**Council of the Isles of Scilly report**

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|  | **P/21/050/FUL Porthmellon Beach, Telegraph Road St Mary’s:**  **Construction of a rock armour revetment in the south west corner of Porth Mellon Beach. Formalising pedestrian beach access track. (EIA Development) (Major Development).** | |
|  | **Date** | 19th October 2021 |
|  | **Meeting** | Full Council |
|  | **Part** | 1 |
|  | **Authors** | Lisa Walton, Chief Planning Officer |

**Recommendations**

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|  | **1.** | That members GRANT planning permission for the reasons set out in the report and SUBJECT to the conditions set out in Appendix A. |
|  | **2.** | That members DELEGATE to the Chief Planning Officer any minor changes required to the conditions set out in Appendix A. |

**Site Description and Proposed Development**

1. This application is one of three concurrent applications for coastal defensive works on St Mary’s. The works at the three sites will support the natural drainage systems at Lower Moors and Higher Moors, reducing the amount of sea water inundation and preserving the island’s freshwater supply whilst protecting residential properties at Porthloo and Porthmellon, key road infrastructure into Hugh Town, Porthmellon Industrial Estate, the only business park on the Isles of Scilly, and the islands’ waste management and recycling site at Porthmellon.
2. At Porthmellon this includes a new flood defence to reduce erosion of the earth bank in the southern corner of Porthmellon beach, which protects several houses and businesses as well as the general Telegraph Road area from flooding and erosion during storms. The bank also protects the freshwater supply within the Lower Moors SSSI.
3. The Environmental Statement describes the proposed development as being required to formalise and strengthen the existing defence in the south-western corner of Porthmellon beach. The existing vegetated bank has experienced wave undercutting, leading to a breach that caused flooding of the adjacent slipway and Telegraph Road. Breaching or overtopping of the defence could affect a range of strategically important assets including adjacent residential and commercial properties, including the island’s waste and recycling facility, Telegraph Road, which is the principal highway connecting the area to Hugh Town and the rest of St Mary’s, and could also result in saline intrusion into the Lower Moors SSSI to the south east, which is a major source of freshwater for the island.
4. Porthmellon is located on the north east side of Hugh Town, on St Mary’s and has a north west facing beach that faces onto St Mary’s Harbour. The bay consists of a sand and pebble beach backed by a narrow strip of sand dunes along most of its length. In the southern corner of the bay, these dunes are absent, and the back of the beach is a high earth bank covered by a variety of exotic plant species. Behind the dunes and earth bank are several houses and commercial buildings and a small concrete slipway, that provides access to the beach for boats and other vehicles. Telegraph Road, which links Porthmellon to Hugh Town and the wider island, is located immediately behind the dunes and vegetated bank, and landward of this is Porthmellon Industrial Estate and the islands’ only waste and recycling centre. A short distance inland from the beach is Lower Moors SSSI, which is an important freshwater habitat for a range of plants and animals and provides freshwater for the island. Porthmellon beach is popular with both locals and tourists, especially so during the period from May to September as the centre for water sports and associated activities and the St Mary’s Gig Club sheds, as well as the Beach restaurant, are located at Porthmellon.
5. The proposed development contained within the application comprises:
   * The repair to the existing retaining wall, at the north end of the beach;
   * Installation of a boardwalk to formalise a path across the dune;
   * Construction of a 40m long rock armour revetment (6m height half of which will be below existing beach levels) to the south west corner of the bay. This is designed to reduce erosion to reduce the risk of over-topping.
   * The rock armour is proposed to tie into the existing vegetated bank along Telegraph Road. It will overlay a geotextile membrane and comprise a mix of 1-3 tonne blocks of Cornish granite.
   * Blocking up on the existing cut-through from Telegraph Road, which currently links down to the south corner of Porthmellon beach.
6. A **link (1)** to all the plans and documents submitted with the application.

**Background and Relevant History**

1. There is planning history associated with some of the buildings on Porthmellon Beach, but none relevant to the proposed works.

**Consultations and Representations**

1. A site notice has been on display in the vicinity of the application site and a press notice published in the Cornishman Newspaper for a period of 30 days (05/08/2021-07/09/2021). The application appeared on the weekly list on 2nd August 2021, published online and circulated on social media. Neighbouring properties who share a boundary with the site, or are within 4 metres of it, have been written to directly. The dates of consultation and a summary of any responses are set out below. All representations received on this application can be read in full following the **link (1)** below. Material planning issues raised will be addressed in the planning assessment below.

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| Neighbour | Date Consulted | Comments Due | Date Responded | Comments |
| Camberdown, Porthloo | 13/08/20021 | 12/09/2021 | - | - |
| Penventon, Buzza Road, | 13/08/20021 | 12/09/2021 | - | - |
| Gunner Rock, 7 Jacksons Hill | 13/08/20021 | 12/09/2021 | - | - |
| Sandy Banks Cottage, Telegraph Road | 13/08/20021 | 12/09/2021 | - | - |
| The Store, 21 Porthmellon Industrial Estate | 13/08/20021 | 12/09/2021 | - | - |
| Sandy Banks Barn, Cottage, Telegraph Road | 13/08/20021 | 12/09/2021 | - | - |
| Western Maintenance, 26 Porthmellon Industrial Estate | 13/08/20021 | 12/09/2021 | - | - |
| Sandy Banks Farm, Telegraph Road | 13/08/20021 | 12/09/2021 | - | - |
| 6 Bay View Terrace | 13/08/20021 | 12/09/2021 | - | - |
| 5 Bay View Terrace | 13/08/20021 | 12/09/2021 | - | - |
| 4 Bay View Terrace | 13/08/20021 | 12/09/2021 | - | - |
| 3 Bay View Terrace | 13/08/20021 | 12/09/2021 | - | - |
| 2B Bay View Terrace | 13/08/20021 | 12/09/2021 | - | - |
| 2A Bay View Terrace | 13/08/20021 | 12/09/2021 | - | - |
| 6B Bay View Terrace | 13/08/20021 | 12/09/2021 | - | - |
| Chalet 6 Bay View Terrace | 13/08/20021 | 12/09/2021 | - | - |
| 7 Bay View Terrace | 13/08/20021 | 12/09/2021 | - | - |
| Unit Rear Of  2 Bay View Terrace | 13/08/20021 | 12/09/2021 | - | - |
| 1 Bay View Terrace | 13/08/20021 | 12/09/2021 | - | - |
| Rat Island Boat Yard, 27 Porthmellon Industrial Estate | 13/08/20021 | 12/09/2021 | - | - |
| 30 Porthmellon Industrial Estate | 13/08/20021 | 12/09/2021 | - | - |
| Ales of Scilly 31 Porthmellon Industrial Estate | 13/08/20021 | 12/09/2021 | - | - |
| Isles of Scilly Underwater Centre, 14a Porthmellon Industrial Estate | 13/08/20021 | 12/09/2021 | - | - |
| The Beach, Telegraph Road | 13/08/20021 | 12/09/2021 | - | - |
| Gig Sheds, Telegraph Road | 13/08/20021 | 12/09/2021 | - | - |
| Sailing Centre, Telegraph Road | 13/08/20021 | 12/09/2021 | - | - |
| Isles of Scilly Sailing Club, Telegraph Road | 13/08/20021 | 12/09/2021 | - | - |
| Isles of Scilly Boat Company, Telegraph Road | 13/08/20021 | 12/09/2021 | - | - |
| Porthmellon Cottage, Telegraph Road | 13/08/20021 | 12/09/2021 | - | - |
| Turnstone, Telegraph Road | 13/08/20021 | 12/09/2021 | - | - |
| Teeki, Telegraph Road | 13/08/20021 | 12/09/2021 | - | - |
| The White Gallery, 20A Porthmellon Industrial Estate | 13/08/20021 | 12/09/2021 | - | - |
| Sibleys, Unit 5 28-29 Porthmellon Industrial Estate | 13/08/20021 | 12/09/2021 | - | - |
| KOR Electrical Unit 4  28 - 29 Porthmellon Industrial Estate | 13/08/20021 | 12/09/2021 | - | - |
| MCGA Units 2 To 3  28 - 29 Porthmellon Industrial Estate | 13/08/20021 | 12/09/2021 | - | - |
| 28 - 29 Porthmellon Industrial Estate | 13/08/20021 | 12/09/2021 | - | - |
| 6B Bay View Terrace | 13/08/20021 | 12/09/2021 | - | - |
| Chalet 6 Bay View Terrace | 13/08/20021 | 12/09/2021 | - | - |
| 7 Bay View Terrace | 13/08/20021 | 12/09/2021 | - | - |
| Pernic Forge  Porthmellon Industrial Estate | 13/08/20021 | 12/09/2021 | - | - |
| Radio Scilly  Porthmellon Industrial Estate | 13/08/20021 | 12/09/2021 | - | - |
| Turnstones, Telegraph Road | - | - | 31/08/2021 | I would just like to make a plea that the little area (garden) on the bank opposite Turnstones is not disturbed. I like to think that it is a memory to Richard as he made it and looked after it. |

1. Due to the nature and location of the application, being classed as ‘Environmental Impact Assessment’ (EIA) development a number of internal and external consultations have been carried out. These, including dates consulted and responses received, are set out in summary below. All consultation responses received on this application can be read in full following the **link (1)** below. Material planning issues raised will be addressed in the planning assessment below.

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| Consultee | Date Consulted | Comments Due | Date Responded | Comments |
| Natural England | 13/08/2021 | 12/09/2021 | 03/09/2021 | In terms of the conservation of Habitats and Species then in relation to the impact upon European Sites (SAC and SPA), there is ‘No objection’.  Based on the details submitted NE are satisfied that the works will not hinder the conservation objectives of this site; so long as they are undertaken in strict accordance with the information provided by the applicant. Natural England will comment on a stage 1 MCZ assessment if consulted by the MMO. |
| Historic England | 13/08/2021 | 12/09/2021 | 31/08/2021 | On the basis of the information available to date, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant. |
| Secretary of State | 13/08/2021 | 12/09/2021 | - | - |
| South West Water | 13/08/2021 | 12/09/2021 | - | - |
| Cornwall Archaeological Unit | 13/08/2021 | 12/09/2021 | 09/09/2021 | We have consulted the Cornwall & Isles of Scilly Historic Environment Record and the submitted documents, and in this instance, we consider it unlikely that significant archaeological remains will be disturbed by groundworks. No archaeological mitigation is required, and therefore no archaeological condition is sought. |
| Duchy of Cornwall | 13/08/2021 | 12/09/2021 | - | - |
| Environment Agency | 13/08/2021 | 12/09/2021 | 21/09/2021 | Overall the EA have no objections to the proposal. They do note:  The proposed structures have the potential to impact on Isles of Scilly Complex Special Area of Conservation (SAC), the Isles of Scilly Special Protection Area (SPA), Peninnis to Dry Ledge Marine Conservation Zone (MCZ) and Porthloo SSSI and Higher Moors and Porth Hellick Pool SSSI. We note that Natural England are the lead authority for these protected areas and are satisfied that if the proposed works are carried out in strict accordance with the information provided by the applicant there is not likely to be an adverse effect on the interest features or hinder conservation objectives of the designated sites.  We recommend that the mitigation measures set out in Section 5.5 of the Environmental Statement are included in the Construction Environmental Management Plan (CEMP) and this document should be provided to and signed off by Natural England prior to any construction taking place. We support Natural England’s request to attach planning conditions for the planting of the restored sand dunes with native species and the works are timed between January and March 2022 to protect breeding birds. There is no mention of any biodiversity enhancements as part of the proposal. The proposed works would need to achieve a biodiversity net gain to be in line with the Government’s 25 Year Environment Plan, the NERC Act 2006 (section 4) |
| CIOS Highways | 13/08/2021 | 12/09/2021 | 09/09/2021 | At the contractor’s access route point the highway is to remain open at all times during the duration of the works. The approach to and from the contractor's access route, via the highway, should be swept regularly to remove debris. Regular cleaning of any plant is recommended before traveling from the access route to reduce debris being transferred onto the highway. |
| AONB Partnership | 13/08/2021 | 12/09/2021 | 10/09/2021 | I note the Environmental Statement has assessed the potential direct and indirect impacts of these proposed flood defence works on the local landscape, biodiversity and coastal processes, and where these impacts have been identified, actions have been recommended to minimize their significance which are welcomed. These proposals will protect the SSSI and freshwater habitats at Lower and Higher Moors, alongside the groundwater drinking water supplies, the latter of which are critical for the continued sustainability of St Mary’s. I note the proposed planning conditions suggested by Natural England in relation to native dune planting, the bird breeding season and biodiversity net gain associated with these planning applications and would support these recommendations. |
| Lead Local Flood Authority | 13/08/2021 | 12/09/2021 | 24/08/2021 | Given the flood risk posed to the Isles of Scilly due to its low-lying nature and the likely increase in future flooding as a result of the effects of climate change, we welcome this application. These works will provide increased protection of homes, businesses and critical infrastructure including the natural environment, fresh water supplies, telecommunications, St Mary’s Household Waste Recycling Centre, local emergency services (Cornwall and Isles of Scilly Fire and Rescue Service and South West Ambulance NHS Foundation Trust) and local road networks. |
| RSPB | 13/08/2021 | 12/09/2021 | - | - |
| Marine Management Organisation | 13/08/2021 | 12/09/2021 | 17/08/2021 | Works below the Mean High Water Spring (MHWS) will require a license from the MMO. The works that require MMO consent at this site include the rock revetments and the loading/unloading of materials and equipment on to the beach. |
| CIOS Environmental Health | 13/08/2021 | 12/09/2021 | - | - |

1. **Primary Legislation and Planning Policy**

**Primary Legislation**

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| The Town and Country Planning Act 1990 | Section 70(2) of the Planning Act requires the Local Planning Authority to have regard to the development plan, so far as material to the application, and any other material considerations when determination planning applications. |
| The Planning (Listed Buildings and Conservation Area) Act 1990 | The site is within a Conservation Area where there is a requirement to ensure that any development preserves or enhances the character or appearance of the area, as embodied in Section 72 of the Planning (Listed Buildings and Conservation Area) Act 1990. |
| The Countryside and Rights of Way Act 2000 | The Isles of Scilly is also a designated Area of Outstanding Natural Beauty (AONB). The legal framework for such areas is provided by the Countryside and Rights of Way Act 2000. The Act places a statutory duty on the Local Authority to have regard to the purpose of conserving and enhancing the natural beauty of the AONB when exercising or performing any functions affecting land within it. |
| The Conservation of Habitats and Species Regulations 2017 | It is a legal duty of a Local Planning Authority, when determining a planning application for a development, to assess the impact on European Protected Species ("EPS"), such as bats, great crested newts, dormice or otters. |
| The Conservation of Offshore Marine Habitats and Species Regulations 2017 | This legislation implements the species protection requirements of the Habitats and Birds Directives offshore (more than 12 nautical miles from the coast). |
| Marine and Coastal Access Act 2009 | This requires public authorities to make decisions in accordance with marine policy documents and if it takes a decision that is against these policies it must state its reasons. MMO as such are responsible for implementing the relevant Marine Plans for their area, through existing regulatory and decision-making processes. |
| The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 | The aim of Environmental Impact Assessment is to protect the environment by ensuring that a local planning authority when deciding whether to grant planning permission for a project, which is likely to have significant effects on the environment, does so in the full knowledge of the likely significant effects, and takes this into account in the decision making process. The regulations set out a procedure for identifying those projects which should be subject to an Environmental Impact Assessment, and for assessing, consulting and coming to a decision on those projects which are likely to have significant environmental effects. |

**Planning Policy**

1. **National Planning Policy Framework (NPPF) 2019.** At the heart of the NPPF is a presumption in favour of sustainable development. The NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise.
2. Chapter 15 of the NPPF relates to the conservation and enhancement of the natural environment. Paragraph 172 advises that great weight should be given to conserving the landscape and scenic beauty in Areas of Outstanding Natural Beauty, which have the highest status of protection. The conservation of wildlife and cultural heritage are important considerations.
3. In terms of the general approach to making effective use of land then paragraph 118 specifically seeks to ensure the planning decisions should (b) recognise that some undeveloped land can perform many functions, such as…flood risk mitigation… Additionally chapter 14 is about ensuring development addresses the challenge of climate change, flooding and coastal change. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
4. **South West Marine Plan (2021).** The South West Marine Plan, hereinafter referred to as the ‘Marine Plan’, must be used for all planning decisions for the sea, coast, estuaries and tidal waters (which sometimes extend a long distance inland), as well as developments that impact these areas, such as infrastructure. All public authorities are responsible for implementing the South West Marine Plan through existing regulatory and decision-making processes. A **link (2)** below provides access to the South West Marine Plan (2021).The key policies relevant to the proposed works include:
5. **Climate Change SW-CC-1:** Proposals that conserve, restore or enhance habitats that provide flood defence or carbon sequestration will be supported. Proposals that may have significant adverse impacts on habitats that provide a flood defence or carbon sequestration ecosystem service must demonstrate that they will, in order of preference: avoid; minimise, mitigate - adverse impacts so they are no longer significant compensate for significant adverse impacts that cannot be mitigated.
6. **Climate Change SW-CC-2:** Proposals should demonstrate for the lifetime of the project that they are resilient to the impacts of climate change and coastal change.
7. **Climate Change SW-CC-3:** Proposals that are likely to have significant adverse impacts on coastal change, or on climate change adaptation measures inside and outside of the proposed project areas, should only be supported if they can demonstrate that they will, in order of preference: avoid, minimise, mitigate adverse impacts so they are no longer significant.
8. **Disturbance SW-DIST-1:** Proposals that may have significant adverse impacts on highly mobile species through disturbance or displacement must demonstrate that they will, in order of preference: avoid, minimise, mitigate adverse impacts so they are no longer significant.
9. **Seascape and Landscape SW-SCP-1**: Proposals should ensure they are compatible with their surroundings and should not have a significant adverse impact on the character and visual resource of the seascape and landscape of the area. The location, scale and design of proposals should take account of the character, quality and distinctiveness of the seascape and landscape. Proposals that may have a significant adverse impact on the seascape and landscape of the area should demonstrate that they will, in order of preference: avoid, minimise or mitigate - adverse impacts so they are no longer significant.
10. **Isles of Scilly Local Plan (2015-2030)**. The key policies within the Isles of Scilly Local Plan (2015-2030), hereinafter referred to as the ‘Local Plan’, would be Policy SS7 (Flood Avoidance and Coastal Erosion)and the relevant sections are set out below. Other policies that are also relevant include SS1, SS2, SS9, OE1, OE2 and OE7. A **link (3)** below provides access to the new Local Plan (2015-2030).
11. **Policy SS7 (Flood Avoidance and Coastal Erosion) .**  Development will be permissible where it complies with the NPPF and national guidance, takes account of local evidence and strategies (including the Local Flood Risk Management Strategies (LFRMS) and the Shoreline Management Plans (SMP)), and incorporates appropriate mitigation. Specifically policy SS7 makes provision for coastal defensive works at (3) where it is stated that natural dune restoration and works connected with flood resilience and coastal defence will be supported where any natural and historic environment designations, that may be affected, have been adequately addressed in accordance with Policy OE2 (Biodiversity and Geodiversity) and OE7 (Historic Environment).

**Planning Assessment**

1. The main planning issues for consideration are whether the proposed works comply with the existing planning policy framework, which includes the Local Plan, the South West Marine Plan and the National Planning Policy Framework.

**Principle of Development**

1. As the works are primarily terrestrial in nature, the starting point for planning decision making is the Local Plan. As noted above there is a specific policy in relation to coastal defensive works (Policy SS7) which establishes the principle of this type of development, providing no wider harm is identified as a result. This includes harm or impacts upon the natural environment and the historic environment. It will be necessary to consider any other material planning considerations. This could include issues such as any long-term impacts on amenity, highway or coastal access or wider visual harm. Subject to these issues, which will be assessed below, the principle of the proposal is considered acceptable.
2. Given the nature of the proposed works, and its location partially within the inter-tidal zone, it is necessary to consider the development in light of the policies of the marine plan. The issues therefore are set out below.
3. As the application is considered EIA development, an opinion formally adopted by the Local Planning Authority following a screening opinion request in 2017, there is a statutory duty to examine the adequacy of the environmental statement submitted with reference to the content requirements of the EIA Regulations and reach a reasoned conclusion. If planning permission is to be granted, the Council must ensure that all appropriate mitigation and monitoring measures are secured. EIA is, therefore, an integral component of the planning process for significant developments. EIA leads to improved decision making by providing the development management process with better information. EIA not only helps to determine whether development should be permitted, but also facilitates the drafting of planning conditions and planning obligations to control development, avoid or mitigate adverse effects and enhance beneficial effects. Therefore, it is vital that the environmental issues raised by the application are assessed in a robust and transparent manner.

**Visual Landscape Impact**

1. The main element of the project is the installation of a new flood defence to reduce coastal erosion on the earth bank in the southern corner of the bay. This requires the construction of a compound, off Telegraph Road, close to the construction site. Materials for the project will be brought to the side via a landing craft, directly on to Porthmellon beach. The flood defence revetment will be constructed using an excavator.
2. It is considered that there will be temporary impacts on landscape character and views of the beach would occur as a result of use of the area by construction equipment and the storage of construction materials. These impacts would affect local residents and people visiting the beaches. Once the works are complete, the rock revetment would have a minor impact on landscape character and views because the revetment would replace sandy beach and affect a vegetated bank. Due to the small-scale of the revetment, it is considered that the wider and longer term impacts of these changes, that will occur, will not be significant.
3. Both the long-term and the short-term temporary elements of the project are considered to be appropriate in the context of this site and would not give rise to significant adverse visual impacts upon the landscape and seascape. The proposal is therefore considered to be in accordance with Policies OE1 and OE7(5) of the Local Plan (2015-2030) and Policy SW-SCP-1 of the Marine Plan (2020).

**Impact on the Historic Environment**

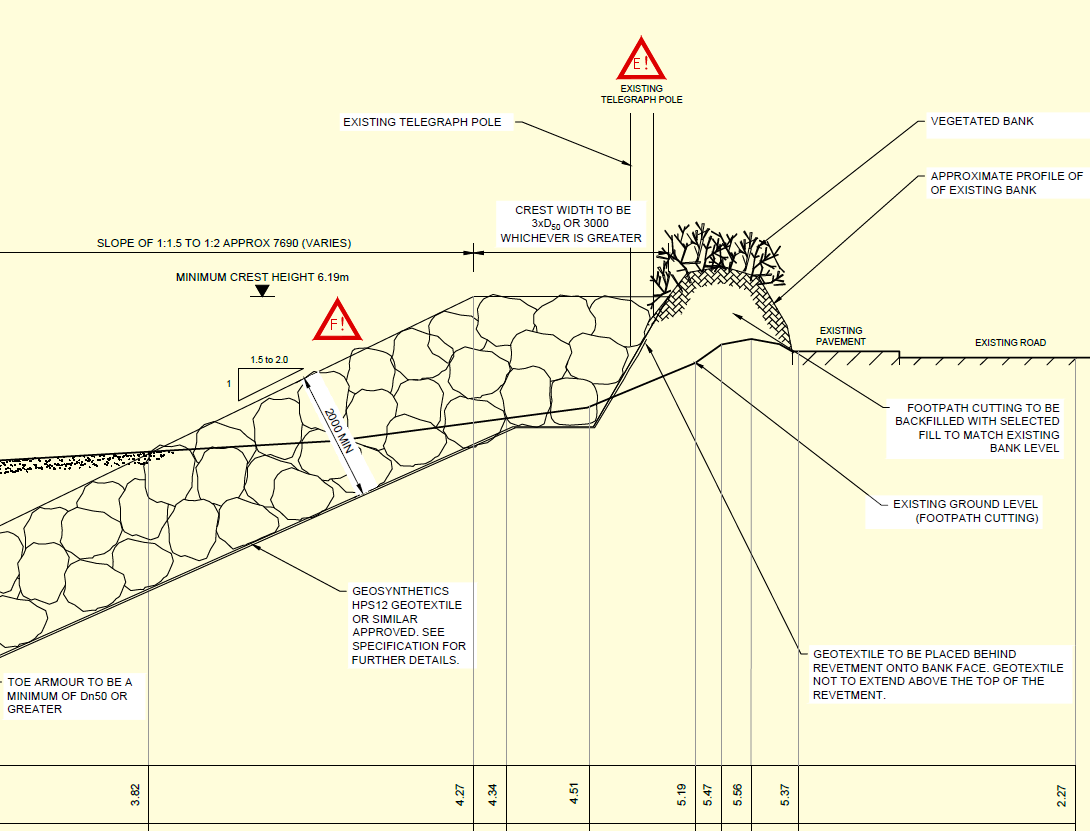
1. In addition to being within the Conservation Area, the site is located within close proximity to two designated Scheduled Monuments. Both at the north side of Porthmellon beach, which are a smugglers cache and Harry’s walls. The landing craft is identified to arrive at the southern side of the beach and as such these heritage assets are not considered to be impacted by the proposal. There are no Listed Buildings within the vicinity of the site, but there are eight Listed Buildings near to the site. The assessment concluded that there may be minor visual impacts upon the Scheduled Monuments during construction, but that the flood defence will not impact on the setting or fabric of these heritage sites or on any of the Listed Buildings.
2. As materials will be delivered to site via sea, there is the potential for prehistoric remains on the beach to be disturbed. It is recommended that offloading takes place in the south of the beach, where remains are less likely to be discovered. It is considered that the proposed works will not directly impact upon either feature in this case. In terms of the setting of these heritage assets and any inter-visibility impacts then it is considered that the works would be screened in both cases by intervening trees and rocks. On the basis that there is no identified archaeological constraint area, in the area of works, it is considered that the potential to encounter archaeological remains during construction of the defence would be low.
3. Archaeological advice on this application has been sought from Cornwall Archaeological Unit who have consulted with the local Historic Environment Record. They have confirmed that it is unlikely that for buried archaeological remains would be disturbed at this site. The proposed works are considered to comply with Policy OE7(7) of the Local Plan and Policy SW-HER-1 of the Marine Plan.

**Impact on the Natural Environment**

1. The proposed works are located in close proximity to a number of natural environment designations. This includes the Isles of Scilly Complex Special Area of Conservation (SAC) and the Special Protection Area (SPA) which runs up to the MLWS close to the proposed works. In terms of the habitats and species, protected by these European designations, then the Habitat Regulations Assessment (HRA) has screened the proposal in terms of likely significant effects, based on the conservation objectives of the designations.
2. At Porthmellon, construction materials will be delivered to site using a landing craft; this could have a minor impact on beach habitats, although these effects would be temporary and are not likely to be significant. Construction of the rock revetments would also result in a loss of relatively small areas of beach habitat. The potential impacts in this case includes the access route for landing craft and transportation of materials across the beach. The HRA notes that works are estimated to take a period of 4 weeks and will be timed to avoid April through to October due to boat use of the existing slipway.
3. The potential hazards include direct habitat loss, noise and visual disturbance, water pollution, air pollution, sediment release and alteration to coastal processes. The HRA concludes that there are no ‘in-combination’ projects to review. The outcome of the HRA when considering the potential hazards on all of the identified interest features, concluded ‘no likely significant effects’ on the European Sites. On this basis the proposal is considered to comply with Policy OE2 of the Local Plan and Policy SW-BIO-1/2/3 of the Marine Plan.

**Impact on Neighbouring Amenity and coastal access**

1. The proposal involves construction works and the transportation of materials to the boat yard site and the placement of materials as part of the reinforcement measures to protect infrastructure, businesses and properties. The long-term impact, in terms of amenity, will be the protection of the coast from coastal inundation and coastal erosion, this is not considered to give rise to any amenity issues. In the short term works could cause some disturbance but given the projected timing and timescales it is not anticipated that the duration of works would cause a significant adverse impact upon general amenity of the community.
2. In terms of the impact upon tourism, mainly in the form of homes to rent as tourist accommodation or other local tourism sites, such as restaurants. There is farmland to the north and east, industrial land (St Mary’s only industrial park) to the south east and the urban area of Hugh Town to the south and west. It is possible that these small businesses could be affected during the construction period, as the serenity and the scenery of the local area would be adversely affected, in the short-term. These impacts could be lessened by the construction period taking place between outside the peak tourism season, as is currently programmed.
3. In terms of other islanders or visitors then it is noted that the economy of the islands is small and relies on tourism. In recent years, the tourism economy has begun to shrink, and visitor numbers have fallen. The majority of visitors to the Isles of Scilly are British, and have visited before, often many times. A recent survey showed that visitors consider that scenery and peace and quiet are the best things about the Scilly Isles.
4. Access across the islands varies. Some areas are accessible by roads and others only by footpaths. There are many footpaths on the islands, which reach almost all areas, including the proposed works at Porthmellon. Walking is very popular with both tourists and local residents.
5. It is considered that given the small-scale of the proposed flood defences, they will not be large enough to create a significant change in land use at this site. In addition, the assessment determined that construction of the flood defences is not likely to have a significant impact upon the tourism industry. This is because the works will be taking place in winter and spring, avoiding the peak summer tourist season. Also, many visitors to the islands have visited before and know the area well. As a result, it is thought that small-scale construction would not discourage people from returning to the islands. However, there could be a small impact on local businesses at Porthmellon that rely on tourists; these businesses could see a reduction in footfall during construction.
6. Given the proximity to footpaths, there may be some impacts on access during construction and they may have to be temporarily closed for safety reasons. This should be clearly publicised and address within a Construction Environment Management Plan (CEMP). There are, however, alternative access points to Porthmellon beach that would enable access and activities to be maintained. The proposal also includes the creation of a formalised boardwalk access to the beach, across the dunes. This is designed to enable the dune cut through to be closed, in the interests of the integrity of the coastal protection, whilst retaining a pedestrian access to the beach.
7. One representation raises an issue with the retention of the ‘garden’ opposite a property known as ‘Turnstones’. This property is located on the south side of Telegraph Road, adjacent to the demolished Carn Thomas Secondary School site. The garden referred to as being maintained as a ‘memorial garden’ which they request to be left undisturbed. The land in question is not explicitly identified by this person, but it is assumed to be the area of planting opposite Porthmellon Cottage. This is the area in which the work to install the rock revetment is proposed and where the ‘cut-through’ is proposed be closed off. It is likely therefore that the current planting will be lost as part of the works, which is intended as a means of protection of the area from over-topping. The applicant has suggested that the CEMP can be adjusted to ensure the contractors retain as much of the planting as possible. It is however not guaranteed that this could be achieved given the nature of the works.
8. It is noted that this land is part of the coast, managed by the Isles of Scilly Wildlife Trust, it is not private garden land or greenspace maintained by the Council. Whilst it is unfortunate that this planting may be lost, if it is not possible to retain it, it is not reasonable to refuse the application on the basis that it could be lost. An area to the rear of the proposed rock revetment will be retained as a vegetated bank, as per the image below:



1. To ensure the local geological conditions on the Isles of Scilly are not impacted, only Cornish or Devonian granite has been identified to be used to create the flood defences. This is as close as possible to the local granite. The proposed works at this site are considered to be acceptable both in terms of amenity and public access on the basis that the impacts are minimised by their anticipated short duration and timing. The proposal is therefore considered acceptable in terms of Policy SS1 and Policy SS2(b) of the Local Plan and Policy SW-ACC-1 of the Marine Plan.

**Impact on Infrastructure and Highway Safety**

1. A key aspect of this proposal is the aim of protecting the vulnerability of the islands specifically its freshwater supplies on St Mary’s, in addition to protecting homes, businesses, Telegraph Road, and the islands Industrial Estate and Waste Site. The proposal involves the delivery of materials to the site via landing craft. The materials delivered directly to the beach are for use at Porthmellon only. The storage of materials, adjacent to Sandy Banks (between Sandy Banks and the Industrial Estate) will see some localised movement of materials which could have some impact in the immediate vicinity. This localised impact, together with the timing and short duration of the project, would not give rise to wider successive vehicular movements of large scale vehicles, which could both congest some of the island’s road, as well as degrade surfaces. If it not considered the proposal will have a significant impact upon infrastructure or highway safety.
2. There are residential properties close enough to Porthmellon to potentially experience air quality impacts from the release of dust and noise impacts. In order to prevent dust impacts, the contractors will follow mitigation described by the Institute of Air Quality Managers. This should form part of the CEMP. To prevent noise impacts, the application advises that the contractors will follow guidance provide by British Standard 5228, which includes not dropping dusty material from excessive height.
3. Whilst it is not anticipated that night-time working will be required, should it be necessary (to manage the unloading of construction materials within the tidal cycle), it would have to be lit. There will be impacts to local properties if the Porthmellon site needs to be lit. These impacts can be minimised, by, for example, switching off lights when they are not needed. The ES notes that it is not expected that there would be any pollution to the land or water due to construction. A proposed mitigation measure is to ensure that actions such as storing and refuelling machinery takes place as far away from the sea as possible. Through the application of robust construction practices and employing a range of environmental management actions, which will need to be documented in a Construction Environmental Management Plan (CEMP), to ensure that any contractor working on site commits to best possible practice.
4. Overall it is considered that the proposal is acceptable in terms of infrastructure and highway safety and the application would accord with Policy SS9 of the Local Plan.

**Flood Risk Impacts**

1. The Cornwall and Isles of Scilly Shoreline Management Plan (SMP2 and mid-term review), which can be found in **link (4)** below, notes that St Mary’s is extremely exposed to Atlantic waves and swell from westerly, southerly and easterly directions. It is sheltered from most north-westerly waves. The annual 10% exceedance wave height is likely to be around 3.0 - 3.5m. The wave climate is extremely influential in all aspects of risk assessment at the coastline. The mean spring tidal range at St Mary’s is 4.9m. Tidal currents, whilst not as influential as the wave climate in dictating shoreline morphology, can attain significant velocities where they flow in the narrower channels between islands.
2. The SMP notes that the long-term policy for St Mary’s is generally ‘no active intervention’ (NAI) along the undefended cliffs, given the local importance of the protecting the freshwater supplies it was recognised that damage and exposure from direct wave action due to its westerly aspect and the inundation of seawater, there remains a demonstrable risk of over-topping impact on the Lower Moors SSSI and associated impact on the freshwater supply for the island. The elevated presence of heavy metals has been identified at the northern inlet into the Lower Moors.
3. The AONB Management Plan 2021 – 2026 can be read in **link (5)** below recognises the threat of rising sea levels particularly in relation to freshwater supply through saline intrusion, contamination and flood inundation.
4. Although located in an area considered to be at risk of flooding, the development is seeking to reduce the impact posed by climate change, which is rising sea levels. The works are specifically seeking to limit the impact of ‘overtopping’ which without intervention will increasingly have a detrimental impact on the island’s freshwater supplies, in addition to posing increased risk to property and life. Policy SS7(3) explicitly supports the type of development proposed, where no adverse harm is identified.
5. Policy SW-CC-3 of the Marine Plan seeks to ensure proposals for climate adaption measures do not exacerbate coastal change and where the works enable local communities to be more resilient and better able to adapt to coastal erosion and flood risks. On the basis that the proposals do not compromise any existing adaptation measures, it is considered that the proposed works would accord with Policy SW-CC-3 of the Marine Plan.

**Conclusion on the Significant Environmental Effects**

1. In light of paragraph 25 above and the regulatory requirements of the EIA regulations, this section seeks to reasonably conclude (Reg 26, (1) (a) and (b)) on the significant environmental effects of the development. The Environmental Statement (ES) sets out the likely significant effects in light of short-term and long-term effects, the magnitude of the effects and the sensitivity of the effects. This includes an assessment in relation to:
   * Coastal processes, geomorphology and flood risk,
   * Biodiversity and nature conservation;
   * Landscape;
   * Historic Environment;
   * Land use, tourism and public amenity;
   * Sustainability and Climate Change;
   * Other construction-related effects (logistics, air quality, noise and light conditions); and
   * Cumulative and in-combination effects
2. It is noted that the EIA was carried out and submitted in 2019, so the in-combination impacts considered related to planning applications permitted or in consideration at that time. The ES does not capture development permitted since that date. It is noted that since 2019 there has been one additional application, that needs to be taken into account. This is the outline planning application P/21/002/OUT, which was a ‘major development’ application to construct 12 self-build homes in Old Town. The commencement of each individual plot cannot commence until the site overall has been prepared following the discharge of a number of significant pre-commencement conditions and following the submission of the Reserved Matters applications (of which there are likely to be 12). Whilst the works associated with the construction of homes in Old Town, could see an increase in vehicular movements, including the movement of construction materials, it is not anticipated to take place until these pre-commencement matters have been resolved. The applicant is aware and has noted that if such development of the self-build homes does overlap with the construction periods for the coastal sea defence works, a coordinated approach would be taken to ensure the short periods of construction traffic does not coincide with the self-build projects. Thereby minimising the cumulative impacts upon the roads. Such consideration should be set out in a Construction Environment Management Plan (CEMP).

1. In light of the above housing proposal and following an examination of the environmental information submitted, it is considered that the ES sets out a clear assessment of the significant effects. Attention is drawn to Table 12-1 of the Environmental Statement, which sets out a summary of the significant effects, mitigation measures and residual effects in relation to the issues identified. These issues are covered in the above planning assessment.
2. Slight to moderate residual effects have been identified at Porthmellon in relation to landscape, on the historic environment, on land use, tourism and public amenity, sustainability and climate change, mainly as a result of construction. No significant effects were identified as a result of cumulative effects. Large positive effects were identified for all sites in terms of sustainability and climate change and negligible residual effects for all sites were identified for ‘other construction effects’ subject to proposed mitigation of the adoption of an industry standard Construction Environment Management Plan (CEMP).
3. It is considered that the ES and an examination of the environmental information of the sea defence works will increase protection of homes, businesses and infrastructure from tidal flooding and coastal erosion, for the lifetimes of each development. In accordance with the requirements of the EIA regulations this report has concluded the proposal will not give rise to long-term significant adverse effects on the environment.

**Monitoring Considerations**

1. The mitigation and monitoring considerations have been identified in the ES and an outline CEMP has been drawn up to assist with the implementation and managed through an Ecological Clerk of Works (ECoW). It is considered appropriate to require appropriate monitoring of the mitigation measures to ensure the moderate residual effects identified are not any greater or more significant than identified in the ES. A condition to require the submission of the CEMP to address all of the issues identified, is therefore recommended.

**Conclusion**

1. The proposed coastal defensive works, as set out in the submitted application, and considered through the Environmental Statement and Habitat Regulations Assessment are considered adequate to comply with the requirements of the Environmental Impact Assessment Regulations. The proposal is considered to comply with the relevant policies of the Local Plan and the Marine Plan.

**Recommendation**

1. The proposed coastal defensive works be approved in accordance with the conditions set out in Appendix A.

**Financial implications**

1. None

**Legal implications**

1. There is a requirement to determine planning applications within statutory timescales. In this case the determination date for the planning application is 19th November 2021.
2. Members will note that the determination of this application, if a decision is made at the 19th October 2021 Full Council meeting, will be within the statutory 16 week determination period.
3. Should members be minded to refuse this application, contrary to the recommendation, then it should be noted that the risk of an appeal challenge would increase (simply on the basis appeal challenges tend to be when planning permission is refused or unnecessarily delayed). If Members are minded to refuse this application then they are advised to provide a clear re-balancing of the issues as to why the scheme is unacceptable. Additionally Members would be advised to set out any additional conditions they consider appropriate to address matters of harm. It is recommended that the precise wording of conditions is delegated to the Chief Planning Officer, in consultation with the Lead Member for Planning. Officers can only provide guidance to Members if reasoning is considered to be material to the planning application and whether any suggested conditions are likely to meet the 6 tests for applying planning conditions to development. Guidance on meeting tests for use of planning conditions can be found in the **link (6)** below. For reference these are:
   * 1. necessary;
     2. relevant to planning and;
     3. to the development to be permitted;
     4. enforceable;
     5. precise and;
     6. reasonable in all other respects.
4. For information Members are asked to note that as of the 1st October 2018 the Local Planning Authority has a duty to agree with applicant’s any pre-commencement conditions it considers necessary to control a development. Members are advised to bear this in mind as any additional requests for pre-commencement conditions will need to be agreed with applicants.

**Other implications**

1. Due to the application being located in a sensitive environment, as denoted by the AONB, it has been screened for environmental impacts through an Environmental Impact Assessment (EIA), Screening Opinion. This screening and subsequent scoping opinion concluded that the development proposed does constitute EIA development requiring an Environmental Statement (ES). The full ES has been provided in relation to the three applications (P/21/049/FUL, P/21/050/FUL and P/21/051/FUL) and can be read online in **link (1).**
2. The planning application engages certain human rights under the Human Rights Act 2008 (HRA). The HRA prohibits unlawful interference by public bodies with conventions rights. The term ‘engage’ simply means that human rights may be affected or relevant. The rights potentially engaged by this application, including the right to a fair trial and the right to respect for private and family life, are not considered to be unlawfully interfered with by this proposal.

**Links**

**1. The application details submitted:** <https://www.scilly.gov.uk/planning-application/planning-application-p21050ful>

**2. Isles of Scilly Local Plan 2015-2030:** <https://www.scilly.gov.uk/planning/planning-policy/local-plan-2015-2030-adopted/adoption-local-plan-2015-2030-regulation-26>

**3. South West Marine Plan 2021:** <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004494/FINAL_South_West_Marine_Plan__1_.pdf> and Technical Annex: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/995761/FINAL_South_West_Technical_Annex.pdf>

**4. Cornwall and Isles of Scilly Shoreline Management Plan (2010):** <https://www.scilly.gov.uk/sites/default/files/document/planning/smp2.pdf>

**5. AONB Management Plan 2021 – 2026:** <http://13097e80-9f1e-480f-9703-b1ffff1ec62e.filesusr.com/ugd/f2ee4f_aea237417ab7471e9d656515a7201e1f.pdf>

**6. Six Tests for Planning Conditions:** <https://www.gov.uk/guidance/use-of-planning-conditions>

**Report Approval**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Chief Executive/**  **Strategic Director** | Not Applicable |  |
|  | **Financial** | Not Applicable |  |
|  | **Legal** | Simon Mansell  Isles of Scilly Monitoring Officer | 11/10/2021 |

**Appendices**

Appendix A: Recommended Conditions

**C1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.**

Reason: In accordance with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

**C2 The development hereby permitted shall be carried out in accordance with the approved details only including:**

* **Site Location Plan, Drawing Number: PM2000**
* **Block Plan: Drawing number: UA008878-ARC-XX-XX-DR-CE-0300, Rev P3**
* **Site Plan: Drawing number: UA008878-ARC-XX-XX-DR-CE-0300, Rev P3**
* **Design Statement, Ref: UA008878-ARC-XX-XX-RP-CE-0363, Rev P1**
* **Proposed Plans, UA008878-ARC-XX-XX-DR-CE-0302 Rev P2**
* **Proposed Rock Armour Section A: UA008878-XX-XX-DR-CE-0320, Rev P3**
* **Proposed Rock Armour Section B: UA008878-XX-XX-DR-CE-0302, Rev P3**
* **Beach Access Plan, UA008878-XX-XX-DR-CE-0322, Rev P2**
* **Trial Pits Plan, UA008878-XX-XX-DR-CE-0301, Rev P01**
* **H&S Design Hazard: UA008878-ARC-XX-XX-HS-CE-0362, Rev P2**

**These are stamped as APPROVED**

Reason: For the clarity and avoidance of doubt and in the interests of the character and appearance of the Conservation Area, Area of Outstanding Natural Beauty and Heritage Coast in accordance with Policies OE1 and OE7 of the Isles of Scilly Local Plan (2015-2030).

**C3** **No development shall take place, including any works of transporting materials to the site, until a Construction Environmental Management Plan (CEMP) in addition to the indicative method statement, has been submitted to and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The CEMP shall incorporate:**

* **The timing of intended implementation, to avoid conflicting with breeding birds or harm to biodiversity features;**
* **The times during construction when specialist ecologists need to be present on site to oversee works, if required;**
* **Responsible persons and lines of communication;**
* **Monitoring, reporting and emergency responses;**
* **The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;**
* **industry standard, best-practice measures to control site run-off, manage soils and waste, manage fuel and other materials to prevent spillages and also emergency procedures in the event of a pollution incident;**
* **standard best practice construction measures to avoid significant disturbance of adjacent features (human neighbours and, consequently, nesting and wintering bird populations within the nearby Lower Moors SSSI, interest features of the SAC and SPA) arising from vibration, artificial lighting and noise effects;**
* **An archaeological Watching Brief during delivery of construction materials to monitor the potential for any impacts on buried remains in the inter-tidal area (in case of unforeseen ground conditions occurring), details of the use and management of materials, waste management, a plan for Verification Control Documents;**
* **risk assessments and method statements in light of revealed conditions (relating to Health and Safety and buried services) as well as to take account the recommendations of Foundation Works Risk Assessment (if required);**
* **area(s) for the parking of vehicles of site operatives;**
* **space for the loading and unloading of plant and materials;**
* **storage of plant and materials used in constructing the development;**
* **construction vehicles wheel washing facilities, if required;**
* **measures to control the emission of dust and dirt during construction;**
* **a detailed scheme for reducing/re-using/recycling/disposing of waste resulting from the works.**
* **Details of any signage and protective barriers in relation to notifying users of the area, of the timescales of the works, including signs to re-direct or safeguard footpath users from avoiding the site works.**

**On completion of the development any contractors compound, temporary access and all plant, machinery, fencing, lighting and any other equipment or structures used as part of the construction process shall be removed from the site and, where appropriate, the land reinstated to its former condition within three months.**

Reason: This is a pre-commencement condition that requires details that were not submitted as part of the application, but are required to fully understand the impact upon the Islands natural environment designation and to ensure that the construction of the development is adequately controlled and to protect the amenities of the area and essential infrastructure in accordance with Policies SS2, OE2 and SS7 of the Isles of Scilly Local Plan 2015-2030.

**C4 Before commencing any planting along the vegetation section of the rock revetment, details of the native plant species and planting schedule, shall be submitted to and approved in writing by the Local Planning Authority. Native plant species should be used to provide valuable habitat and to ensure no biodiversity net loss. The planting shall be carried out in accordance with the approved details and any plants which, within a period of 5 years of completion of the project, die before successful establishment, shall be replaced with new plants.**

Reason: To ensure the works safeguard the wealth of biodiversity present on the Isles of Scilly and safeguards existing habitats and features in a bio-secure manner in accordance with Policies OE1 and OE2 of the Isles of Scilly Local Plan (2015-2030).

**Informatives:**

1. In dealing with this application, the Council of the Isles of Scilly has actively sought to work with the applicants in a positive and proactive manner, in accordance with paragraph 38 the National Planning Policy Framework 2019.
2. Please note that from the 6th April 2008 a fee is now payable for the discharge of any conditions where details are required to be submitted pursuant to that condition. Details of the exact amount and the procedure to be followed can be found on the Council's website.
3. It should be noted that some of the conditions attached to this consent are required to be complied with prior to the commencement of the development hereby approved, if those conditions are not fully adhered to, then the consent cannot lawfully be implemented, therefore a new application will be requested and consideration will be given to the expedience of enforcement action.