**Council of the Isles of Scilly report**

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|  | **P/21/049/FUL Porthloo Beach, Porthloo St Mary’s:**  **Construction of concrete retaining wall faced with greenheart wood to continue the existing wooden retaining wall and placement of granite rock armour revetment on the beach side of the retaining wall (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 dune and flood defence scheme in this application is located at Porthloo which has three key aims. This includes protecting the islands critical infrastructure, particularly Porthloo Road, one of the main vehicular routes on the island, increasing protection for properties and businesses situated behind the beach and increasing protection for the Lower Moors Site of Special Scientific Interest (SSSI).
2. The project has been in development for a number of years and is subject to Government funding. The application is supported by a full Environmental Impact Assessment (EIA) and Habitat Regulations Assessment (HRA). The main elements of work being proposed include:
   * The construction of a 30 metre long concrete retaining wall, as a continuation of the existing retaining wall. It will be face with greenheart wood. On the beach side this will also include the placement of 110 metres of Cornish granite rock armour, including partial deconstruction of the existing works to construct the revetment.
   * A diversion of the existing footpath (that runs on the landward side of the existing dunes) on to Porthloo Lane.
3. The Environmental Statement (ES) describes the proposed development as being required to reduce erosion of the coastline and to reduce the risk of flooding to homes and businesses, to Porthloo Lane and to the freshwater lake at Lower Moors. Works comprise a rock revetment, which is sloping bank of large rock boulders, positioned in the northern half of the bay in an area currently protected by an area of rock rubble. The rock revetment will protect the coastline from erosion by waves during storms also reduce the risk of waves flowing over the beach and into the nearby homes and businesses. The rock revetment will be 110m long and around 17m wide, with about a third of this revetment being buried below the current ground level.
4. The settlement of Porthloo is located on the western side of St Mary’s and includes Porthloo beach, which is a relatively enclosed bay measuring approximately 300m running roughly on a north south alignment, flanked by rocky outcrops to the north (leading to Taylor’s Island) and south (leading to Newford Island) sides. To the south is Porthloo boat yard. Porthloo Road runs very close to the coast at the mid-point of the bay and provides access to the beach for pedestrians and a wide grass verge provides some unofficial parking. Vehicular access to the beach is provided a Porthloo boat yard. To the east side of Porthloo Road is Porthloo Terrace, a row of 4 two storey homes, to the south east of which is a further development of four detached houses and to the south is further residential and commercial development, including a studio, art glallery, holiday let properties and houses, that run up from ‘Sharks Pit’ or ‘Thomas’ Porth’, which is a smaller bay to the south of Porthloo beach.
5. A **link (1)** to all the plans and documents submitted with the application.

**Background and Relevant History**

1. In 2008 an application was made to remove, reinstate and extend the slipway at Porthloo boat yard. P/08/084/FUL was approved at Planning Committee in October 2008. In 2012 a further application was submitted to improve the slipway, including sea defence works. P/12/043/FUL was approved at Planning Committee in April 2012. In 2013 an application to form a concreate base and x3 10,000 litre water collection tanks was submitted. P/13/056/FUL was approved at Full Council in November 2013. In 2019 an application was made to extend the hardstanding area for the purposes of improved access and manoeuvring for the boat yard. These applications were all considered under the Local Plan: A 2020Vision (2005), now revoked and replaced with the Local Plan (2015-2030).

**Consultations and Representations**

1. A site notice has been on display in the vicinity of the application site and as well as a press notice 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 |
| Longstone Farm, Longstone, | 13/08/20021 | 12/09/2021 | - | - |
| Porthloo Farmhouse, Porthloo | 13/08/20021 | 12/09/2021 | - | - |
| Camberdown, Porthloo | 13/08/20021 | 12/09/2021 | - | - |
| White Cottage, Porthloo | 13/08/20021 | 12/09/2021 | - | - |
| 4 Porthloo Studios | 13/08/20021 | 12/09/2021 | - | - |
| 4 Porthloo Terrace | 13/08/20021 | 12/09/2021 | - | - |
| 3 Porthloo Terrace | 13/08/20021 | 12/09/2021 | - | - |
| 2 Porthloo Terrace | 13/08/20021 | 12/09/2021 | - | - |
| 1 Porthloo Terrace | 13/08/20021 | 12/09/2021 | - | - |
| Samson House | 13/08/20021 | 12/09/2021 | - | - |
| Glandore Gallery | 13/08/20021 | 12/09/2021 | - | - |
| The Rope Walk | 13/08/20021 | 12/09/2021 | - | - |
| The Stables | 13/08/20021 | 12/09/2021 | - | - |
| Compass Rose Cottage | 13/08/20021 | 12/09/2021 | - | - |
| Glandore | 13/08/20021 | 12/09/2021 | - | - |
| Hicks and Sons Boathouse | 13/08/20021 | 12/09/2021 | - | - |
| Thompsons Boathouse | 13/08/20021 | 12/09/2021 | - | - |
| Badcocks Boathouse | 13/08/20021 | 12/09/2021 | - | - |
| South’ard Engineering Workshop | 13/08/20021 | 12/09/2021 | - | - |
| Scillonian Boatbuilding and Repairs | 13/08/20021 | 12/09/2021 | - | - |
| 3 Porthloo Stuidos | 13/08/20021 | 12/09/2021 | - | - |
| 2 Porthloo Stuidos | 13/08/20021 | 12/09/2021 | - | - |
| 1 Porthloo Stuidos | 13/08/20021 | 12/09/2021 | - | - |
| Workshop Porthloo | 13/08/20021 | 12/09/2021 | - | - |

1. Due to the nature and location of the application, being classed as both ‘major development’ and ‘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.  This application is within or adjacent to the Porthloo SSSI. Natural England advises that the proposal, if undertaken in strict accordance with the details submitted in the CEMP, is not likely to damage the interest features for which the site has been notified. |
| Secretary of State | 13/08/2021 | 12/09/2021 | - | - |
| South West Water | 13/08/2021 | 12/09/2021 | 13/08/2021 | SWW require compliance with the criteria set out in their consultation response. This includes the protection of the water mains, which requires the protection of a 3m easement or a relocation of the water main network. |
| Cornwall Archaeoological 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 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. Paragraph 155 advises specifically that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). 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, 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. 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 issues. This includes 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 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 below are assessed in light of both the marine plan and the local plan.
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 elements of the project are the extension of the retaining wall and rock revetment as well as the diversion of the existing footpath. These are designed to link into and be an extension of the existing sea defences at Porthloo. From the landward side the main visual impact will be the 30 metre extension of the existing retaining wall. This height will be a continuation in terms of height, so whilst the existing ground levels rises, the height of the retaining wall will remain fixed. Although this is proposed to be constructed of pre-cast concrete, the intention is to face this with greenheart wood due to its durability. This type of wood is best-suited to use in marine environments and has good weathering characteristics.
2. Visually the proposed extension of this retaining wall will appear lower, as the ground level rises up, the wall retains a static height (as opposed to following the contours of the existing ground level). This together with the greenheart wood finish will ensure it does not appear discordant. From the seaward side, so from the water or from the beach, the visual change will be limited to the extension of the rock armour, which is intended to join in with the existing rock revetment, with an extension further north, in line with the retaining wall, finished off with a roundhead. This is stated to be of granite, with a composition found locally, and imports being restricted to Cornish granite, should there be an insufficient supply locally. This together with reinforced dune planting will create a natural appearance, that will ensure an assimilation into this marine environment. The extension will extend the rock armour northwards towards the Porthloo SSSI. The features of interest within the designation of the Porthloo SSSI are geological in nature, and the citation of this designation can be read in link (4) below.
3. In addition to the main elements of the project (the extension of the retaining wall and rock revetment), the proposal will include a temporary construction compound to be located in the boatyard near the beach. All construction materials will be delivered to the beach using a landing craft. A dump truck will unload materials from the landing craft and transport them across the beach to where the revetment is to be constructed, which will be done using an excavator. This will have a temporary visual impact upon the wider landscape but in the context of the boat yard usage, a limited visual impact is considered acceptable, providing the site is restored once the works are complete.
4. 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 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. The works themselves do not directly affect either monument which includes, to the south, a World War II Pillbox which is located to the north side of the building at South’ard Engineering and on Newford Island the remains of civil war-era breastwork and battery. 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.
2. 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 Area of Conservation (SAC) which runs up to the MLWS approximately 60m to the west of 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. 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**

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 inundation and 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. It is possible that these small businesses could be affected during the construction period, as the amenity of the local area would be adversely affected, in the short-term. These impacts could be lessened by the construction period taking place outside the peak tourism season, as is currently programmed. In terms of other islanders or visitors to Porthloo beach, then the impact of the works would prevent beach activities taking place. On the basis of the proximity of other beaches, such as Thomas’ Porth, it is not considered that this would be a significant impact. 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 and Porthloo Road. The proposal involves the delivery of materials to the site via landing craft. The materials delivered directly to the beach are for both the project at Porthloo and materials to be used at Porth Hellick. The materials, therefore, other than a transportation of some granite to Porth Hellick, will have little impact upon the highway network, as it does not require successive vehicular movements of large scale/heavy goods vehicles, which could both congest some of the islands road, as well as degrade surfaces. It is not considered the proposal will have a significant impact upon infrastructure or highway safety.
2. SWW have noted that the proximity of a 6 inch main pipe, which they have stated must be protected and not restricted. Any development within 3 metres should be avoided in order to maintain SWW’s easement requirements. Development that restricts access will require the developer to divert the water main, at their own expense. The applicant has confirmed that the development will not restrict the required 3 metre easement or access to the water main.
3. 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 read in **link (5)** 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 Porthloo Lane for access to properties, and as a result of subsequent modelling (following the mid-term review of the SMP) it was recognised that damage and exposure from direct wave action due to its westerly aspect and the prospect of 30m of inland, 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. As part of the application for EA funding and investment in sea defences it has also been recognised, and accepted, that at a local level, there is more value associated with this frontage than was determined by the high level economic assessment undertaken by the initial SMP. The area is the site of the only significant sized boat park on the island and is also the location of the only commercial marine workshops & slipway capable of managing the inter-island boats. There is such limited development space on the islands that there is no alternative site for such facilities. The inter-island boats are central to the visitor economy of the islands and are crucial in supporting inter-island travel and as such this area is central to the local economy and the sustainability of communities on the islands. The overall approach at Porthloo should satisfy objectives relating to the AONB and SAC designations.
4. The AONB Management Plan 2021 – 2026 can be read in **link (6)** below recognises the threat of rising sea levels particularly in relation to freshwater supply through saline intrusion, contamination and flood inundation.
5. 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. Additionally and in recognition of the importance of this area for the local economy and maintenance of transport connections, the proposal is also in accordance with Policy SS9 (2). This seeks to support development proposals that improve the islands’ air and sea links and associated infrastructure.
6. 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 24 above and the regulatory requirements of the EIA regulations, this section seeks to reasonably conclude (Reg 26, (1)(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 seek 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. Slight to moderate residual effects were identified at Porthloo 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).
2. 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, if carefully managed.

**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.

**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 (7)** 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 the submission of 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-p21049ful>

**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. Porthloo SSSI and Lower Moors SSSI Citation:** <https://designatedsites.naturalengland.org.uk/PDFsForWeb/Citation/2000177.pdf> and <https://designatedsites.naturalengland.org.uk/PDFsForWeb/Citation/1001273.pdf>

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

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

**7. 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: PL2000**
* **Block Plan: Drawing number: UA008878-ARC-XX-XX-DR-CE-0200, Rev P1**
* **Site Plan: Drawing number: UA008878-ARC-XX-XX-DR-CE-0200, Rev P1**
* **Design Statement, Ref: UA008878-ARC-XX-XX-RP-CE-0260, Rev P4**
* **Proposed Revetment Specification, UA008878-ARC-XX-XX-SP-CE-0831**
* **Proposed Revetment Plan, UA008878-ARC-XX-XX-DR-CE-0220, Rev P4**
* **Porthloo Site Information: UA008878-ARC-XX-XX-SP-CE-0801**
* **H&S Design Hazard: UA008878-ARC-XX-XX-HS-CE-0261-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 dune planting, details of the native plant species and planting schedule, shall be submitted to and approved in writing by the Local Planning Authority, in consultation with Natural England. Native dune species, such as Marram Grass Ammophila arenaria or Creeping Willow Salix repens should be used to provide flood defence and stabilise the dune system, whilst supporting this valuable habitat. 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 or are washed away before successful establishment to the dune, 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.