests that it '*is more effective at controlling its costs*'. It is more likely that the Company has been more effective at putting up tolls: from 2003 to Feb 2020, RPI increased by 61%, but tolls increased by over 100% (from £2.20 to £4.50). Mr South's analyses supported this, showing that for the distance covered, tolls at the Ferry Company were higher than other operators.[109]

Productivity:

5.55 All businesses today build in productivity improvement targets to their budgeting. The old business model, outdated at least since the 1980s, was for cost plus inflation to justify prices. Today, the market sets the price and companies must reduce costs to maintain profitability. And yet, in questioning, Mr Thomas, the Company accountant, said that no productivity assumptions had been built in. As stated earlier, peak prices have already been achieved and passenger numbers are declining. To derive extra profits the Ferry Company should be seeking productivity improvements, not price rises. Further price rises will only decrease future usage and be counter-

[105] Consumer Prices Index including owner occupiers' housing costs
[106] II/192 section 3
[107] II/194 section 7
[108] I/10 paragraph 3.3.10
[109] II/93-94

productive to revenue generation. Price rises without productivity improvements is a failed and outdated business model.

The rate of return sought is excessive:

5.56 The Ferry Company wants a return on investment (defined as 'profit before tax as a percentage of shareholders' funds') of at least 6.1%.[110] Whilst Mr Thomas argues for the Applicant that a return of only 5% would be very low,[111] these targets come from historic analyses and are not based on today's reality.

5.57 The economy and markets are changing. The evidence of Mr Stobart[112] considers Net Asset Value (NAV) as the main measure of performance, as used by the applicant, to be inappropriate. More appropriate measures of performance should be brought in line with those of other regulated utilities. For instance, as reported in the Investors Chronicle (17–23 July 2020) Ofgem says it intends to halve the rate of return previously allowed.

> "…*the Regulator is proposing that the allowed rate of return on equity – based on the CPIH – be set at 3.7% for electricity transmission and 3.95% for gas transmission and distribution, down from the current 7–8% level.*"

The Regulator justified this saying:

> *"…so that less of consumers' money goes towards network companies' profits and more towards driving network improvements.'*

This shows that the market and returns available have changed and that the Ferry Company's goals of 6% plus are no longer reasonable.

5.58 More appropriate measures of performance for the Ferry Company should be brought in line with those of other regulated utilities.

Valuation of the company's assets is a blackhole:

5.59 The valuations used by the Ferry Company are open to question, including concerns about ownership and rights over the Ferry Road. Inclusion of the road, and its valuation, inflates the value of assets of the Ferry Company and so affects the return on assets shown. The evidence of Mr Parsons discusses this.[113] The valuation includes the value of land which no reasonable purchaser would pay, given that there was never any monetary investment made for the land rights in the first place and that statute would continue to allow a new owner continuing free right use of but also prevent the assets from being sold. The NAV of £15 million is therefore flawed.

5.60 In addition, the Company's valuer, Mr Glenwright, refused to explain the methodology in his depreciated replacement cost (DRC) method, so there is no explanation of his assumptions. The method takes no account either, of business performance. It must be assumed that the reluctance to share this data indicates an over-valuation of the company's assets, meaning that the returns sought by the Ferry Company are even more excessive. The

[110] I/10 paragraph 3.3.2 **Inspector's note** – these figures are overtaken by the Appendices to the updated report submitted by Mr Thomas for the Applicant (I/158-189) and the updated evidence of Mr Kean (I/190- 198)
[111] I/166 paragraph 4.1.5
[112] II/85-90
[113] II/7-64

submission from Mark Street, of the National Trust, throws further doubts on the soundness of the valuation. In oral evidence, he said that the 2015 valuation should be treated with caution. The value of the Company's assets need to be independently assessed.

The Ferry Replacement Reserve is a flawed concept:

5.61 The Ferry Company has made two offers:

- that funds for the FRR will take precedence over payments of dividends; and,
- that the Directors of Fairacres will make a £5 million loan available for the purchase of the new ferry.

5.62 However, where has the money gone that was given in previous settlements? Mr Thomas, the Accountant, was unable to explain where the extra toll income had gone. The whole history of ferry toll increase applications over the last 20 years has seen the Ferry Company seek toll increases in order to boost the FRR, only for that funding never to materialise. Without a legally binding method for the FRR, such as an escrow account or trust fund, there can be no confidence that, over the 12 year period sought by the Ferry Company for toll increases, that it will not revert to past form, and give dividends precedence over building up the FRR.

5.63 Mr Thomas was also unable to understand why dedicated funds for the FRR should be created, as with an escrow account, or trust fund. The reason for the company's opposition to such arrangements is nothing to do with their technical feasibility. It is because they would lose control over use of the funds to cover other expenses, which may be for emergency operational or maintenance reasons, but also because such funds would remove the company's flexibility to move the money to where they want, e.g. to dividends, or other parts of the Fairacres Group. Cash is king and can only be properly ring fenced through a dedicated escrow account or trust fund.

5.64 The offer of the £5 million loan is new. Although welcome, the size is unlikely to be sufficient to fund a new ferry unless the FRR is properly ring fenced. Secondly, commitments made now for a decision to be made in 10–12 years' time need to be treated with extreme caution, given the potential changes that could happen to the Company over the next 12 years. The last two years alone, with a major breakdown, and Covid, have shown the vagaries of what can happen. In reality, 12 year forecasts are no more than a spreadsheet exercise.

5.65 The FRR is an anachronistic bookkeeping methodology that was discontinued by most companies many years ago. Book-keeping entries do not buy new ferries, hard cash or debt does that. The FRR merely segregates the distributable funds of the Company but does not inhibit the directors from distributing those funds by means of a dividend. The need is for the cash funds for the ferry replacement to be ring fenced into an escrow account or trust fund.

5.66 Despite previous applications where toll increases were justified by the need to increase the FRR in the past, the FRR stood at £1.145 million in 2003, and at £2.495 million in 2008. It stood at only £2.6 million in 2020. The detailed evidence of Mr Tice deals with this matter.[114] That history shows that unless the ring-fencing commitment is legally binding and enforceable, then it must be given limited weight in determining the application. The Applicant made much of the findings of the previous Inspectors as providing a guide in relation to the current case. However, if they had a chance to review how successful the FRR had been in securing sufficient funds when compared to the level of dividends that were being paid, they may have given less weight to the reality of any FRR commitment made to justify previous increases that cannot be secured by law and enforced by a third party.

5.67 On the matter of there being a named beneficiary for any escrow account, it is suggested that this be the SoS, who would act in the public interest, protecting the interests of the public. The 1923 Act included both the principal and the detail for the creation of a fund to repaid to others should the ferry road not be built with a specified timeframe. A similar, externally facilitated and controlled approach should be secured for the commitment of another significant asset for the company, namely a new ferry.

5.68 Moreover, if a toll increase is held to be justified and a new ferry is not purchased in 12 years' time, or if the funds to purchase a ferry are not available, the public would have been deprived of the benefit and misled about the justification for the toll increase. As guardian, the SoS would be the appropriate party to safeguard those funds.

The finances of the Ferry Company should be treated entirely separate from that of its parent company, the Fairacres Group:

5.69 Ideally, as hypothesised by Mr Tice, the Ferry Company would be a totally separate business. However, as part of the Fairacres Group, it is one component. Analyses of the years 2008 to year 2019 (see submission) show that the Ferry Company provided 77% of all Fairacres Group net profits before tax. In the years 2014 – 2019, the Fairacres Group would have been loss making in five of the six years without the Ferry Company contribution. It can only be surmised, but the current pandemic will have hit the loss-making hotel businesses hard. The Fairacres Group relies heavily on the cash from the Ferry Company. It is, effectively, the cash cow of the Group business.

5.70 Unless properly secured, the funds could be distributed upstream to the Fairacres Group by means of inter-company loans, with no certainty of the loans being repaid. The funds could also be called by the Fairacres Group bankers under the terms of the cross-guarantees or under any Group offset arrangements – there is no clarity on the terms of the guarantee or upon any offset arrangements.

5.71 We can understand that the Fairacres Group is in need of greater income. However, the Ferry Company the subject of this Inquiry, does not.

No fare increases are necessary:

5.72 We do not see why a new ferry, due to enter service in 2034, should be financed by ferry users in the intervening period. It should be financed by the users of the new ferry once it is in service. Moreover, a capital and tax

[114] II/100-119 as amended by ID8

efficient structure should be employed utilising, as far as possible, cheaper, tax efficient debt. In the meantime, the current cash holdings of some £3.2 million (as at 31 March 2020) should be easily capable of being built up to meet from such resources, the non-debt financed element of the capital cost of the new ferry.

5.73 There needs to be a firm commitment in the meantime, to keep set levels of cash in the Company. The existing £5 million limit on the borrowing capacity of the Ferry Company should be increased to a realistic, current day limit through amendment to the Act of Parliament, for which there is plenty of time. This structure would also remove the need for the FRR book-keeping and potentially enable a higher level of dividends to be paid the shareholders, as set out in the evidence of Mr Stobart.[115]

Replacement ferry:

5.74 Given that new diesel and petrol cars are being banned from 2030, there is no justification for a new diesel ferry in 2034. It must be electric/hydrogen or similar. There are electric powered comparable ferries on the market now, and even better ones no doubt will be available in the near future. Mr Stobart, called by the Parish Council, suggested, given the importance of the environmental agenda to the Government, that grants, or subsidies, may well become available to meet a significant share of the cost. This should be taken into account in future fare increase applications.

Local residents, businesses and employees have been ignored by both the Ferry Company and the Consortium:

5.75 As outlined to the Inquiry (submissions of John South and Peter Bowyer) local residents in Studland in particular, and Purbeck more widely, tend to be lower income earners, and more aged. These local residents and employees will face above inflation increases when they are already struggling. Whilst the slight improvement in the discount scheme provided by the Ferry Company's revised application is welcomed, this still falls way behind the discounts provided to local residents and users in other crossings. The evidence of Mr South outlines at least seven examples where comparable ferries offer much greater discounts for local residents and employees who need to use the ferry regularly rather than as a treat.[116]

5.76 As proposed, the discounted fares will rise by 35%, way ahead of the government's inflation forecasts. As a consequence, local residents and employees will avoid the ferry and drive the long way around, as evidence in the representations from the Pig Hotel and the Bankes Arms. The Ferry Company should come forward with new proposals to assist residents and employees in Studland and Purbeck. This would be part of their Corporate Social Responsibility, as stated by Mr Bowyer. In addition, it is preferred that future users should pay for the replacement ferry, not existing ones. As in other regulated companies, it would be better for the new ferry to be largely funded by loans, against which the Ferry Company could claim tax relief. The evidence of Mr Stobart for the Parish Council deals with this.[117]

115 II/85-90
116 II/91-95
117 II/85-90

The 12 year period sought in the toll application is far too long:

5.77 The 12 year timescale means that the forecasts are simply unreliable. This is a pure spreadsheet exercise with no credibility. Mr Thomas was unable to quote how many other companies use such a long period. The reason is because there are none since budgeting over such a long period is meaningless.

5.78 Mr Thomas argues that the business is a steady one. In reality it should be, but it was shut for five months in 2019 due to an 'unforeseen' mechanical failure, and Year 1 of its 12 year forecasts have now been blown apart by Covid. Even steady businesses become unsteady in a turbulent market. If for no other reason, it is suggested that this application be rejected because the 12-year budgeting/forecasts are totally unreliable.

5.79 Such a lengthy period also removes all opportunity for scrutiny of the company's accounts. For instance is it indeed achieving its objectives e.g. of building an FRR, and removes all accountability and redress.

Consortium counter proposal:

5.80 We are sympathetic to aspects of the Consortium's compromise approach, such as the freeze on foot passenger and bike fares to encourage ecological travel. However, its case:

- provides no sound mechanism for the FRR or other financing options for a new ferry;
- allows fare increases of over 40% for cars without any new dispensations for local residents/employees who are dependent on the ferry for travel. This will damage local businesses and push more traffic onto the roads around Wareham and Corfe Castle;
- profitability will continue to exceed operational needs;
- no mention is made of a more environmentally friendly replacement for the ferry – electric or hydrogen rather than diesel; and,
- it inexplicably provides revenues to the Ferry Company that exceed even its own requests, as the evidence of Mr Tice shows.[118]

Conclusion

5.81 Residents and consumers or users of the Ferry services want a viable and reliable service and are open to toll increases that are reasonable. Sadly, those presented by the Ferry Company are not reasonable. Whilst quite content for the Ferry Company to earn an acceptable, risk adjusted return on an efficiently structured capital base, and not against toll increases that are deemed essential for the operation of the Ferry Company as a business, the proposals put forward either provide for further grossly inflated profits, or offers for the FRR/loans that are not binding or credible.

5.82 The current toll levels are more than adequate to meet the Ferry Company's current requirements. The Inspector and the SoS should reject the toll

[118] II/118-119

applications from both the Ferry Company and the Consortium, instead inviting them to return, after a year, with more credible proposals.

5.83 If it is determined that there can be no requirement for an escrow account or trust arrangement, with reliance placed instead on the Company's FRR policy (for that is all it is) the following protections should be considered:

a) a legally binding commitment by the Directors to:

i) always maintain unencumbered cash (not a commitment to NAV) with the Ferry Company equal to at least the balance of the FRR; and,

ii) not to distribute as dividends funds more than the distributable reserves of the Ferry Company other than those represented by the FRR.

b) removal of the cross-guarantees and any off-set arrangement with banks or any other parties and a legally binding commitment not to put such an arrangement in place in the future;

c) a legally binding commitment not to make any loans or other forms of lending either to other members of the Fairacres Group or to any third parties;

d) within nine months of its financial year end, publish on its public website the full audited financial statements of the Ferry Company containing certification by the directors that all these undertakings and obligations had and continue to be complied with and an equally clear statement that sufficient funds have been secured in the FRR with unencumbered cash at least equivalent to the FRR maintained at all times; and,

e) any toll increase be limited to a period of no more than four years and for there then to be another toll increase application to be made to the SoS.

5.84 Without these legally binding assurances, any commitments are not secured beyond those offered to the Inquiry, apart from those governed by the internal governance of the private companies who have an interest in the Ferry Company and must therefore be treated with caution. If not legally binding, then when the next application is made to increase fares, we will be back to square one, with, in all likelihood, future users of the ferry being called upon to find the cash for whatever the next spending priority turns out to be.

THE NATIONAL TRUST

The case for the National Trust is reported substantially in the form of its opening and closing submissions.[119]

5.85 <u>Affordability of the ferry</u>: The ferry tolls compared to others around the country are exceptionally expensive. It is not always practical or equitable to assume that commuters can use foot or bicycle to reach their places of work and thus avoid the vehicle charges. Much of the work in the Studland area is in the service sector which is not highly paid. Some 70% of National Trust

[119] ID2 and ID12 The written evidence of the National Trust, including its counter fare proposal, can be found at II/122-138

Staff in Purbeck reside on the Poole side of the crossing and thus need to use the ferry to access work, or else make the long drive around the Harbour. The ferry fare as it stands, used for car-based commuting purposes, takes up around 11.6% of take-home pay of the average National Trust employee (when taking full advantage of discounts available). It is already difficult to attract and retain staff because of this cost. Further raises will make this situation more acute. This rationale also applies to local residents, many of whom are older and living on pensions, who need to access Poole for healthcare and provisions. Car use is key.

5.86 Whilst mileage-based comparisons are used to suggest that the ferry offers comparable value for money, this does not take into account the additional time factor this builds into the day for regular commuters. This easily adds an additional 90 minutes travel time each day, which is significant for individuals and families.

5.87 As set out in the Bournemouth-Swanage Motor Ferry Act, 1923 (1923 Act) the ferry was created *'to provide a more direct means of communication between Bournemouth and Swanage and be of local and public advantage'*. Nearly 100 years later, that regular users cannot afford this more direct means of communication does not seem to be of local or public advantage.

5.88 Right of free access to Toll road: The 1923 Act gave rights for the Ferry Company to raise a toll for the use of the Ferry Road, as well as the use of the Ferry itself. The Act also included provisions for certain users to have free use, without toll, of the Ferry Road. S.97(6) sets out these benefits that the Bankes Settled Estates, now the National Trust, would enjoy. The Ferry Company's current justification for increasing the toll is to secure a reasonable financial return from all its assets, including the Ferry Road. Since the separate road toll was removed, it can reasonably be assumed that a proportion of the single toll charge includes a return on the valuation or investment in the Ferry Road.

5.89 It is The National Trust's case that whenever its employees, and anyone else who should benefit from s.97(6) pays a single toll, it is in fact paying a sum for use of the road and that should not be liable for the payment of this proportion of the charge. Any new schedule of charges should, therefore, set out the specific rate applicable to the Ferry only proportion of the charge due to be paid by the beneficiaries of s.97(6). Alternatively, the Ferry Company could remove any value of the Ferry Road in their calculation of the reasonable return to reach a revised single toll charge for the various types of vehicles and passengers.

5.90 Estimated costs and ferry replacement plans: The requirement for toll increases is based upon a need for the Company to replace the current ferry in 2032 with a new ferry, expected in service in 2034. The calculations are based upon raising £12.8 million for the replacement, less borrowings that can be up to £5 million, by increasing current toll levels.

5.91 In a recently added statement to the Toll Inquiry appendices, the Ferry Company made the following statement:

"*To meet this priority,* [the Company] *is today making a public commitment to carry out ongoing robust investigations into emerging environmentally -*

friendly alternatives to diesel propulsion for the replacement of the Bramble Bush Bay, which is due to be ordered in 2032.

Currently, Naval Architects do not believe there is a viable non-diesel alternative drive system available on the market and the costs of unproven emerging technologies are an unknown. However, as and when alternative power sources become available, SFC will continue to evaluate their viability and sustainability. These alternative power sources will include but not be limited to electric, hydrogen and biofuel".[120]

5.92 The statement is weakened by the addition below that suggests this is a possibility not a firm commitment for the 2032 replacement:

"Alongside increases in efficiency, cost savings and the commitment from the Directors not to pay dividends to the owners until the ferry replacement fund is topped up, sound financial planning also ensures that a replacement ferry – ideally a more environmentally-friendly one than the Bramble Bush Bay – can be purchased, when it is judged necessary by the Company's Naval Architects."[121]

5.93 It is accepted that ferries powered by cleaner technologies are still fairly new. However, if this is a genuine intention, rather than a populist statement, it is of concern that the finances put forward justifying the fare increases are based upon a quotation of £12.8m for a replacement diesel ferry and the costs for maintaining the current ferry until that time. No exploration has been made of greener alternatives and what impact they might have on financial projections.

5.94 The submission includes links to green commercial ferry options to illustrate that this technology is already available in the commercial sector and the general consensus is that they offer significantly lower running costs to the tune of around 80% less. As a total of £7.5 million is costed in for maintenance and running of the diesel ferry between now and 2032, this is potentially a significant saving. Less time out of the water, will also offer opportunities for increased income and a better continuity of service for users.

5.95 Whilst the purchase price of newer ferries is still higher than traditional technologies, it is also possible to retrofit existing ferries with electric motors. Whilst the general consensus is that the hull of the existing ferry is in excellent condition, this might offer an alternative way to reduce running costs and improve service without raising tolls further.

5.96 It is appreciated that the detail is key. The general point is that no exploration of these options has been carried out before this Inquiry, thus the need for toll rises is predicated upon the quotation for replacing a diesel ferry, which does not reflect the ferry companies stated intent.

5.97 <u>Who should pay for the new ferry:</u> The financial projections indicate that current users will be those paying for the future ferry. This is not fair or logical. It would be possible to lease a ferry which, if paired with significantly lower running costs, would create a situation where sufficient revenue from future users may well be adequate for this purpose.

[120] I/144
[121] Ibid

5.98 Calculation of reasonable return on investment: The Company has approached the calculation of a toll charge with reference to the overall value of their assets and the need to obtain a reasonable return from the valuation of such assets. The 1923 Act provided the necessary rights for the Company to build a road and take land for certain other purposes. For the Ferry Road, in relation to the land owned by the Bankes Estate in 1923, the Company was given the right to enter into an easement and to take a conveyance of other land. These rights are set out in s.97(1)(a & b). Further restrictions of sale were applied to these rights and lands and on the Company by s.97(16). The National Trust is not aware of an easement or a conveyance having been agreed.

5.99 The National Trust is the successor to the Bankes Estate via a Deed of Assent dated 19 August 1982, the first page of which clearly identifies that all of the Bankes Estate (Bankes Land) was vested to The National Trust, including the Ferry Road verges. The final section of this page of the document vests all of the late Mr Bankes' remaining interest in property in the Parish of Studland to The National Trust. No evidence has been produced to indicate that this would not have included the freehold of the width of the carriageway of the Ferry Road. The carriageway of the Ferry Road remains unregistered. If the Company owns the carriageway, why have they not registered it despite having registered other lands acquired by them.[122]

5.100 A combined value of £11.529 million is shown on the balance sheet of the Ferry Company for the year ended 31 March 2019 for the value of land, road and slipways.[123] The balance sheet notes that the land occupied by the buildings, causeway and slipway is freehold. This amounts to 0.6 acre at South Haven. It further notes that the 2.5 miles occupied as the Ferry Road, is held in perpetuity under the terms of the 1923 Act.

5.101 The Ferry Company is not claiming ownership of the road. The description is 'held in perpetuity'. However, when considering the impact of this term on the overall valuation on the balance sheet, it feels a little disingenuous. The Ferry Company does not 'hold' Ferry Road and has not adequately explained the basis on which it considers to have rights over it. If the Company does have an easement, it is crucial to understand how this balance sheet figure was reached, in order to understand if the valuation upon which the Ferry Company seeks reasonable return is fairly assessed.

5.102 The Gerald Eve valuation, carried out for the Company in 2015, made an assessment in terms of values which are the basis of the balance sheet figure. Whilst it refers to the perpetual interest, it gives no legal basis for the interest. The restriction on disposal of the Bankes Lands, and the lack of freehold ownership of the Ferry Road, are material factors in the valuation of the assets of the Company and as such any valuation that is relied upon to calculate a reasonable return, and subsequently used to set new toll charges, should refer specifically to the legal status of these assets.

5.103 If the Toll revision calculations are based on a valuation where the assumptions are materially incorrect or the valuer has not been fully appraised

[122] When the Land Registry registered The National Trust's Title under DT350216, it appears that the exclusion of the carriageway was an error – the registration was done as part of a wider project which did not afford time for detailed analysis.
[123] I/46

on restrictions on sale, it is submitted that the whole set of calculations are not reasonable due to a gross over-valuation of the land assets and are therefore built on sand.

5.104 Whatever view is taken of the reasoning above, a crucial consideration is whether it is appropriate for what was given freely by the Bankes Estate under an Act of Parliament '*to provide a more direct means of communication…. and to be of public and local advantage'* should now be used as the basis of a valuation from which the Ferry Company are seeking to make financial return. Many such ferry operations are in public ownership, possibly for this very reason.

5.105 Finally, section 12 from the 2019 accounts of the Ferry Company indicates that the Ferry Company has entered into a composite guarantee with four other group companies in respect of bank overdrafts. As the objective of the proposed toll raise is to create a fund to purchase a new ferry, it seems necessary that such savings are protected from being potentially used as a guarantee against overdraft in other parts of the Fairacres Group trading activities. Without some kind of ringfenced Trust fund arrangement, any savings made could be used to manage overdraft issues elsewhere. If a decision is made to accept the proposed raises, it seems necessary for a simultaneous order directing how these monies are protected and used for this purpose only.

5.106 The National Trust also submitted a variable pricing model for the Ferry which was consulted on during the adjournment.[124]

5.107 <u>Comments on the counter proposal by the Consortium:</u> The rationale behind this alternative proposal is to attempt to align the toll increases with the Consortiums goals for sustainability in terms of transport, highways use and infrastructure. The National Trust as a conservation charity, recognises this and shares these aspirations. We also note that one of the key objectives of the proposal was to demonstrate that there was an alternative way for the Ferry Company to achieve its financial targets (whether the need is disputed or not). We agree with this exploration of options and believe that wider issues, such as sustainability and utility of the ferry, should be considered when understanding the financial goals of the Ferry Company. The Trust's concerns with the proposal relate to the impact of the toll rise on local car users and the wider practicality of their proposals at the current time.

5.108 The Consortium quotes a number of key policy statements that they are obliged to implement that effectively inform their suggestion of a maintenance of toll fees for walkers and cyclists but increases to be borne by all vehicles. Whilst we share the aspiration for sustainable travel, the approach will not deliver this outcome.

5.109 The Ferry was created to be of local and public advantage and the co-operation of the Bankes Estate in granting interests in its land, at no direct cost to the Company, reflected its support of these original purposes. The rights granted

[124] **Inspector's note** – Ms Churcher confirmed orally to the Inquiry that the Trust's counter proposal was not a finely tuned, fully worked up model equating to a proposal for consideration. Rather, it was simply intended to stimulate discussion, recognising the need for a replacement ferry. It was also confirmed that no formal questionnaire or surveys had been undertaken to inform it.

reflected its concerns of the risk that later incarnations of the ferry operations would begin to diminish these. The rights conferred on the Ferry Company to have an easement over the ferry road, and the ability to occupy land free of charge for the purposes of the ferry on condition that it returned them to the original owners or their successors should the operation ever cease, have already been eroded by the actions of the Ferry Company in its various ownerships since the first Act in 1923.

5.110 The Studland side of the Ferry is located a couple of very exposed miles from the nearest village and facilities. The road is narrow, often significantly congested and is subject to a speed limit of 60 mph. The Ferry Company has yet to share Council and National Trust aspirations for a cycle lane in place of parking along one side of the road and does not wish to see a reduction in speed limit to 40 mph along the private road section. It is currently not clear if cycling infrastructure improvements can be achieved without Ferry Company consent, as the legal situation over who has what control is complicated. The original intent was for the road to pass into Public Ownership in 1988. The local authority declined to take on this responsibility at this time, so Ferry Road responsibility and liabilities remains with the Ferry Company. As the road is in a SSSI, a new cycle lane is unlikely to be legally possible without loss of current road width, which could be problematic. The Consortium quotes that Active Travel England have the power to inspect Highway Authorities. Ferry Road is operated by way of an easement on privately owned land, so would not come under Active Travel England scope.

5.111 The road is fundamentally unsafe to cycle upon and it will take some time to resolve this situation. Beyond the ferry road itself, there is no continuing cycle infrastructure, so the ongoing journey continues to be less than ideal. Whilst the National Trust would be very supportive of achieving improvements, the wider challenges to this are recognised.

5.112 It is unrealistic to expect many regular users to adopt bike or foot travel as an alternative to the car to reach either Bournemouth, Poole or Swanage. As described, the road is exposed, un-lit, hilly, over five miles to population centres either side and is dangerous. It is highly unlikely that families with children, or those not in great physical health, could walk or cycle to reach the ferry, let alone continue with their onward journeys on either side. The time factor for walking is also a deterrent for those needing to use the ferry for general life purposes such as commuting, shopping, healthcare, family visits etc. In terms of equality, the Consortium proposal does not seem to be fairly weighted towards those who cannot cycle or walk. For regular journeys, those that can already do so, as it is so much more affordable. The 2011 census data shows that around 85% of people coming to and from Purbeck for work do so using vehicles, reflecting the reality of living and working in rural areas with large distances to reach workplaces. The current hourly public bus service is not regular enough, nor has any flexibility in route or timings, to support the hospitality sector, so is not a realistic option in many cases.

5.113 In terms of National Trust staffing and local community engagement, the bike/ foot toll reduction will not create more regular users. Neither will it have much of an impact on leisure users, who do not seem to find the current toll unacceptable. Thus, locals seem to be unfairly bearing the weight of the Consortium's toll proposals.

5.114 The price for car travel is already seen as beyond the affordable point by most regular users. This can be evidenced by local feedback, low year-round usage of the ferry, and difficulty in recruiting staff. Using information extrapolated from the Ferry Company submissions, the ferry is only around 50% full across the year. This figure drops to 22% in the winter months. Data from the 2011 Census indicates that around 7,000 cars travel for work each way in and out of Purbeck each day. The ferry runs at least half empty between 7.00 - 9.00am and 4.30 – 6.30pm during the off season. Thus, only 576 vehicles on average use the morning or evening commuter slots each day. Whilst it is unlikely that all 7000 commuters are likely to need the ferry, only 576 more of the 7000 would be needed for it to be full. An additional 1,152 cars each day avoiding the 44 mile detour would have a more significant environmental benefit than reducing bike and foot passenger tolls. It would also contribute to reducing congestion on the alternative route which, during the period of extended ferry shut down in 2019, was considerable at times.

5.115 The charges are also out of line with other similar ferry crossings across the country. Whilst sharing the Consortium belief that single car users should probably pay the higher fee for ferry use, and that regular users should benefit from a discount, the Trust differs as to what these charges should be in practice. The current price is £4.50 for one-off use, reducing to £3.40 with maximum discount for a car. The Consortium proposal is for this to rise to £6.50 for one-off use, £4.61 with maximum discount.

Ferry	One off cost	Regular user cost
Dartmouth Higher Ferry	£11.50 return	£1.55 single
Dartford Crossing	£2.50 single	£20 a year or £10 for 50 crossings, plus 20p for each additional crossing
Falmouth (Falmussel)	£7 single	£2.30 single
Tamar-Torpoint	£2 single	£1 single
Cowes Floating Bridge	£2.40 single	£1.80 single

5.116 Although many are in public ownership, the National Trust is keen to understand why the current and proposed tolls for the Sandbanks Ferry are so high in comparison. Even those in public ownership would not be able to run with significant deficits in their operating costs.

5.117 It would seem logical that greater affordability for regular users would create increased ferry usage year-round, which would bring in more income in the non-visitor season. An extension of this logic would be that the current toll proposal may create a net decrease in income for the Ferry Company. As the price becomes less affordable there may well be less usage by locals.

5.118 To conclude, use of land associated with the rights to run the Ferry was given without charge by the Bankes Estate (now National Trust) to improve local communications. This is a material factor in the setting of any new toll charges. It is not equitable to justify any toll increase on a notional return on asset values, when those assets were freely given at the outset.

5.119 We object to the Ferry Company proposal, and the alternative proposed by the Consortium, on the grounds that neither are in the local interest and would actively reduce the ability of people living on either side of the harbour to link across, creating greater traffic on the alternative route, more car based pollution, difficulties in recruiting and retaining staff and real hardship and reduced opportunities for many as a result.

5.120 With advances in technology a smarter charging approach, including the use of number plate recognition to improve efficiency of charging is much more possible. Investment in cycling infrastructure should be part of all of our obligations as landowners and business operators in the area. Greater environmental improvements could be achieved by moving earlier to a more sustainable propulsion fuel for the ferry.

5.121 Although supportive of the aspiration of the Consortium to increase sustainable travel, we feel that because of the challenging rural location and no current onward safe biking network, this aspiration cannot be achieved through manipulation of ferry charges to encourage change to cycle use. We do, though, feel that a significant reduction in fees for regular users would contribute to greater overall use of the ferry and a net reduction in car miles travelled, thereby reducing pollution and carbon emissions. We therefore ask if an off-season trial period could be used to understand if a significant reduction in ferry fees for potential regular ferry users would help the Company achieve its financial goals.

CORFE CASTLE PARISH COUNCIL

The case for the Parish Council is reported substantially in the form of its original written submission and the speaking notes of Councillor Dru Drury, which were handed up to the Inquiry. [125]

5.122 The approach taken by the Consortium is supported and the revised application from the Applicant, which includes an undertaking to investigate alternative greener methods of propulsion and freezing the charges for pedestrians and cyclists, as well as improving the discounts on pre-purchased tickets, is welcomed. That said, other fare increases are excessive in the early years, although this has been levelled out in the later alternative submissions.

5.123 A reasonably large increase in fares will cause drivers to increasingly cease using the ferry and get to Studland and Swanage by using alternative routes, including the A351 through Corfe Castle. The evidence of Mr Thomas, for the Applicant, shows that the number of crossings by cars are reducing.[126] There appears to be no evidence that this is linked to fare increases, but it is clearly happening. At the same time, tourism to Purbeck is not reducing so the additional travel must be by road. We have also heard from the Pig Hotel about their concerns about the negative impact of a large fare increase on their staff and customers, and have been told by representatives of Studland Parish Council (Messrs Boulter and Mr Stobart) that their residents would use alternative routes in the event of a large price increase.

[125] II/68-69 and speaking notes at ID11
[126] I/159 paragraph 1.3

5.124 Although 2020 has not been a typical year, we have definitely seen an increased level of traffic through Corfe Castle. There are only two routes into Swanage, a major tourist destination, one is the route via the ferry, and the other is via the A351 which passes directly through Corfe Castle. Corfe Castle has a population of some 800. It is a very picturesque village, some two thirds of which is a Conservation Area. It also lies within an AONB. The village receives around 300,000 visitors a year, many coming to visit the castle which is a national monument managed by the National Trust. The main road which carries all traffic to Swanage, including tourist traffic, local and residential traffic, together with large delivery lorries, buses and up to 70 movements a day each way with lorries carrying stone from the quarries which all lie to the south of Corfe, has a clear choke point in the middle of the village, where it turns at nearly 90° on the edge of the square.

5.125 This road is already under extremely heavy usage. During the Covid crisis, when the ferry was shut last year, the A351 was subject to many substantial traffic jams and delays. This has a serious effect on the local economy, as Purbeck needs to bring in staff, often in the tourist industry, who struggled to get in to work. People from Purbeck also travel to work in the Bournemouth and Poole area using the ferry. Increased ferry prices will drive more people onto this alternative road route. That additional use of the A351 will cause even more congestion on the narrow road where it passes through Corfe.

5.126 It is accepted that there is a clear need to replace the existing ferry at some point in the near future, but any ferry replacement reserve should be ring-fenced so that it cannot be used for any other purpose. The views of the other Councils on this point are endorsed. The largest onshore oil field in Europe (the Wytch Oil Farm and collecting station) is located within the Parish. The operating company, Perenco, has a commitment to return the site to its original state when they finish extracting oil around 2038. It is understood that they have set up a ring-fenced account to enable this to be done, even if the company goes out of business or is sold. As an alternative, the Ferry Company should commit to obtaining a marine mortgage or other method of funding. There is support for a green method of propulsion for any new ferry that is procured in the future.

5.127 Mr Kean's confirmation that there are no plans for the new card system to be able to be used on a shared basis between friends and family is disappointing. Books of tickets can be freely shared, so not to also allow this for use of the card is a step backwards.[127]

LANGTON MATRAVERS PARISH COUNCIL

The case for the Parish Council is reported substantially in the form of its original written submission[128] and the oral presentation by Councillor Knight at the Inquiry.

5.128 <u>Fares for pedestrians and cyclists:</u> The application as revised now freezes the prices for cyclists and foot passengers, which is welcomed.

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[127] **Inspector's note** – this was clarified at the Inquiry by Mr Reynolds for the Applicant, in answer to my questions. See paragraph 3.4 above.
[128] II/98-99

5.129 Excessive profit: The proposed increase in fares for motorised vehicles is excessive. Whilst it is not unreasonable for a company to seek to make a profit, it is important, in the case of a monopoly, that the service provider should not exploit its position and should limit itself to a return which is reasonable. That is, an amount which is sufficient to pay a reasonable return to its investors and to ensure its future viability by making adequate provision for replacement of assets.

5.130 The Ferry Company seeks to justify its price increases based on a return on a spurious and debateable asset value. It does not reflect its liquidation value, re-sale value, nor the monies actually invested. In the case of a monopoly supplier, a return based on a percentage of turnover, or measured on share capital would be more appropriate. This would enable bench marking against similar monopoly suppliers to establish a reasonable and justifiable return. The Ferry Company's 2018 application was rejected in part, because the increase was deemed to be excessive. There is nothing of a substantive nature in the latest application which addresses this issue.

5.131 There are significant concerns about the robustness/reliability of the cost model put forward. A cost inflation of 3% is proposed, but not substantiated as a reasonable return or inflation to be expected. Other appropriate rates e.g. CFI, RPI, PPI, CPIH are all considerably less than 3%. An inflation rate of no more than 2.4% should be adopted, which would be in line with many of the price indices.

5.132 No guarantee as to the use of the ferry replacement reserve: While the Ferry Company has expressed an intention to build up a reserve for the purpose of purchasing a replacement ferry, it is not offering any legally binding undertaking to guarantee that this reserve will be used exclusively for the stated purpose. The Company's 2018 application was rejected in part, because no such guarantee was offered. There is nothing of a substantive nature in the latest application which addresses this issue.

5.133 Discounts for local users: Many local users are dependent on the ferry for getting to and from work, for essential shopping and for hospital visits. Mr Reynolds' clarification about the ability to share the electronic bulk purchase ticket is welcomed in this regard.

PETER BOWYER

The material points, taken from Mr Bowyer's written objections[129] and oral submissions at the Inquiry, are:

5.134 The higher toll charges will have a significant impact on the local economy and local businesses, and on persons in the community of Purbeck, many of whom are on low incomes. The value of those fixed incomes will fall if toll fares increase, with adverse impacts on the standard of living for residents. In short incomes will move from wage and salary earners to the owners of capital.

5.135 Over the last 40 years, there has been a fundamental redistribution of income and wealth in the Purbeck area. There has been a move away from the share

[129] Mr Bowyer's original objection to the application is item 4l of Dossier 4. Subsequent representations are found at II/140-178

of income that goes to labour in the form of wages, and in terms of capital. Increasing the tolls will increase that trend. The effect of that, is a change in the pattern of local consumption. Purbeck has a low wage economy. In 2019, average wages were in the region of £16,000pa. At the same time, average house prices were in the region of £400,000. Extrapolating that forward to 2020, that huge disparity creates a significant economic problem, particularly in terms of the affordability of property. In Studland, almost 50% of homes are second homes, with little positive impact on income and expenditure in the local community. On that context, there is a strong case to be made for having a high wage local economy, which could encourage the survival of businesses – they would become more efficient and more effective when they have to examine their costs at a higher level.

5.136 The ability of Purbeck residents to access skills is another important factor. The greatest level of acquisition of skills is between the ages of 16-24 through further education (FE). There is no FE provision in Purbeck. It can only be accessed by travelling further afield to Dorchester, Weymouth or Bournemouth/Christchurch and Poole. Anything that inhibits the ability of students to access FE will lead to a low level of skills. That is of significance because one of the key components of a high wage local economy is to increase level of skills. Higher tolls may well discourage young people being able to use the ferry to access that FE.

5.137 Viable local businesses that employ residents are important to the local economy, as evidenced by those speaking for the National Trust, the Pig on the Beach etc. The importance of local businesses giving something back to the community by employing local residents should not be underestimated. They need to demonstrate a corporate social responsibility, including the role and meaning of their organisation in the community they serve. There is a huge opportunity for Purbeck businesses, perhaps led by the Ferry Company, to do precisely that.

5.138 The 2009 Studland Parish Plan includes, at Action Point Tr9, a recommendation for an independent assessment of the cost justification for the ferry fares, with the Ferry Company encouraged to develop a discount scheme for Studland residents, irrespective of the number of tickets purchased (rather than the present bulk purchase discount which is available to anyone who can afford it).

5.139 The engagement of the Ferry Company with the local community since the last Inquiry is welcomed and is to be encouraged. Building on that, with greater engagement, it would be possible to develop a win-win situation for all parties in this area. The creation of a Citizens Assembly should be considered, where mutual dialogues could establish ways in which the Company could have greater flexibility in terms of pricing, including a means by which local businesses on the Isle of Purbeck and in Studland could work together.

5.140 We need to think very seriously about the local economy of the area. Toll increases adversely affect others and there should be ways other than a public Inquiry that can be explored by major stakeholders for examining how we can do that.

5.141 These views are recognised by the residents of the locality, who make use of the valuable ferry services and wish to see it continue to serve the needs of the local community which it was set up for.

PIG ON THE BEACH HOTEL AND RESTAURANT

The material points, taken from Tara Crabbb's written objection[130] and her oral submissions at the Inquiry, are:

5.142 This is a Studland business relying on staff who commute each day, and on guests. The proposed increases will significantly affect the daily commuting costs for staff (impacting both staff retention and recruitment) and could affect customers.

5.143 Even though staff are paid well, the tolls for an average household over a five week month would be in the region of some £170-£225, which is a huge sum. The business also seeks to recruit and develop students from the Bournemouth area. If they can't afford to commute, they will lose out on viable career opportunities. A discount structure should be introduced for regular users.

6. WRITTEN REPRESENTATIONS

6.1 In addition to original objections to the application by persons who didn't speak at the Inquiry,[131] written representations were also made by a further eight objectors.[132] The majority of issues raised are reflected in the concerns set out above. Other concerns identified include:

- The rural communities of Purbeck will not flourish if speedy access to the facilities of Poole and Bournemouth, including hospital services, becomes too expensive.
- The proposed increase will have a significant detrimental effect on all day visitors to Purbeck from the Bournemouth area, not just tourists. Day trip customers coming by car from Bournemouth already have to pay £9.00 return before they pay for parking and then for food and drink. This will affect the tourism/hospitality industry, the principal economic activity on the Isle of Purbeck.
- The Ferry Company operates a monopoly - the only alternative for the significant number of employees is a lengthy drive round Poole Harbour, adding to congestion and polluting CO_2 emissions. The monopoly should not be allowed to continue to control a major transport link in Purbeck and Sandbanks. Nationalisation has, and is being used elsewhere, particularly in transport, to maintain efficient services and safeguard the local communities.
- There is often congestion on the road to Poole via Sandford, especially in the morning and afternoon rush hours.
- The ferry is at half capacity or less for term-time all through the year. I used the ferry eight times in November. It was 50% full on all but one occasion. During May-October on dry days it is usually 90%-100% full between 10.00-18.00.

[130] II/179
[131] items 4a, 4b and 4i of Dossier 4
[132] II/96, 97, 120-121, 181- 184, 211-391 and 393-398

- The Ferry Company received a substantial insurance payment for loss of income as a result of the breakdowns in winter 2018 and summer 2019. However, even though they have been severely hit by those outages, losing virtually all their summer and autumn trade, local businesses cannot insure for the same eventuality, as there is still access by road.
- The right for the Company to run the ferry should be removed, the land compulsorily purchased and another company brought in to run it.
- The Service Level Agreement in the ferry licence simply states that the Company must operate a service 365 days a year unless the ferry breaks down. This is an incredibly loose and inadequate arrangement.
- The pandemic has occurred since the application was made, which will only have exacerbated the adverse impacts on the rural communities.
- The ferry operation has been highly profitable in recent years and will be in the future. In 2017, the Company made £1,244,007 profit before tax on a turnover of £3,056,480, a rate of 31%. The Company's own submissions to the 2018 Inquiry stated that '*the data table at appendix 5.1 shows that the Company's profit before tax as a percentage of sales is much more favourable than other companies in similar industries*.'

7. INSPECTOR'S CONCLUSIONS

7.1 The following conclusions are based on the oral and written representations to the Inquiry and on my inspection of the site and its surroundings. The numbers in parentheses thus [ ], refer to paragraphs in the preceding sections of this Report from which these conclusions are drawn.

Background

7.2 There has been a succession of toll increases since 2004, the last increase being authorised in 2015 when the maximum tolls chargeable were phased in over a three year period, up to April 2018.[133] In 2018, an application was submitted to increase the tolls again, over a further three year period. That application was unsuccessful.[134] There has therefore been no fare increase for vehicles over the last three years, with the fares for pedestrian and pedal/motorcycles having been the same since 2009.

7.3 With the exception of foot passenger and pedal/motorcycle fares, which it is now proposed would continue at their current rates, the amended application proposes incremental toll increases phased over a 12 year period up to 2032. As with previous applications, the increases proposed are intended to fund a replacement vessel, as well as providing a return on investment for shareholders.

The Statutory Criteria

7.4 The statutory criteria against which the application is to be judged are set out in s.6(3) of the Transport Charges &c. (Miscellaneous Provisions) Act 1954 (the 1954 Act)[4.3, 5.4] as amended by the Bournemouth-Swanage Motor Road and

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133 e.g. ID25 paragraph 143 - applications were made in 2004, 2006, 2009 and 2014
134 ID25 and ID26

Ferry Act 1986 (the 1986 Act). Its provisions set out three distinct considerations for the Secretary of State (SoS):[4.4- 4.7, 5.5, 5.6]

- the expenditure required on the working, management, maintenance (etc) of the undertaking;
- reasonable contributions to any reserve, contingency or other fund; and,
- a reasonable return on investment where appropriate.

Regard is also to be had to the financial position and future prospects of the Company. Moreover, any revision to the tolls should not result in the Company receiving an annual revenue either substantially less or substantially more than adequate to meet the expenditure and other costs, charges and expenses as are properly chargeable to revenue.

7.5 The discussion that follows is to be considered in the light of the governing legislation which provides the framework and remit for the scope of this Inquiry. In particular, I have no jurisdiction over the way the Company is structured or which accounting policies it adopts.

Expenditure on the working, management and maintenance of the undertaking[4.8-4.15]

7.6 While consistently expensive, the maintenance costs, and periods of time when the service cannot run, are otherwise not very predictable. This follows from the nature of the ferry as a complex mechanical craft. Outages of service caused by mechanical problems carry unpredictable high costs, as well as resulting in a complete loss of income.[135] [4.11, 4.60]

7.7 The evidence of Mr Hope also confirms that ship repair costs are increasing above the rate of inflation.[4.12] Another consideration is that whilst not required by statute, the Company keeps the ferry 'in Class' with Lloyd's Register, which imposes more onerous requirements in terms of maintenance and inspection than would otherwise be the case.[4.9, 4.60]

7.8 The direct costs, as set out in the Company's forecast profit and loss accounts up to 31 March 2032,[136] were not directly challenged. As well as ongoing repairs and maintenance to the ferry, the slipways, the road and buildings etc, these include scheduled refit works every other year. Major refits are undertaken every four years, when the ferry is taken down to Falmouth and put into dry-dock (financial years ending 31 March 2023, 2027, 2031). A minor refit is scheduled in the financial years ending 31 March 2021, 2025 and 2029. The re-fits result in the ferry being out of service for between two-three weeks for a minor refit, and six-nine weeks for a major refit,[137] during which times no income is generated.[4.10]

7.9 At the Inquiry, objectors queried the point of spending money on a major re-fit in year ending March 2031, when the ferry is due to be replaced. However, the new ferry would not come into service until 2034 – the current vessel would need to remain safe and seaworthy until then.

[135] I/53-64
[136] I/174 Appendix 2.2 to the evidence of Mr Thomas
[137] I/9 top of the page.

7.10 As at the 2018 Inquiry, objectors also queried the management charges shown on the accounts, suggesting that they represented an additional profit for the directors.[5.29a] In response, Mr Kean confirmed that the directors do not take salaries. Rather, the necessary work they do is covered by the management charges which are a direct cost incurred, not a benefit. No evidence was produced to contradict that or to suggest that the charges are excessive or otherwise unreasonable.

7.11 In my view, the application makes a sensible and realistic allowance for expenditure on the working, management and maintenance of the ferry, particularly when regard is had to the historic experience of those expenses. The forecast profit and loss accounts also take account of the absence of any income during both major and minor refits - the Consortium's proposal does not take into account the income reductions during refit years,[138] with the National Trust's proposal making no allowance for ferry refits at all.

Contributions to any reserve, contingency or other fund

7.12 The existing vessel, the Bramble Bush Bay, came into service in 1994. That there is a need for a replacement ferry at some time in the future, is not in dispute.[4.16, 5.126] Whilst the estimated replacement date has changed over the years, it is a matter of fact that the ferry is now some 26 years old and is heading towards the end of its anticipated life span of 25-30 years, as suggested in 2009.[139] An unexpected drive shaft failure in July 2019 led to wider repair and maintenance work being undertaken, the extent of which, combined with the ongoing routine major and interim refits, has extended the life of the ferry to around 2034. I have no reason to suppose that the ferry is likely to be economic to run beyond that, with likely increasingly unpredictable performance. There is also the possibility of regulatory changes.[4.16, 4.17]

7.13 Objectors maintained that any replacement ferry should be required to be powered by more sustainable methods, for instance by means of electric, hydrogen or biofuel propulsion.[5.36, 5.74, 5.91-5.96, 5.122, 5.126] Whilst it is beyond the remit of this Inquiry to specify the type of ferry as a suitable replacement, a recent press release by the Company made a public commitment to investigating more environmentally friendly alternatives.[140] Whilst that is not binding in any way, I see no reason why the Company would not, when the time comes, look at greener propulsion methods and the availability of any grant assistance that might be available to it at that time. There may also be regulatory changes that have implications for the type of propulsion. As indicated by Mr Hope during the Inquiry, if the tolls increase in line with the revised application, the Company is, in practice, as likely to be able to afford a 'green' ferry as a diesel-hydraulic replacement when the time comes. I have no reason to doubt that.

7.14 Replacement on a like for like basis, that is a diesel powered hydraulic craft, is estimated as being in the region of some £12.8 million in 2032,[141] the time

[138] see Mr Thomas I/168 paragraph 5.1.2
[139] since 2004, various dates have been referred to at the various Inquiries as to the life expectancy of the ferry: in 2009 it was suggested that this was between 25 and 30 years i.e. 2019-2024; in 2014, it was suggested that the ferry would need to be replaced in 2021, by which time it would have been in service for some 27 years; at the 2018 Inquiry, the date had moved to 2026. (ID25 paragraph 143)
[140] I/144
[141] e.g. I/8 paragraph 2.4

when an order would need to be placed to secure a replacement in service by 2034.[4.1, 4.16, 4.17, 4.20] Allowing for inflation, the cost has been consistent throughout the previous Inquiries and I have no reason to suppose that it is not realistic.[4.18, 5.16, 5.90] The replacement is to be funded by the Ferry Replacement Reserve (FRR) plus borrowings of up to £5 million, being the maximum loan the Company can seek, as set out at s.11 of the 1986 Act.[4.19] [142].

7.15 In light of the poor performance of the FRR following approved toll increases in previous years, the 2018 Inspector and objectors at this Inquiry, had significant concerns about the security of the FRR and its protection for the intended purpose, and the absence of any certainty that the funds would grow such that by 2032 the money for a replacement would be available.[4.21, 4.26, 5.41, 5.42, 5.62-5.66, 5.70, 5.132]

7.16 In the past, the payment of dividends and loans to other parts of the parent company (Fairacres Group Limited) were given priority over building up the FRR, notwithstanding that previous toll increases had been allowed largely on the basis of the need to build up the fund. In essence, the dividends were paid at the expense of building up the FRR. Mr Kean confirmed that since the last Inquiry, the Ferry Company directors have adopted a change in policy, with returns now ranked behind the FRR such that any risks are borne first by the shareholders.[143] [4.22-4.25, 5.16, 5.61] That is also confirmed in the evidence of Mr Thomas[144] and at Notes 1.17 and 1.13 respectively of the Accounting Policies for the years ended 31 March 2019 and 2020, which now set out that:

> '*An amount is being set aside over the period to 31 March 2032 to renew the motor ferry by the transfer of an estimated amount to the Ferry Replacement Reserve, when sufficient funds are available…..The directors have specifically ring-fenced this reserve for the purposes of the ferry replacement*.'[145]

That is a step change in comparison with previous years, as evidenced by the reports for years ended 31 March 2017-2018 which make no reference to ring fencing of the reserve.[146] Indeed, for the year ended 31 March 2018 for instance, the Note stated that:

> '*…as this is an allocation of profit and loss account reserves, it may be necessary, in the future, to utilise part of the provision to fund substantial other items of expenditure*.'[147]

7.17 In addition the parent company, Fairacres Group Limited, has provided a signed letter of undertaking to the SoS to the effect that it will, subject to certain caveats, procure the Ferry Company to:

[142] **Inspector's note** – whilst borrowings of up to £5 million would be available to the Company, Mr Thomas explained that, in reality a loan of £4 million or less was more likely, in order to allow some head room for contingencies.
[143] I/191-192 The policy is referred to in the accounts e.g. I/84 under the heading 'Results and Dividends'
[144] e.g. I/163 paragraph 2.2.3
[145] I/95
[146] II/311
[147] II/335 Note 1.18

- acquire and bring into operation a new replacement vessel by the time the current ferry reaches the end of its useful life (expected to be January 2034; and,
- maintain net assets of not less than £15 million (as shown in Fairacres' accounts) until the replacement vessel is in operation.[148]

7.17 In terms of how the arrangement works in practice, the likely cost of a new ferry in 2032 (based on an estimate provided in March 2019)[149] is £12.8 million (based on the forecasts at Appendix 2.2 to the updated evidence of Mr Thomas).[150] That has been extrapolated forward over each of the 12 years 2020-2032. In any one year, the Ferry Company will put in to the FRR that sum which is the difference between the extrapolated price for a new ferry were it to be purchased at that time, less borrowings of up to £5 million plus the bought forward FRR balance.[151] So gradually, over the 12 years, the FRR would increase as the cost of a replacement ferry increases.[4.21]

7.18 Pursuant to that policy, due to the effects on profits after tax of the unprecedented mechanical failures in 2018 and 2019, and the suspension of service due to Covid-19, no dividend was paid to the shareholders in 2019 and 2020, with all profits after tax allocated only to the FRR. No dividends will be paid out for year ending 31 March 2021 either, with payment looking increasingly unlikely, or at best substantially reduced, for the year ending March 2022, due to the impact of the current lockdown restrictions.[4.25] [152] However, if the remaining projections hold up, the forecasts anticipate sufficient funds in the reserve to be able to purchase a ferry from 2023 onwards should that be necessary for some reason.

7.19 It is because the dividends are calculated against the ever increasing value of the FRR that there is not a straight line correlation in the forecasts. The amount transferred into the FRR varies, because it takes account of changes in the profitability of the Company year on year as a consequence of planned minor and major refits. For example, in a major refit year such as 2027, not only would the Company have to bear the costs of the works, but there would also be a material reduction in income.[5.17-5.23] All in all, I am content that the arrangement proposed is prudent, allowing the reserve to build gradually over the 12 years, whilst also allowing for a replacement to be purchased earlier should the need arise. As such, I consider it to be 'reasonable' in the terms of the 1954 Act, as amended.

7.20 Notwithstanding the arrangements now in place, many objectors continued to have significant concerns as to guarantees about the safety of the FRR, not least since previous toll increases were permitted on the basis that they were needed to build up the fund and yet, at year ended 31 March 2020, the fund

[148] I/67-68
[149] I/58
[150] In particular his Appendix 2.2 at I/174
[151] e.g. in 2027, the forecasts show the FRR at some £6,037,368 which, together with borrowings of £5 million, would be sufficient to fund a new ferry then, leaving £233,398 for the shareholders as dividends (the extrapolated cost of a new ferry at that time being estimated as £11,037,368. From 2028 onwards, the borrowings required reduce consistently from the £5 million maximum. In 2032, the FRR is forecast as £9.2 million which, together with borrowings of £3.6 million, would provide the £12.8 million required for a new ferry. Any profits after tax above that would be paid as dividends.
[152] I/166 paragraph 4.1.1

stood at only £3,357,762,[153] up from £2.6 million at 31 March 2019.[154] Various possibilities were mooted, including the use of an escrow, or a trust fund possibly with the SoS as the named beneficiary. Other suggestions included transferring Company assets to another limited company, altering the cross-bank guarantee and disaggregation of the shares.[4.28, 5.67, 5.68-5.71, 5.83, 5.84, 5.105, 5.126] However, I have no reason to doubt the veracity of the legal situation as set out in the requested Position Statement.[155] Whilst I recognise that Studland Parish Council did not have access to legal advice, I am mindful that the Consortium was represented by an advocate who raised no concerns in terms of the content of the Position Statement.[5.29d, 5.37] In essence, it would seem that none of the suggestions mentioned by the objectors would or could lawfully achieve exactly what they sought, including protection in the event that the Company went into liquidation.

7.21 There was some concern about the FRR being an accounting tool.[5.29d] Irrespective of whether the reserve is kept in a physically separate account from other monies or not, the main point is that safeguards are now in place to ensure that there are sufficient funds within the Company to obtain a replacement at any given time.

7.22 Going forward, I recognise that it would be at the discretion of the directors as whether they might change their policies again at some point in the future. However, as set out in the Position Statement, it is intended that the policy would be documented in the accounts each year. The Applicant's auditors would have to formally report on compliance with the policy in their annual reports which, together with the accounts, are provided annually to the SoS as required by s.35 of the 1923 Act.[1.14, 4.25, 5.38] All in all, I have no reason to suppose that that level of scrutiny, combined with the formal written undertaking now provided, offers the best protection that the Applicant can reasonably be expected to offer, or put in place, in order to safeguard the FRR for its intended purpose, without breaching company law.

Return on investment, where appropriate

7.23 Parliament chose to secure provision of the ferry operation by a private company, as opposed to a public or non-profit body. That choice was reaffirmed by the 1986 Act, which set out that the Company would continue to hold its existing assets and provide the motor road and ferry service. Thus, whilst the significant expense of providing and maintaining the service falls to the Company, not the public purse, the corollary to that is that the Acts do allow the Company to achieve a return on its investment.[4.34]

7.24 However, the terms '*where appropriate*' and '*reasonable return on investment*' referred to in s.6(3) of the 1954 Act (as amended) are not defined in statute. There are several alternative methods for calculating a return on investment, each giving different results. This led to considerable debate at the Inquiry given the difficulties in part, in defining the value of the investment. In essence, this boiled down to whether return should be measured by reference to profit, a metric such as turnover, or to Net Asset Value.

[153] I/90 Other Reserves (see Note 12 at I/98)
[154] I/9 paragraph 3.1.2
[155] ID10

Measured by reference to profit[4.47, 4.48]

7.25 Mr Tice, for Studland Parish Council, argued that returns should be measured against the Company's profits before tax, irrespective of how those profits were spent and regardless of whether it was ever paid out to investors. He maintained that even in circumstances where the Company might pay out no dividends for any of the next 12 years, instead placing all the profits into the FRR and spending all of that on a new ferry that would, in his view, amount to a return on investment.

7.26 I recognise that this approach is one way of measuring return. However, whilst the Company clearly relies on anticipated profit to build up the FRR, that is not the same as realising a profit on the sale of an asset at some point in the future, which is the nub of Mr Tice's proposition. It would be impractical in my view, to assume that there would be a return on investment using this method and therefore, it does not represent a reasonable proxy for investment for the purposes of this Inquiry.

Measured by reference to turnover

7.27 There was a suggestion that returns would be better measured against turnover, which might also enable benchmarking against other similar monopoly suppliers.[4.40, 4.51, 5.130]

7.28 As noted by the Consortium, measuring returns against turnover arithmetically returns higher yields, possibly 25%.[5.29c] However, the turnover of the Company is, in essence, measured through ticket sales. Importantly, in the context of this Inquiry, it is income received before deductions for expenses and is quite different from profit. I agree with the Applicant in this regard, that it does not relate directly to investment and thus is not a useful proxy for investment in the terms of the 1954 Act (as amended).[4.51]

7.29 As to measuring performance against the returns achieved by similar suppliers, there are many factors that contribute towards whether a company is fit for comparison, such as size, ownership, regulatory controls, geography, profitability and capital structure. Whilst the evidence of Mr Thomas sought to demonstrate similar returns to companies within similar SIC classes (inland water transport and passenger sea and coastal water transport)[156] the evidence of Mr Tice was that those classes included very large operations such as P&O and Stena, cruise lines, island ferries and excursion companies, bicycle hire, port management etc.[157] I agree with Mr Tice that on the face of it, they are not directly comparable with the ferry company the subject of this Inquiry. Whilst objectors referred to the fares for other UK ferries,[5.85, 5.115, 5.116] again, I have no means of knowing whether they provide direct comparators – it is not as simple as looking at a particular toll and the distance covered by the ferry. In the absence of any detail to enable direct comparisons, there would be a real danger of comparing apples with pears, limiting the usefulness of such an exercise.

Measured by reference to Net Asset Value (NAV)

7.30 This is the Applicant's preferred method, as it was at the previous Inquiries,

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[156] Standard Industrial Classification (SIC) codes referred to in his Appendices 5.2 -5.5 I/180-183
[157] II/111

with none of the last three Inspectors taking any issue in terms of the principle of the Company measuring its return on investment in this way.[4.41, 4.42] I recognise, in this regard that measuring returns in this way returns lower yields than other methods. That said, I need to come to my own view on the matter in the light of the evidence before this Inquiry.

7.31 The NAV is that set out in the same 2015 Gerald Eve Valuation[158] that was before the 2018 Inspector. It comprises an independent valuation prepared by Mr Glenwright, the purpose of which was to ascertain the capital value of the properties specified below for incorporation into the Company accounts. Although some at this Inquiry were critical of its age, it was confirmed in answer to my questions that, other than ongoing maintenance and repairs, there has been no material change in terms of the assets since 2015.

7.32 As of March 2015, the ferry operation and its associated assets were valued at £14,270,000.[159] The properties/assets valued are listed as:

- the northern slipway located at Sandbanks;
- the southern slipway and causeway located at Studland;
- the company office, flat and storage building located in Studland; and,
- the road between the Causeway and the National Trust's Knoll car park entrance, located in Studland (Ferry Road).[160]

Note 12 of the Valuation confirms that it also includes the value attributable to items of plant and machinery, including the ferry, berthing and anchor points and chains in use.

7.33 The Valuation was prepared on the basis of Existing Use Value, using the Depreciated Replacement Costs (DRC) methodology.[4.57] [161] Whilst objectors felt that this was not appropriate,[5.60] the evidence of Mr Glenwright was that the method is used for the valuation of specialised property where there is no active market for the asset being valued, confirmed in the Valuation as comprising circumstances where there is no useful or relevant evidence of recent sales transactions due the specialised nature of the asset, and where it is impractical to produce a valuation using other methods. In coming to that view, he relied on the RICS Global Glossary, which defines 'specialised property' as:

> '*A property that is rarely, if ever, sold in the market, except by way of a sale of the business or entity of which it is part, due to the uniqueness arising from its specialised nature and design, its configuration, size, location or otherwise*.'[162]

7.34 That seems to me to be a fair description of the Ferry Company. Moreover, whilst being very critical of the DRC method Mr Street, for the National Trust,[163] confirmed that he himself had used it to value infrastructural assets.[4.57, 5.29b)] Although objectors may have a preference for other methods,

[158] I/106-138
[159] I/118
[160] I/114
[161] I/107-108 and I/154-155
[162] I/155
[163] oral evidence

there was no evidence to demonstrate that a valuation based on the DRC methodology is incorrect in some way.

7.35 There was considerable opposition to the inclusion of Ferry Road in the NAV, particularly in the light of its legal status and the rights of the Company over it.[5.59, 5.88, 5.89, 5.98-5.105, 5.109, 5.118] The Valuation ascribes some £3 million for the 2.5 mile long Ferry Road. In response to some of the concerns raised, Mr Glenwright confirmed during cross-examination, that there was no double counting of the value for the road, for example by valuing the land beneath the road, the road itself and the right to control the road separately.[5.7]

7.36 Note 9 of the Valuation sets out that it was undertaken on the understanding that the Company retains either the freehold title to the properties, or has a perpetual interest or power over the properties vested in it by statute. Section 8 of Mr Glenwright's evidence adds that he considers that perpetual interest to be akin to a freehold.[164] Moreover, having been made aware of the potential issues in relation to the status of and rights over the road during the Inquiry, he confirmed that that did not alter his valuation of the land or the Company's assets.[4.55]

7.37 It is clearly not for me to come to a definitive view on the status of and/or the rights over the road as part of this process. I am mindful however, that s.4 of the 1986 Act vests the road in the Company in perpetuity, as long as the Company continues to operate the ferry. Moreover, it was the opinion of the advocate for the Consortium that the Company's statutory rights over the road are tantamount to ownership in fee simple/freehold.[5.36] There is no dispute that the Ferry Company has ongoing responsibility for, and has invested in the construction/ maintenance of, the road; the road allows customers to access the ferry on the Studland side; without control over it, the Company could not exist; indeed, control of the road and the operation of the ferry are indivisible.[5.7] Based on all the evidence that is before me, I agree with the findings of Inspector Stone in 2018 that the road is an integral part of the business[165] and consider that it is not unreasonable to include the value of Ferry Road as part of the overall NAV of the Company. The legal technicalities of road ownership do not undermine that valuation.

7.38 In the circumstances that prevail, I am satisfied that it is not unreasonable to measure returns by reference to NAV as being an appropriate method for considering return on investment in the terms of the 1954 Act as amended.

Reasonable return

7.39 Reflecting the prioritisation of the FRR over the payment of dividends, 0% dividends as a percentage of net assets were returned for the years ending 31 March 2019-2020. Dividends will not be paid either for year end 31 March 2021.[166] As confirmed in the evidence of Mr Thomas, the forecast average return as a percentage of net assets over the period 2019-2032 is 2.96% - or, purely prospectively from 2021 onwards, 3.46%,[4.59] down from an average in the original submissions of 3.66% for 2019-2032, or 4.27% for 2021-2032.[167]

[164] I/157
[165] ID25 paragraph 149
[166] I/166 paragraph 4.1.1
[167] I/20

That is considerably less than the figures of 8.85% referred to at the 2018 Inquiry.[168] I am also mindful that the projections do not take account of any implications on income etc of the current lockdown, the implications of which are likely to be felt into the next financial year. I have no reason to disagree with the comments of Mr Thomas to the Inquiry in this regard, that the forecast dividends for year ending March 2022 will, in all likelihood be less than stated in the forecasts and thus the average return over the whole period may be less than 3.46%.[4.59]

7.40 As to whether that is a reasonable return or not depends on appetite for risk. Objectors maintained that since the company operates as a monopoly, it should be considered as low risk, with a correspondingly lower rate of return.[5.129, 5.130] However, whilst this is the only company operating a ferry service across the harbour entrance, those wishing to travel from one side to the other have the option of going by road if they wish.[2.3, 4.61, 5.48, 5.123] Moreover, as demonstrated by the outages caused by mechanical problems over the last couple of years or so, maintenance costs are significant and unpredictable.[4.11, 4.60-4.62, 4.78] In addition, during periods when the ferry is not in operation, the Company loses its main income stream.[169] That has been exacerbated over the last year by the impact of the recent lockdowns and travel restrictions.

7.41 In the usual scheme of things, if an investor is unhappy with the returns they receive, they can sell their shares and re-invest with the hope of higher returns. That is not the case with the Ferry Company - shareholders have to accept the returns or sell the entire Company, assuming a willing buyer could be found.[4.63] I am also mindful that the Company cannot increase tolls without recourse each time to the Secretary of State. All told, I agree with the findings of the 2015 Inspector that, whilst the busines might generally be considered as low risk compared to some, it most certainly is not risk free.[170] To my mind, that justifies a higher return than might otherwise be the case.

7.42 Objectors consider that the rate of return should be measured against indices such as CPI or CPIH, on the basis that they are typically lower than the RPI.[5.51-5.54, 5.131] However, the rates of return referred to by Mr Stobart for Ofgem, of 3.7% and 3.95% based on CPIH,[5.57, 5.58] are in fact higher than the average rate of return forecast here. Based on those figures, it seems to me that the returns now sought by the Ferry Company are roughly aligned with other regulated utilities.

7.43 I note in this regard that the forecast profit and loss accounts were prepared at a time when the forecast RPI was 3%[171] and are based on a corresponding inflation rate.[172] Whilst this was a concern of objectors at the previous Inquiry, the Inspector noted that a consistent figure had been used across all data and therefore provided a consistent relative increase against which to judge the proportionate increases.[173] I have no reason to take a different view in this

[168] ID25 paragraph 150
[169] **Inspector's note** – the Company receives some, albeit very limited, income from rental of part of its lands for the siting of a mast
[170] ID23 paragraph 72
[171] I/164 paragraph 3.1.1. This compares to a rate of 3.6% at the time of the 2018 Inquiry (ID25 paragraph 137)
[172] I/174 – note at the top of the page
[173] ID25 paragraph 137

Inquiry. As far as I am aware, the RPI continues to be a widely used indicator in the UK, including for instance, by the Government in setting rail fares. As noted by Mr Thomas, the Chancellor advised in 2019 that RPI would continue to be used by the Government until 2030 (subject the outcome of consultation to be held in the future).[174] Whilst the 3% rate is higher than the current RPI and CPI rates, it is lower, albeit marginally, than the 3.1% RPI predicted by the consumer and marketing website *statistica.com* for 2022.[175]

7.44 I have found that it is not unreasonable to use NAV as a proxy for investment for the purposes of assessing the proposal against the considerations set out at s.6(s) of the 1954 Act as amended. Indeed, that was the approach adopted previously by Inspector Stone, with no issue taken by the SoS on this point. Moreover, the average return of 3.46%, which is significantly less than that advanced in the previous Inquiry, appears to be comparable to the returns suggested for instance, by Mr Stobart for Studland Parish Council, as being appropriate. All in all therefore, I am content that the proposal represent a reasonable return on investment when measured against NAV in the terms of the 1954 Act as amended.

When is appropriate

7.45 The principle of the shareholders taking a dividend from the Company is clearly appropriate, as it is allowed for by statute. It is not appropriate in my view however, to take dividends without first ensuring that there are sufficient funds in the FRR to ensure that a new ferry can be obtained when required, as has happened in the past. As set out above, measures are now in place to ensure that the FRR is prioritised ahead of the payment of any dividends. I am content that those arrangements are sufficient to ensure that returns are paid only where appropriate.

Annual revenue neither substantially less nor substantially more than adequate

7.46 The application to increase the tolls is premised on gradual increases for most vehicle classes over the next 12 years, up to a maximum amount in 2032. It is clear from my findings above that the forecast annual revenue over the next 12 years would not be substantially less than adequate to meet expenditure etc. However, were the application to succeed, it would be necessary to ensure that the fares did not increase any faster than as set out in the proposed schedule and that the bulk discount rates were adhered to[176] in order to ensure, as far as is possible, that annual revenue would not be substantially more than adequate in the terms of the 1954 Act as amended.[4.72, 4.73, 5.13,]

7.47 Were the SoS minded to make an Order approving the application, I have no reason to suppose that it could not be worded in terms to secure the phased approach set out in the Schedule, and that the bulk discounts shown are also made available, as opposed to relying on the goodwill of the Applicant to implement the increases no faster than as set out in the Schedule.[5.13, 5.31-5.35] Indeed, the Applicant confirmed support for such an approach in the event that it is considered to be necessary.[4.73]

[174] I/164 paragraph 3.1.2
[175] I/165 paragraph 3.1.4
[176] set out at Annex C below

7.48 Whilst welcoming the revised application, which in many ways either reflected or bettered its counter proposal, the Consortium had a residual reservation in relation to the final charge for a car in 2032, maintaining that it represented a return that was not reasonable. In the view of the Consortium, the final charge should be no more than £6.50 – as proposed, the final charge would be £6.75.[5.13c, 5.15, 5.25-5.28, 5.30] [177] However, the Consortium's counter proposal includes fewer, and consequently steeper increments.[178] I agree with the Applicant in this regard, that users of the ferry are likely to find gradual increments more manageable. Moreover, the Applicant's amended proposal includes greater discounts for bulk ticket purchases than is suggested by the Consortium. Of particular note though, whilst the Consortium proposes a lower final rate for cars, the overall income generated by its scheme would be slightly greater than the income generated by the Applicant's revised scheme. In any event, I have found the rate of increase included in the Applicant's schedule, which informs that final figure, to be reasonable. All in all, I am content that the final increase for single cars as shown in the Applicant's schedule is not unreasonable and would not give rise to annual revenue that is substantially more than adequate in the terms of the legislation.

7.49 As explained above, it should be possible, in principle at least, to buy a replacement ferry in any year after 2023. I am mindful, in this regard, that were a replacement to be purchased at any time before 2032, the increased tolls from then on could provide annual revenue that was substantially more than adequate, with the returns no longer being 'reasonable'. However, on the evidence before me, including the significant maintenance works recently carried out and the planned, ongoing re-fits, I have no reason to suppose that it would be prudent to replace the ferry materially earlier than 2034 as is forecast.

Other Matters

7.50 Studland Parish Council, among others, consider that peak fares have already been reached and that existing fares are enough to fund a new ferry.[5.45-5.47, 5.82] However, sufficient income is required in order to generate FRR funding over both the peaks and troughs of disposable income sufficient to purchase a replacement ferry on any one year, as well as generating a return on investment for shareholders as allowed for by the legislation. As demonstrated by a comparison of the 'with' and 'without' toll increases forecast profit and loss accounts,[179] where there is no increase in tolls, the income generated would clearly not be sufficient to do that.

7.51 Some were concerned about the reliability of the forecasts over a 12 year period [5.77-5.79] with criticism also that the proposed toll increases are excessive, with the discounted fares rising by some 35%.[5.76] I recognise that forecasting inflation over the next 12 years is never going to be an exact science. However, and whether or not other companies/business provide forecasts based on that length of time, a good sense check is the historical data over the last 12 years. Mr Thomas confirmed to the Inquiry in this regard, that that data had informed the forecasts. In any event, given that

[177] I/186
[178] II/70-81
[179] I/173-174

the expected lifespan of the current ferry is 12 years, it seems not unreasonable to me to secure a gradual toll increase over that period, in order to be able to purchase a replacement as and when, with the annual submission of the accounts to the SoS providing regular scrutiny. As to the overall toll increase, that is spread over the 12 year period and reflects the 3% rate referred to above, which I have found to be not unreasonable.

7.52 Studland Parish Council was concerned that no productivity assumptions had been built into the forecasts.[5.55] However, with a 'product' as specialised as this, it is not readily apparent what productivity improvements could be achieved: a larger craft to take more vehicles would necessitate widening of the slipways etc and there is no suggestion that the craft could make more, or any speedier crossings than it currently does. It is not clear either, how costs could be decreased.

7.53 Much local employment in the Studland area is in the tourist and hospitality sector, where wages can be lower than in other sectors. There was concern in this regard, that the proposed increase in fares would take a larger proportion of income for those travelling by car via the ferry, exacerbating existing difficulties for employers in recruiting and retaining staff.[5.75, 5.85, 5.87, 5.112-5.114, 5.119, 5.134, 5.135] In practice however, apart from an initial jump of 50p per trip for a car (equating to an increase of £5 per week assuming return trips) the subsequent annual increments range from between 10-25p per trip. These figures can be reduced with the bulk purchase discounts available over the next 12 years, which range generally between 28-32% for cars. I recognise that for some individuals, the initial increase could be significant, but there is no substantiated evidence as to the likely overall consequence for employment in the area. Moreover, against that generalised concern, I need to weigh the benefits of the proposal in terms of securing funds for a replacement vessel, as well as providing a relatively modest return for shareholders.

7.54 It was also argued that the proposed fare increases would reduce the number of local people being able to afford to use the ferry, to the extent that there would be a material increase in the number of people choosing to drive round to Poole and Bournemouth, which in turn would significantly increase congestion and CO_2 emissions on the roads through Corfe Castle, Wareham and Sandford etc.[5.48, 5.76, 5.119, 5.123-5.125, 6.1]

7.55 The trip by road for those not using the ferry is some 31 kilometres (19.26 miles) to Poole, or around 38 kilometres (23.6 miles) to Bournemouth.[2.3] The Government's mileage rates referred to by the 2015 Inspector have not changed, remaining at 45p per mile.[180] Assuming that the rate stays the same, a return trip on the ferry by car in 2032, would result in a cost saving of some £3.80-£7.74 depending on destination, increasing to a saving of £8-12 using the maximum bulk purchase rate.[181] I recognise, as did the 2015 Inspector, that this is a crude basis on which to make a comparison. Nevertheless, when considered together with the extra time that the road trip would take (estimated as some 90 minutes additional travel time each day)[5.86] it seems to me that the ferry route would still provide a highly competitive alternative.

[180] ID23 paragraph 83

[181] A return trip on the ferry by car in 2032 would be £13.50, compared with a return trip by road to Poole of £17.33, or £21.24 to Bournemouth (based on current Government mileage rates). The maximum discounted return rate for a car on the ferry (book of 50 tickets) would be £9.18. I/185 top table

In the absence of any robust substantiated evidence to the contrary, I see no reason why those making the journey by car, for whatever reason, including for further education,[5.28, 5.136] would be dissuaded necessarily by the price increase. Even more so when the additional time involved with that option is placed into the balance. I am also mindful of the confirmation by Mr Reynolds for the Applicant in answer to my questions at the Inquiry, that the plastic bulk purchase SFTC is not confined to use by a single person or a particular vehicle.

7.56 Whilst I do not have similar figures in relation to mileage rates for goods vehicles, again as noted by my colleague in 2015,[182] it is not in the interests of the Ferry Company to price itself out of the market. Taking into account the 28-32% bulk purchase discount available, together with the additional time it takes to drive round by road, and in the absence of any substantiated evidence to the contrary, I have no reason to suppose that the fare increases proposed would materially increase traffic and CO_2 emissions on the local roads.

7.57 The Consortium drew attention to sustainable travel policies in its Local Transport Plan (LTP) and the DfT's *Gear Change* policy (July 2020).[5.8-5.12, 5.108] Whilst there is no statutory obligation to take these into account in the context of this Inquiry, they are material considerations. The policies and guidance relied on seek to prioritise alternative means of travel to the private car, in particular walking and cycling.[183] As the amended toll scheme now retains the fares for foot passengers and cycles/motorcycles, there is no conflict with the strategic objectives and obligations for the constituent Districts.

7.58 A number of other matters were raised by objectors which are beyond the scope of this Inquiry. In addition to having no powers to direct the means of propulsion of the replacement vessel, there is no power available through the governing legislation to require that the Company provides or contributes to the provision of cycle infrastructure along Ferry Road,[5.110, 5.111, 5.120, 5.121] no matter how desirable such might be. There is no scope either to secure any change in the Acts under which the Ferry Company has to operate to allow it to borrow more than the £5 million limit imposed by statute,[5.73] or to influence matters such as the setting up of a Citizen's Assembly.[5.139]

7.59 It was suggested that more should be done to introduce a reduced tariff for local residents/businesses and/or peak/off-peak rates.[5.14, 5.133] However, as explained by Mr Thomas in oral evidence, there are problems in terms of managing that in practice, for instance, how might 'local' be defined. Also, a driver might join the queue for the ferry in an off-peak period, but by the time they got to the toll booth, the peak time had kicked in. In any event, that is not something, however desirable, that can be imposed through this Inquiry.

8. CONCLUSION AND RECOMMENDATION

8.1 There is no dispute that a replacement ferry will be required by 2034 (at which time the current ferry will be some 30 years old) or, that to ensure that it is in service by then, an order would need to be placed in 2032. In 2018, the SoS agreed with the significant concerns of Inspector Stone in relation to the proposal before him at that time, namely that there was no assurance as to

[182] ID23 paragraph 84
[183] II76-77 paragraphs 7 and 8

the date when a replacement ferry might be required; there was no assurance that the FRR would be safeguarded or would rise to the levels required to enable a replacement vessel to be obtained; and that the return on investment was not considered reasonable or appropriate given that it was secured ahead of contributions to the FRR and would be maintained at an artificial level that did not reflect the true performance of the Company.[184]

8.2 I consider that those concerns have been fully addressed by the current application and the arrangements now secured. In particular, the date for replacement of the ferry has been fully justified and accounted for in the forecast profit and loss accounts; the Applicant has now put in place all the provisions it reasonably can to safeguard the FRR for its intended purpose (so far as the Company is able to within the powers of the law) and, based on the forecast profit and loss accounts would be able to obtain a replacement from at least 2023 onwards (if required); the payment of dividends is appropriate in those years where there is a surplus of profits after investment in the FRR has been prioritised, with the return on investment (measured against NAV) being reasonable, at an average of 3.46% over the 12 years. Accordingly, I consider the proposed increases to be consistent with the statutory framework governing the ferry operation, as set out in s.6(3) of the 1954 Act, as amended.

8.1 I fully appreciate that the increase is viewed by many as inappropriate and that objectors will be disappointed with my conclusion. However, whilst the views of local residents and businesses are very important, they must be balanced against other considerations. I have not ignored those views in coming to my conclusion. I have taken full and careful account of all the representations that have been made, which I have balanced against the provisions of the relevant Acts and other material considerations. In the overall balance however, for the reasons set out above, the evidence in this case leads me to conclude that the application should succeed.

8.4 I therefore recommend that an Order be made confirming the toll increases proposed, subject to the maximum rates in any year as set out in the attached schedule at Annex C. Whilst the Applicant maintains that that proviso is not necessary, I consider it to be very necessary for the reasons set out above, otherwise the Company could, if it so wished, introduce the maximum fares (ie the fares before 2032) whenever it chose. That could, in some years, result in revenue over and above what I consider to be adequate in the terms of the legislation. The view of Mr Dubin, for the Consortium, is that such an approach is lawful.[5.31-5.35] I have no reason to disagree. In the event that the Secretary of State was to agree with my recommendation, it should be noted that the Applicant adopts Mr Dubin's submissions.[4.72, 4.73] If the Secretary of State was minded to make the Order in these terms, he may wish to take legal advice to ensure that it is a lawful approach within the terms of the relevant legislation.

Jennifer A Vyse
INSPECTOR

[184] ID26 paragraphs 6 and 7

ANNEX A
APPEARANCES AT THE INQUIRY

APPLICANT:

For the Ferry Company:

Paul Reynolds, of Counsel
He called

Tim Hope	of Burness Corlett Three Quays Naval Architects
Richard Glenwright	of Gerald Eve Property Advisors and Valuers
Kevin Thomas	of Rickard Luckin Accountants
Michael Kean	Managing Director, Bournemouth-Swanage Motor Road and Ferry Company

OBJECTORS:

For the Consortium (comprising Dorset Council, Bournemouth, Poole and Christchurch Council and Swanage Town Council):

Joshua Dubin, of Counsel
He called

Jack Wiltshire	Head of Highways, Dorset Council

For Studland Parish Council:

Councillor Nick Boulter	Chairman of the Parish Council
Malcolm Tice	Working party member and local resident
Eric Stobart	Working party member and local resident
Andrew Parsons	Working party member and local resident
John South*	Working party member and local resident

* Mr South was, in the event, unable to attend in person. His views were reported to the Inquiry on his behalf, by Mr Boulter.

For the National Trust:

Tracey Churcher	General Manager of the Purbeck Estate
Mark Street	Senior Estate Manager

Individual Objectors:

Councillor Stephen Dru Drury	Vice-chair, Corfe Castle Parish Council
Councillor William Knight	Chair, Langton Matravers Parish Council
Peter Bowyer	Local resident
Tara Crabb	General Manager, The Pig on the Beach Hotel and Restaurant

ANNEX B
DOCUMENTS

Letters submitted within the prescribed period in response to the original application (Dossier 4)	
4a	Maxine Bond
4b	Dorset CPRE
4c	John South
4d	Malcolm Tice
4e	Studland Parish Council
4f	Nick Boulter (writing as a local resident)
4g	Eric Stobart
4h	Andrew Parsons
4i	Worth Matravers Parish Council
4j	Swanage Town Council*
4k	Dorset Council*
4l	Peter Bowyer
4m	Bournemouth, Christchurch and Poole Council*

*These authorities combined forces for the Inquiry and are referred to in my Report as the Consortium.

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Documents handed up during the Inquiry

ID1	Applicant's Position Statement re ownership and rights over Ferry Road
ID2	Opening submissions for the National Trust
ID3	Opening submissions for Studland Parish Council
ID4	Opening submissions for the Consortium
ID5	Opening submissions for the Applicant
ID6	Bundle 1 attached to ID1 (comprising Acts of 1923, 1928, 1954, 1956 and 1986 plus Agreement between the National Trust and the Ferry Company dated 30 June 1986)
ID7	Bundle 2 attached to ID1 (comprising office copy entries and Google Maps images of the slipways)
ID8	Appendix MT3 (as amended 6/1/2021) to the evidence of Mr Tice (at Tab 28 of Volume II of Inspector's Bundle)[185]
ID9	Explanatory Note from the Consortium explaining the purpose, regulatory background and method of construction of the counter proposal set out in its representation.
ID10	Applicant's Position Statement on ring-fencing etc (trusts, escrow accounts and divestment etc) - submitted at Inspector's request
ID11	Corfe Castle Parish Council – Cllr Dru Drury speaking notes
ID12	Closing submissions for the National Trust
ID13	Closing submissions for Studland Parish Council
ID14	Closing submissions for the Consortium
ID15	Closing submissions for the Applicant
ID16	Applicant's Statement on statutory requirements for scrutiny of the Ferry Company accounts - submitted at Inspector's request to deal with a point of clarification
ID17	Objectors' response to the Position Statement at ID10 above
ID18	Applicant's final comments on ID17
ID19	Consortium response to ID10
ID20	DPI/G1250/09/27 Inspector's Report 27 May 2009
ID21	DPI/G1250/09/27 Inspector's Addendum dated 2 October 2009
ID22	DPI/G1250/09/27 SoS Decision Letter dated 16 November 2009
ID23	DPI/G1250/14/10 Inspector's Report dated 21 January 2015
ID24	DPI/G1250/14/10 SoS Decision Letter dated 23 February 2015
ID25	DPI/G1250/18/10 Inspector's Report dated 22 November 2018
ID26	DPI/G1250/18/10 SoS Decision Letter dated 12 December 2018

[185] The sheet was further amended during questioning of Mr Tice – the reference to 2022 at the top of the RETURN box, should be to 2021

ANNEX C
TOLL SCHEDULE

With regard to each class of traffic in columns 1 and 2 of the tables below, the toll chargeable for the use of the ferry shall not exceed the sum specified in relation to that class in column 3.

Part One

The tolls set out in this Part shall take effect from 1 April 2021 until 31 March 2022 inclusive.

Class	Category	Toll
		£
Class 1	a) Pedestrian (one way toll from Sandbanks) b) Pedestrian (one way toll from Shell Bay)	1.00 0p
Class 2	Pedal or Motor Cycle	1.00
Class 3	Passenger vehicle < 16 persons (cars)	5.00
Class 4	Passenger vehicle > 16 persons (coaches)	10.00
Class 5	Goods vehicle < 3,500kg (Cars)	5.00
Class 6	Goods vehicle 3,500kg - 20,000 (Trucks)	10.00
Class 7	Book of 50 tickets for pedestrians	45.00
Class 7b	Book of 100 tickets for pedestrians	85.00
Class 9	Book of 50 tickets for cycles	45.00
Class 9b	Book of 100 tickets for cycles	85.00
Class 10	Book of 10 tickets for Motor Cars	36.00
Class 11	Book of 50 tickets for Motor Cars	170.00
Class 12	Book of 10 tickets for Goods Vehicles (Trucks)	72.00
Class 13	Book of 50 tickets for Goods Vehicles (Trucks)	340.00
Class 14	Book of 10 tickets for Buses & Coaches	72.00
Class 15	Book of 50 tickets for Buses & Coaches	340.00

Part Two

The tolls set out in this Part shall take effect from 1 April 2022 until 31 March 2023 inclusive.

Class	Category	Toll
		£
Class 1	a) Pedestrian (one way toll from Sandbanks) b) Pedestrian (one way toll from Shell Bay)	1.00 0p
Class 2	Pedal or Motor Cycle	1.00
Class 3	Passenger vehicle < 16 persons (cars)	5.10
Class 4	Passenger vehicle > 16 persons (coaches)	10.20
Class 5	Goods vehicle < 3,500kg (Cars)	5.10
Class 6	Goods vehicle 3,500kg - 20,000 (Trucks)	10.20
Class 7	Book of 50 tickets for pedestrians	45.00
Class 7b	Book of 100 tickets for pedestrians	85.00
Class 9	Book of 50 tickets for cycles	45.00
Class 9b	Book of 100 tickets for cycles	85.00

Class 10	Book of 10 tickets for Motor Cars	36.72
Class 11	Book of 50 tickets for Motor Cars	173.40
Class 12	Book of 10 tickets for Goods Vehicles (Trucks)	73.44
Class 13	Book of 50 tickets for Goods Vehicles (Trucks)	346.80
Class 14	Book of 10 tickets for Buses & Coaches	73.44
Class 15	Book of 50 tickets for Buses & Coaches	346.80

Part Three

The tolls set out in this Part shall take effect from 1 April 2023 until 31 March 2024 inclusive.

Class	Category	Toll
		£
Class 1	a) Pedestrian (one way toll from Sandbanks) b) Pedestrian (one way toll from Shell Bay)	1.00 0p
Class 2	Pedal or Motor Cycle	1.00
Class 3	Passenger vehicle < 16 persons (cars)	5.20
Class 4	Passenger vehicle > 16 persons (coaches)	10.40
Class 5	Goods vehicle < 3,500kg (Cars)	5.20
Class 6	Goods vehicle 3,500kg - 20,000 (Trucks)	10.40
Class 7	Book of 50 tickets for pedestrians	45.00
Class 7b	Book of 100 tickets for pedestrians	85.00
Class 9	Book of 50 tickets for cycles	45.00
Class 9b	Book of 100 tickets for cycles	85.00
Class 10	Book of 10 tickets for Motor Cars	37.44
Class 11	Book of 50 tickets for Motor Cars	176.80
Class 12	Book of 10 tickets for Goods Vehicles (Trucks)	74.88
Class 13	Book of 50 tickets for Goods Vehicles (Trucks)	353.60
Class 14	Book of 10 tickets for Buses & Coaches	74.88
Class 15	Book of 50 tickets for Buses & Coaches	353.60

Part Four

The tolls set out in this Part shall take effect from 1 April 2024 until 31 March 2025 inclusive

Class	Category	Toll
		£
Class 1	a) Pedestrian (one way toll from Sandbanks) b) Pedestrian (one way toll from Shell Bay)	1.00 0p
Class 2	Pedal or Motor Cycle	1.00
Class 3	Passenger vehicle < 16 persons (cars)	5.30
Class 4	Passenger vehicle > 16 persons (coaches)	10.60
Class 5	Goods vehicle < 3,500kg (Cars)	5.30
Class 6	Goods vehicle 3,500kg - 20,000 (Trucks)	10.60
Class 7	Book of 50 tickets for pedestrians	45.00
Class 7b	Book of 100 tickets for pedestrians	85.00
Class 9	Book of 50 tickets for cycles	45.00

Class 9b	Book of 100 tickets for cycles	85.00
Class 10	Book of 10 tickets for Motor Cars	38.16
Class 11	Book of 50 tickets for Motor Cars	180.20
Class 12	Book of 10 tickets for Goods Vehicles (Trucks)	76.32
Class 13	Book of 50 tickets for Goods Vehicles (Trucks)	360.40
Class 14	Book of 10 tickets for Buses & Coaches	76.32
Class 15	Book of 50 tickets for Buses & Coaches	360.40

Part Five

The tolls set out in this Part shall take effect from 1 April 2025 until 31 March 2026 inclusive

Class	Category	Toll
		£
Class 1	a) Pedestrian (one way toll from Sandbanks) b) Pedestrian (one way toll from Shell Bay)	1.00 0p
Class 2	Pedal or Motor Cycle	1.00
Class 3	Passenger vehicle < 16 persons (cars)	5.40
Class 4	Passenger vehicle > 16 persons (coaches)	10.80
Class 5	Goods vehicle < 3,500kg (Cars)	5.40
Class 6	Goods vehicle 3,500kg - 20,000 (Trucks)	10.80
Class 7	Book of 50 tickets for pedestrians	45.00
Class 7b	Book of 100 tickets for pedestrians	85.00
Class 9	Book of 50 tickets for cycles	45.00
Class 9b	Book of 100 tickets for cycles	85.00
Class 10	Book of 10 tickets for Motor Cars	38.88
Class 11	Book of 50 tickets for Motor Cars	183.60
Class 12	Book of 10 tickets for Goods Vehicles (Trucks)	77.76
Class 13	Book of 50 tickets for Goods Vehicles (Trucks)	367.20
Class 14	Book of 10 tickets for Buses & Coaches	77.76
Class 15	Book of 50 tickets for Buses & Coaches	367.20

Part Six

The tolls set out in this Part shall take effect from 1 April 2026 until 31 March 2027 inclusive.

Class	Category	Toll
		£
Class 1	a) Pedestrian (one way toll from Sandbanks) b) Pedestrian (one way toll from Shell Bay)	1.00 0p
Class 2	Pedal or Motor Cycle	1.00
Class 3	Passenger vehicle < 16 persons (cars)	5.60
Class 4	Passenger vehicle > 16 persons (coaches)	11.20
Class 5	Goods vehicle < 3,500kg (Cars)	5.60
Class 6	Goods vehicle 3,500kg - 20,000 (Trucks)	11.20
Class 7	Book of 50 tickets for pedestrians	45.00
Class 7b	Book of 100 tickets for pedestrians	85.00

Class 9	Book of 50 tickets for cycles	45.00
Class 9b	Book of 100 tickets for cycles	85.00
Class 10	Book of 10 tickets for Motor Cars	40.32
Class 11	Book of 50 tickets for Motor Cars	190.40
Class 12	Book of 10 tickets for Goods Vehicles (Trucks)	80.64
Class 13	Book of 50 tickets for Goods Vehicles (Trucks)	380.80
Class 14	Book of 10 tickets for Buses & Coaches	80.64
Class 15	Book of 50 tickets for Buses & Coaches	380.80

Part Seven

The tolls set out in this Part shall take effect from 1 April 2027 until 31 March 2028 inclusive.

Class	Category	Toll
		£
Class 1	a) Pedestrian (one way toll from Sandbanks) b) Pedestrian (one way toll from Shell Bay)	1.00 0p
Class 2	Pedal or Motor Cycle	1.00
Class 3	Passenger vehicle < 16 persons (cars)	5.80
Class 4	Passenger vehicle > 16 persons (coaches)	11.60
Class 5	Goods vehicle < 3,500kg (Cars)	5.80
Class 6	Goods vehicle 3,500kg - 20,000 (Trucks)	11.60
Class 7	Book of 50 tickets for pedestrians	45.00
Class 7b	Book of 100 tickets for pedestrians	85.00
Class 9	Book of 50 tickets for cycles	45.00
Class 9b	Book of 100 tickets for cycles	85.00
Class 10	Book of 10 tickets for Motor Cars	41.76
Class 11	Book of 50 tickets for Motor Cars	197.20
Class 12	Book of 10 tickets for Goods Vehicles (Trucks)	83.52
Class 13	Book of 50 tickets for Goods Vehicles (Trucks)	394.40
Class 14	Book of 10 tickets for Buses & Coaches	83.52
Class 15	Book of 50 tickets for Buses & Coaches	394.40

Part Eight

The tolls set out in this Part shall take effect from 1 April 2028 until 31 March 2029 inclusive.

Class	Category	Toll
		£
Class 1	a) Pedestrian (one way toll from Sandbanks) b) Pedestrian (one way toll from Shell Bay)	1.00 0p
Class 2	Pedal or Motor Cycle	1.00
Class 3	Passenger vehicle < 16 persons (cars)	6.00
Class 4	Passenger vehicle > 16 persons (coaches)	12.00
Class 5	Goods vehicle < 3,500kg (Cars)	6.00
Class 6	Goods vehicle 3,500kg - 20,000 (Trucks)	12.00
Class 7	Book of 50 tickets for pedestrians	45.00

Class 7b	Book of 100 tickets for pedestrians	85.00
Class 9	Book of 50 tickets for cycles	45.00
Class 9b	Book of 100 tickets for cycles	85.00
Class 10	Book of 10 tickets for Motor Cars	43.20
Class 11	Book of 50 tickets for Motor Cars	204.00
Class 12	Book of 10 tickets for Goods Vehicles (Trucks)	86.40
Class 13	Book of 50 tickets for Goods Vehicles (Trucks)	408.00
Class 14	Book of 10 tickets for Buses & Coaches	86.40
Class 15	Book of 50 tickets for Buses & Coaches	408.00

Part Nine

The tolls set out in this Part shall take effect from 1 April 2029 until 31 March 2030 inclusive.

Class	Category	Toll
		£
Class 1	a) Pedestrian (one way toll from Sandbanks) b) Pedestrian (one way toll from Shell Bay)	1.00 0p
Class 2	Pedal or Motor Cycle	1.00
Class 3	Passenger vehicle < 16 persons (cars)	6.25
Class 4	Passenger vehicle > 16 persons (coaches)	12.50
Class 5	Goods vehicle < 3,500kg (Cars)	6.25
Class 6	Goods vehicle 3,500kg - 20,000 (Trucks)	12.50
Class 7	Book of 50 tickets for pedestrians	45.00
Class 7b	Book of 100 tickets for pedestrians	85.00
Class 9	Book of 50 tickets for cycles	45.00
Class 9b	Book of 100 tickets for cycles	85.00
Class 10	Book of 10 tickets for Motor Cars	45.00
Class 11	Book of 50 tickets for Motor Cars	212.50
Class 12	Book of 10 tickets for Goods Vehicles (Trucks)	90.00
Class 13	Book of 50 tickets for Goods Vehicles (Trucks)	425.00
Class 14	Book of 10 tickets for Buses & Coaches	90.00
Class 15	Book of 50 tickets for Buses & Coaches	425.00

Part Ten

The tolls set out in this Part shall take effect from 1 April 2030 until 31 March 2031 inclusive.

Class	Category	Toll
		£
Class 1	a) Pedestrian (one way toll from Sandbanks) b) Pedestrian (one way toll from Shell Bay)	1.00 0p
Class 2	Pedal or Motor Cycle	1.00
Class 3	Passenger vehicle < 16 persons (cars)	6.50
Class 4	Passenger vehicle > 16 persons (coaches)	13.00
Class 5	Goods vehicle < 3,500kg (Cars)	6.50
Class 6	Goods vehicle 3,500kg - 20,000 (Trucks)	13.00
Class 7	Book of 50 tickets for pedestrians	45.00

Class 7b	Book of 100 tickets for pedestrians	85.00
Class 9	Book of 50 tickets for cycles	45.00
Class 9b	Book of 100 tickets for cycles	85.00
Class 10	Book of 10 tickets for Motor Cars	46.80
Class 11	Book of 50 tickets for Motor Cars	221.00
Class 12	Book of 10 tickets for Goods Vehicles (Trucks)	93.60
Class 13	Book of 50 tickets for Goods Vehicles (Trucks)	442.00
Class 14	Book of 10 tickets for Buses & Coaches	93.60
Class 15	Book of 50 tickets for Buses & Coaches	442.00

Part Eleven

The tolls set out in this Part shall take effect from 1 April 2031 onwards.

Class	Category	Toll
		£
Class 1	a) Pedestrian (one way toll from Sandbanks) b) Pedestrian (one way toll from Shell Bay)	1.00 0p
Class 2	Pedal or Motor Cycle	1.00
Class 3	Passenger vehicle < 16 persons (cars)	6.75
Class 4	Passenger vehicle > 16 persons (coaches)	13.50
Class 5	Goods vehicle < 3,500kg (Cars)	6.50
Class 6	Goods vehicle 3,500kg - 20,000 (Trucks)	13.50
Class 7	Book of 50 tickets for pedestrians	45.00
Class 7b	Book of 100 tickets for pedestrians	85.00
Class 9	Book of 50 tickets for cycles	45.00
Class 9b	Book of 100 tickets for cycles	85.00
Class 10	Book of 10 tickets for Motor Cars	48.60
Class 11	Book of 50 tickets for Motor Cars	229.50
Class 12	Book of 10 tickets for Goods Vehicles (Trucks)	97.20
Class 13	Book of 50 tickets for Goods Vehicles (Trucks)	459.00
Class 14	Book of 10 tickets for Buses & Coaches	97.20
Class 15	Book of 50 tickets for Buses & Coaches	459.00

-------------------------------------END OF SCHEDULE -------------------------------------

Extraordinary Council Meeting – 26th February 2024 **Item 4)**

Appendix E

Extract from Studland Parish Council:

Ferry Company application to increase toll charges

"Studland Parish Council (SPC) opposes the attempts of the Ferry Company to re-negotiate the terms of its toll system only 3 years into a 12 year agreement. The new terms proposed by the Ferry Company will be to the detriment of both local people in Dorset and BCP, and to visitors, and to the detriment of all categories of ferry user – car users, pedestrians, cyclists, goods vehicles: everyone. SPC also believes that the ferry company is perfectly viable without any changes.

Studland Parish Council welcomes Dorset Council's opposition to the application, and calls on all local authorities in Dorset and BCP, together with commercial and private users, to oppose the application by the Ferry Company."

Briefing note:

The current toll structure is the one proposed by the Ferry Company only 3 years ago in 2021. It was approved by the then Inspector, despite opposition from various local authorities and other significant users e.g. the National Trust. It was intended to last for 12 years, up to the arrival of a new ferry. In essence the 2021 structure allowed for toll increases of 3% pa. Discounts were allowed, as in the past, for regular users who buy tickets in bulk (mainly local residents).

The Ferry Company now wants to make various changes:

- To move to linking toll increase to inflation, as measured by CPI
- To backdate the inflation increases to 2021 – leading to an immediate increase in tolls for pedestrians and cyclists of 66%, and for car users of 18%
- To significantly reduce the discounts available for buyers of 10 or 50 tickets – which will badly affect local users: discounts for car users will be reduced from up to 32% to only 15% or 20%

These changes, if implemented, would worsen the financial situation of the Ferry Company: the Ferry Company's own analysis has shown a reduction in users paying the full toll: toll levels have already reached a tipping point where it is more economic for users to travel the loner route. The significant increase will lead to the number of users plummeting, as will revenues. It's a classic case of price elasticity, with the Ferry Company pursuing a doom loop which will price itself out of the market.

Extraordinary Council Meeting – Monday 26th February 2024 **Item 5)**

VAT – To consider exercising Option to Tax on Hardstanding, Shore Road

Background

At the Council Meeting held on 18th December 2023 it was noted that consideration could be given to exercising an option to tax in connection with the award of concessions on the hardstanding site on Shore Road. Having identified that expenditure will be required prior to the concessions taking up occupation, it has been determined that it would be best for the Council to opt to tax the hardstanding.

This briefing note is based on VAT Notice 742A – *Opting to tax land and buildings*, and guidance available from the PSTax website - VAT Recovery for Local Authorities or other Public Bodies | PSTAX

Why should the Council opt to tax this property? The partial exemption calculation

Supplies of land and buildings, such as leasing or renting, are normally exempt from VAT. This means that no VAT is chargeable on the rent. In terms of expenditure on exempt supplies (e.g. undertaking works on the property in question), local authorities and other public bodies can only recover VAT incurred where it is considered to be insignificant. The definition of insignificant is if it is less than either £7,500 per annum, or 5% of the total VAT recoverable during the year. Given the scale of the Town Council's operations it is the 5% test that is applicable.

If the 5% threshold is breached, as an average over a period of seven years, then the Council would be unable to reclaim/have to pay over all of the VAT incurred in respect of its exempt supplies. In some years this could be a significant sum, for example in connection with the forthcoming repairs to the Town Hall.

In order to ensure that the threshold isn't breached, the Council can opt to tax land and buildings. Once an option to tax is exercised, all of the supplies made of an interest in that land will normally be standard rated (i.e. STC would charge VAT on the rent), and any VAT incurred in making those supplies will normally be recoverable.

Therefore, where the risk of a breach is foreseeable it is often best to opt to tax in order to ensure that the Council does not exceed the insignificance threshold. In the case of the hardstanding this is relevant because the Council may incur costs in preparing these sites for occupation (e.g. extending water and electricity supplies, resurfacing and legal costs). Although the Council has advised the incoming businesses that it intends to re-charge these costs to them, if the Council incurs the costs in the first place it will have to account for the VAT to HMRC.

The area proposed to be subject to the option to tax is shown on the attached plan.

What effect will this decision have on the Council's new business tenants?

If the Council exercises an option to tax, both tenants will have to pay VAT on their rent and/or licence fees. However, as both are VAT registered they will be able to reclaim this amount.

How can the Council opt to tax?

Once the Council has taken a formal decision to opt to tax a site it must notify HMRC within 30 days. In certain circumstances HMRC must give permission prior to notification taking place.

Has the Town Council previously exercised an option to tax on other property?

Yes, the existing ice cream kiosk bases on the beach are subject to an option to tax, as are the Santa Fe Park and Family Games Room.

Can you revoke an option to tax?

Yes, the Town Council could revoke the option to tax in the future, although not normally until at least 20 years has passed and then only subject to a number of conditions.

Decision required

Whether or not to authorise officers to take the necessary steps to opt to tax the hardstanding on Shore Road, seeking permission from HMRC and taking specialist advice if required.

Martin Ayres
Town Clerk

February 2024

Swanage Town Council

Town Hall, High Street, BH19 2NZ
admin@swanage.gov.uk 01929 423636

Indicative map showing area proposed to be subject to option to tax

SCALE : 1 : 250 @ A4
DATE : 23/02/2024
MAP FILENAME : Shore Road Hardstanding.mpd