



Our ref: LOV1/1 (LPF)
Your ref: 77576

2 May 2025

North Devon District Council
Development Control
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URGENT LETTER

Dear Officers

OBJECTION

White Cross Offshore Windfarm (Onshore Project) (“the Site”)

Full planning permission for the construction and installation of onshore electrical infrastructure required to export electricity from the White Cross Offshore Wind Farm to the national distribution network and associated infrastructure (“the Development”)

1. We are instructed by the formally constituted residents’ group ‘Love Braunton’ regarding the above application. We wrote to you on 28 April raising concerns over the lack of proper publication of the Council’s 14 March HRA (“**March HRA**”) and the lack of response to the HRA by Natural England (“**NE**”) as noted by your senior legal officer’s response on 25 April. We note your response to these concerns by your letter dated 30 April and the decision not to delay the committee meeting. This materially prejudices our client who should be given time to engage their ecologist

Bioscan (UK) Ltd. to review the HRA. It is also highly abnormal and legally questionable to proceed with a decision on an application subject to HRA where NE has not commented on the HRA, in circumstances where their last formal response from February 2025 records “not resolved” in relation to many material issues and in particular at least three “red coded” items remain so that the test of scientific certainty is not met. **For this reason and the detail set out below we consider it essential that the meeting schedule for next week 7 May be delayed and seek your agreement to this course of action.**

2. Love Braunton have separately lodged their written objections in relation to principal material issues which remain unresolved¹. This letter focusses on the key legal issues arising from the applicant’s Rochdale Envelope (“**RE**”) approach to Environmental Impact Assessment (“**EIA**”) Development and we have instructed counsel Ben Fullbrook of Landmark Chambers to consider the applicant’s approach to EIA pursuant to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“**the Regulations**”). In short, despite the applicant applying for full (as opposed to outline) planning permission, the applicant has pursued a “Rochdale envelope” approach to EIA, following the judgment of Sullivan J in *R v Rochdale MBC ex p Milne (No.2)* [2001] Env LR 22. There are also key concerns related to outstanding ecology issues. We had therefore instructed Bioscan (UK) Ltd to provide an initial urgent review of ecology matters and their letter dated 22 April 2025 is submitted alongside this letter but they have not had the capacity to review the HRA which was only sent to us after their initial work.
3. In summary there are two fundamental legal problems to determining the application at the committee meeting next week: -
 - (i) the RE approach fundamentally undermines a lawful decision-making process, which, if unaddressed, could lead to grounds for a legal challenge if the development is resolved to be approved next week. Officers reached this view as long ago as 2024 and whilst officers changed, the applicant did not address their valid legal concerns which we share; and
 - (ii) NE has not resolved the information gap, missing data and other HRA concerns necessary to meet the high threshold of certainty required to discharge HRA duties and protected species, especially where NE has not formally responded to the Council’s March HRA despite the Council’s

¹ 26th October 2023, 3rd November 2023, 12th November 2023, 15th December 2023, 5th January 2024, 28th August 2024 and 5th February 2025.

solicitor's statement in the 30 April response letter that NE has no concerns with the HRA. In any event, the Officer's Report ("OR") is seriously misleading in its summary of NE's advice (see para 40 below).

Problems with Rochdale Envelope approach

4. The description of the Proposed Development set out in the application and on the Council's planning portal² is as follows:

Full planning permission for the construction and installation of onshore electrical infrastructure required to export electricity from the White Cross Offshore Wind Farm to the national distribution network; including installation of 132kV underground electricity transmission cable(s) from landfall at Saunton Sands Car park to a new substation at East Yelland. Construction of temporary facilities required during construction to include haul road, vehicular access, compounds, associated works areas and a permanent substation access road. Construction of a new substation under the Rochdale Envelope Approach with additional information regarding architectural form and silhouette, design code, scale and layout, landscaping, lighting, and appearance and materials.

5. Two things are apparent from this description: (i) this is an application for full planning permission; and (ii) the RE is only stated in this public description of the development to cover the plans for the construction of the substation.
6. In relation to (ii), however, the RE approach does not just cover the plans for the substation but is much broader. Chapter 5 of the ES, for example, describes the onshore element of the Project Design Envelope ("PDE")³ as applying to several elements of the Proposed Development, including (§5.2(13)):
 - a. Landfall construction method
 - b. Onshore Export Cable Corridor (micro-siting of cable route)
 - c. In certain areas whether trenches will be used to install onshore export cables

² <https://planning.northdevon.gov.uk/Planning/Display/77576>

³ Defined in various places in the ES as "A description of the range of possible components that make up the Project design options under consideration. The Project Design Envelope, or 'Rochdale Envelope' is used to define the Project for Environmental Impact Assessment purposes when the exact parameters are not yet known but a bounded range of parameters are known for each aspect."

- d. Construction timings and methodologies
- e. Operation and maintenance methodologies
- f. Decommissioning timing and methodologies

All of the above are said to be subject to further detail or project design.

7. The rationale for adopting this approach is set out in chapter 6 of the ES as follows:

6.4 The Project Design Envelope ('Rochdale Envelope')

The proposed approach to assessment for the Onshore Project is based on the principle of a project design envelope (or 'Rochdale Envelope'). The 'Rochdale Envelope' approach has been employed under various consenting regimes including the Planning Act 2008, TCPA 1990, as well as the Electricity Act 1989. It is recognised by consenting authorities that, at the time of submitting an application, developers may not know the precise nature and arrangement of infrastructure and associated infrastructure that make up the proposed development. This is due to a number of factors such as the evolution of technology and the need for further detailed surveys (especially geotechnical surveys) which are required before a final design and layout can be determined. This flexibility is important as it prevents consent being granted for specific infrastructure or a particular layout which is not possible or optimal at the time of construction, which may be several years after the planning/consenting application was made.

The general principle of the assessment, under the project design envelope approach, is that for each receptor the impact assessment will be based on assessing project design parameters likely to result in the maximum adverse effect, or least beneficial effect, (i.e., the worst-case scenario) for each potential impact. The Rochdale Envelope for a project outlines the realistic worst-case scenario for each individual impact, so that it can be safely assumed that all options within the set parameters will have less effect.

If a combination of design parameters leads to a scenario that cannot realistically occur, then the worst-case scenario will be reconsidered, and a realistic set of worst- case parameters will be assessed. The end result will be an EIA based on clearly defined environmental parameters that will define the range of development possibilities and hence the likely environmental effects that could result from the Onshore Project. This

represents a precautionary but robust assessment of potential effects at this stage of the development process.

Using the project design envelope approach means that receptor-specific potential effects draw on the options from within the wider envelope that represent the most realistic worst-case-scenario. It is also worth noting that under this approach the combination of project options constituting the realistic worst-case scenario may differ from one receptor to another and from one effect to another.

In accordance with the accepted industry approach, the impact assessment has been undertaken based on a realistic worst-case scenario of predicted impacts, which are set out within each technical chapter. The project design envelope for the Onshore Project is detailed in Chapter 5: Project Description.

8. The applicant asserts that the Council has approved the RE approach summarised above (despite the description of development indicating otherwise) and that it did so following a meeting on 21 June 2023.⁴ However, there is no record (despite Love Braunton's FOI requests) from either the Council or the applicant that this was the approach agreed by the Council.
9. In contrast, FOI disclosures suggest that an entirely different approach was deemed necessary by officers. In an officer note circulated before the 21 June 23 meeting, the officer confirmed that the Rochdale Envelope approach was solely for the substation, concluding:

'Further to my emails yesterday I have been looking at the examples they put forward (none of which are really comparable). To get the point I am going to continue to advise full permission with Rochdale envelope approach to substation.' [Email Neale Hall to Jenni Meakins dated 20 June 2023]

I have had a look through their table and given the landscape and ecological designations associated with this application I would agree that requesting a full application to be submitted is the correct route to follow to ensure we make a lawful decision on the final application and agree that the substation element should be assessed on the worst case scenario in terms of scale etc whereby after then can use S73 if the scale is to reduce from that identified in the application'.

[Response Jenni Meakins to Neale Hall, 20 June 2023] (emphasis added)

⁴ See §1.3.3 of the Design and Access Statement.

10. We note that §1.4 of the OR suggests (confusingly) that the RE approach is confined to the substation but that a “*limit of deviation condition*” applies to development of the cable route. This is a distinction without a difference and in any event clearly contradicts what is said about this approach in the description of the “*Project Design Envelope*” earlier in the OR. This suggests that the RE extends well beyond the substation and for that matter well beyond matters going solely to the cable route – it also covers landfall construction, and broader construction and timing methods. It would therefore appear that the Council’s position on this matter has changed from its earlier advice and even now that its description of the approach that it says it has allowed is at odds with the approach which has obviously been adopted. This is irrational and unexplained.
11. In any event, regardless of whether the RE approach to the full Development was agreed by the Council, given the Site is an ecologically and environmentally sensitive location, the location of the cable route and construction methodology (amongst other aspects) are critical to ascertain the potential construction and operational adverse impacts.
12. Therefore, there are two key issues with how the application has deployed the RE approach. First, there is a fundamental lack of clarity on what was agreed with officers when the application was validated by the Council (see above). Second, the approach is inherently inappropriate for this and there are serious concerns as to whether the RE approach can lawfully discharge the Council’s EIA and HRA legal duties for the reasons set out below.

What is the description of the development?

13. It is well established that, as an EIA application, the EIA should be carried out at the earliest possible stage in decision-making⁵ and that EIA requires both the preparation of an Environmental Statement (“**ES**”) and relevant consultation, publication and notification (reg. 4). The ES must also “*include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment*” (reg.18(4)).
14. In ***R (Finch) v Surrey CC*** [2024] PTSR 988, the Supreme Court described the EIA process as follows:

⁵ ***R (Finch) v Surrey CC*** [2024] PTSR 988, §125

“It is essential to the validity of the decision that, before it is made, there has been a systematic and comprehensive assessment of the likely significant effects of the project on the environment in accordance with the EIA Directive...”

15. The Supreme Court also emphasised the importance of public participation in the EIA process:

“The directly enforceable right of the citizen which is accorded by the [EIA] Directive is not merely a right to a fully informed decision on the substantive issue. It must have been adopted on an appropriate basis and that requires the inclusive and democratic procedure prescribed by the Directive in which the public, however misguided or wrongheaded its views may be, is given an opportunity to express its opinion on the environmental issues.”

16. This is confirmed in the description of the Development set out above which anticipated a full planning application (with full details), bar the Rochdale Envelope approach for the substation.

17. However, this is not the information that was provided in the ES or the Report to Inform the Appropriate Assessment dated 16 August 2023 (“**RIAA or Shadow HRA**”) for public consultation and statutory consultee input, nor the information that is now before the Council as decision maker.

18. Critically, this approach also fatally undermines the legitimacy of the Council’s March HRA which has been undertaken based on the RE approach to the shadow HRA⁶. As a matter of law, reliance on the March 2025 HRA would undermine the legitimacy of the assessment as Regulation 63 of the Conservation of Species and Habitats Regulations 2017, as interpreted and applied by the courts,⁷ as this prohibits the Council from granting planning permission unless it has been established beyond reasonable scientific doubt that there will be no adverse effect on the integrity of European Sites (now National Site Networks). This is an exacting requirement and in February 2025 on the information available NE has already questioned whether the standard has been met and there is nothing by way of formal update from NE that it has changed its mind (see further below).

⁶ Para. 2.1

⁷ See **R (Wyatt) v Fareham BC** [2023] Env LR 14, §9 for a detailed exposition of the law.

The appropriateness of the Rochdale Envelope approach

19. More fundamentally, as the Council officers will likely have had in mind when seeking a full planning application for the Development (and providing the advice quoted above), the RE has been developed through case law to apply to a multistage consent process, see the Planning Practice Guidance⁸ and section 2 of the NSIP Projects Advice Note. This is likely to avoid the potential for abuse as outlined by Sullivan J (as he then was) in **R v Rochdale MBC ex p Milne (No.2)** [2001] Env LR 22 (“**Milne**”):

“This does not give developers an excuse to provide inadequate descriptions of their projects. It will be for the authority responsible for issuing the development consent to decide whether it is satisfied, given the nature of the project in question, that it has ‘full knowledge’ of its likely significant effects on the environment. If it considers that an unnecessary degree of flexibility, and hence uncertainty as to the likely significant environmental effects, has been incorporated into the description of the development, then it can require more detail, or refuse consent.”

(emphasis added).

20. This is not an application for multi-stage consent. It is an application for full planning permission. The applicant has not produced any authority to support the proposition that the RE approach can be adopted for a full planning permission,⁹ where full details of the development proposed are (self-evidently) required (and therefore must be assessed) at the outset – there being no opportunity to formally determine any subsequent reserved matters, save for specific matters requiring conditional approval. We assume that this is what the officer meant when he advised that “*I have been looking at the examples they put forward (none of which are really comparable)*” (see full quotation above). In other words, we assume that the applicant has not been able to identify any examples of where this approach has been applied to an application for full planning permission. This would be unsurprising for the reasons given above.

21. Without prejudice to the foregoing, even if the Council can lawfully adopt an RE approach to this application, before making any determination the Council will have

⁸ <https://www.gov.uk/guidance/environmental-impact-assessment#subsequent-applications>

⁹ All that is provided are vague references at 1.4 of the OR to the RE approach being adopted in “*electricity generation projects*” without any suggestion that these projects involved full planning application as opposed to outline or DCO applications.

to be sure that the decision is based on 'full information' and a clear assessment of:

- a. Whether the ES can genuinely be said to have assessed the worst-case scenario for the various parameters.
- b. The level of sensitivity of the environmental receptors and in particular how sensitive they may be to even minor variations in the project (e.g. the design of the substation, or the route of the cable or the cable laying methodology).
- c. The extent to which those parameters are secured by relevant plans and conditions;
- d. The level of detail which will be deferred to conditional approval.

22. We simply do not think the Council has this information available to make this assessment and this is a point our clients have repeatedly made in their objection letters,¹⁰ including the Love Braunton letter 5 February 2025 which inter alia criticised the use of the RE approach as it did not allow assessment of the Development against Neighbourhood Plan policies related to key environmental protections.

23. Further, the RE approach is also inappropriate for three main reasons:

- a. **First**, as a highly sensitive nationally designated landscape with sensitive ecological receptors, minor variations in the final project details could have moderate or even major effects and therefore it is not possible to have sufficient information about likely significant effects without full project details. Two (non- exclusive) examples come to mind:
 - (i) The first is related to the felling of trees and hedgerows. The ES confirms that the Development will result in the felling of mature hedgerows and trees, but, under the RE approach, the extent of felling and loss of trees and hedgerows is unknown and therefore the landscape impacts and the impacts on ecological receptors like bats and birds are also not known.

¹⁰ The Love Braunton letters include 26/10/23 which questioned the cable route, 3/11/23 which criticised the incomplete site selection explanation, 28/8/24 which questioned the connection to Yelland.

- (ii) This is also the case for the more technical aspects like the construction method which is presently unknown and without this detail there can be no certainty as to what the ecological, hydrological or (temporary) landscape impacts will be if cable trenches are dug or where other cabling techniques are deployed. This is readily apparent in the Feb 2025 NE annexes where numbers of matters continued to be marked “not resolved” (see below).

Moreover, the above examples demonstrate the difficulty of addressing any cumulative or in-combination effects in these circumstances. For example, construction techniques which may have less obvious environmental impacts (such as the use of trenchless cabling techniques) may well have other minor impacts that could combine with the impacts of other projects to have significant effects. The approach adopted in this application makes it effectively impossible to keep track of these.

- b. **Second**, it is generally inappropriate to defer consideration of environmental effects for the purposes of EIA since these should be identified at the earliest possible stage. Moreover, as Sullivan J (as he then was) held in *Milne*, the flexibility introduced by the Rochdale Envelope principle “*does not give developers an excuse to provide inadequate descriptions of their projects.*” This seems to be precisely the approach being adopted here.
- c. **Third**, the approach being adopted limits the ability of the public to participate in the overall process, which is a fundamental element of EIA: see *Finch* (above). This is because:
 - (i) there is not enough information or detail for the public to give an informed opinion on principal material issues and
 - (ii) the process being adopted will defer consideration of important matters, which could have a bearing on the environmental effects of the Development at the conditions discharge stage.

Effective public participation in this process is undermined by the approach which has been adopted in this case. In *R (Halebank PC) v Halton BC* [2012]

JPL 56,¹¹ the court held that consultation for the purposes of EIA must be such as to permit “*early and effective opportunities to participate*”. Effective participation means the opportunity to give an *informed* opinion.¹² The public cannot give their informed opinion on the EIA of this application for full planning permission since many fundamental matters are as yet unknown. Since these will be deferred to the approval of various conditions, there is no guarantee that the public will be able to comment on these details as and when they arise. In any event, it is antithetical to a full planning application for EIA development to require details which have a bearing on its environmental effects (which must be assessed at the earliest possible stage) to be provided later after the consent has been granted.

24. On this basis, we consider that the Council has inadequate information to comply with its EIA duties to fully understand and consult the public on the environmental effects of principal material planning issues.

Examples of EIA matters where lack of certainty missing

25. The lack of certainty caused by the RE approach to the cable installation is plainly documented by NE in their letter dated 21 February 2025 letter when read alongside the detailed annexes, A3 Marine and Coastal Processes, B3.1 Protected Species, B3.2 Soils, B3.3 On shore ornithology, B3.4 Coastal Habitats C3 Marine Mammals, D3 Off-shore Ornithology, E3 Benthic, F3 Fish and G3 Designated Sites.

Bats

26. Critically, following a close examination of the February 2025 updated appendices at least three items on B3.1 ‘Protected Species’ remain marked as ‘code red’ issues meaning that NE has concluded that *‘it is not possible to ascertain beyond reasonable scientific doubt that the project will not affect the integrity of an SAC/SPA/Ramsar and/or significantly hinder the conservation objectives of an MCZ and/or damage or destroy the interest features of a SSSI and/or comply fully with the Environmental Impact Assessment requirements.’* (emphasis added)

¹¹ See also *R (Burkett) v Hammersmith and Fulham LBC (No.2)* [2004] Env LR 3: “The democratic right of a member of the public to make representations must be meaningful and therefore the information which is made available must be sufficient to enable a member of the public: (a) to respond to the significant effects on the environment to which it is suggested the project may give rise (b) to examine the project to see whether it is likely to give rise to significant effects which have not been identified”

¹² It is worth noting, though, for completeness that if a further EIA is required at discharge of condition or reserved matters stage then this would be provided for by reg.9 of the Regulations.

27. The annexes set out that in relation to the Greater Horseshoe Bat population provide:

*Principal Area of Disagreement Natural England highlights in our nature conservation advisory role that winter bat activity and year round usage levels throughout development site have not been surveyed and therefore we are unable to advise with any certainty on a conclusion cannot be made about the scale and significance level of impact to flightlines and potential foraging. We advise that both Landfall and Taw Estuary Crossing lie within the greater horseshoe bat *Rhinolophus ferrumequinum* sustenance zones associated with the Caen Valley Bats SSSI. With the majority of the Onshore Development Area to the north of the River Taw located within 5km of Caen Valley Bats SSSI. Therefore, the development is within the core sustenance zone for Greater Horseshoe bat for which the above SSSI is designated for and lies within 3 km. The foraging range of GHB will encompass the whole of the development corridor, and due to warmer winter temperatures further consideration to foraging impacts throughout the year will be required given the proximity of a known hibernacula. **Furthermore, without the full survey data of bat activity throughout the year, Natural England cannot agree that the hedgerow on Saunton Road is not part of a regularly used commuting route used by bats travelling to and from a nearby roost.***

Even where more data is provided NE maintained its concerns in Feb 2025:-

*Disagreed - Although surveys along Saunton Road have been completed for November and December 2024, surveys have not be completed in the remainder of the hibernation period (January and February, although it was confirmed January data had been collected during a meeting between Natural England and the Applicant). The other autumn/winter months cannot be used to assume bat activity during these months because some studies have found bat activity to increase in these months with the increase of milder winter weather. There are no over winter surveys (Nov-Feb) completed for the rest of the development area/within the core sustenance zone for Greater Horseshoe bat. **Without the full survey data throughout the year**, the potential impacts to Greater Horseshoe Bats during the hibernating period, cannot be assessed and therefore **Natural England cannot advise with certainty** that the mitigation for either Saunton Road or the development area as a whole, will mitigate likely impacts. Natural England advises that bat mitigation proposed for March-October should be extended for the winter months and extended to cover the entire working area. The Applicant has agreed to not work outside of daylight hours (sunrise to sunset) through email correspondence 20/02/2025. If the Applicant could commit to extending their lighting mitigation from April-October to the entire year, this would be sufficient mitigation for the period that was not*

surveyed for bat activity. If the LPA are able to include this within condition wording, Natural England is content to mark this issue resolved.¹³

(i) B2.1.3 Pre Construction Surveys

The Applicant states that no pre-construction surveys are required. Natural England disagrees with this conclusion. Especially as these will be required to inform any protected species licence requirements.

Natural England advise pre-construction surveys would be required to apply robust, quantitative and standardised methods to provide data against which post-construction monitoring results and evaluations of mitigation schemes can be compared and assessed. As per our comments provided in January 2024 regarding further surveys: Monitoring of bat activity, particularly with regards to greater horseshoe bats, along Saunton Road is required following removal/coppicing of hedgerows work.

*Disagreed - Natural England advises that pre-construction bat surveys are required. Pre-construction surveys are a standard of offshore wind developments. The majority of surveys for this development were carried out in 2022. As such, it will be more than three years since survey. Given this development only has one year of survey data spread across multiple years opposed to Natural England's standard best practice of two years, it highlights the importance of pre-construction surveys for the whole Whitecross Development/cable corridor. **Pre-construction surveys (in addition to the remaining surveys required as per other points) are required to provide information as to whether bat activity remains similar to that previously recorded or whether there are significant changes that need be addressed through suitable mitigation.** If activity is significantly different, this is likely to affect the potential impacts of the works on bats and therefore the suitability of mitigation. The Applicant has identified that no EPSM licenses are required at present. Though if they found to be required (impacts to roosting bats/foraging and commuting bats associated with an important roost etc) Natural England Wildlife Licencing team must be consulted and further surveys and/or mitigation may be required.*

28. Our instructed ecologists, Bioscan shares NE's concerns, particularly the lack of surveying given the presence of an important rare bat population associated with

¹³ This is addressed in the OR 2.38 and 2.39 but appears to not fully incorporate the NE requirements into conditions.

the Site. In the absence of surveys given the potential cable routing it is 'beyond argument that 'there is a reasonable likelihood of the species being present and affected by the development'¹⁴.

29. Unsurprisingly, the level of information gaps was also a concern shared by officers in 2024, as set out in recently provided FOI correspondence:

"...Both the latter scenarios would likely end in refusal as we won't have the bat survey work, which in my opinion would legally flaw any decision to approve and we would not be able to conclude the HRA so could not approve in law anyway. I am also uncomfortable from a legal perspective with the extent of the wintering bird survey despite NE's view that the one season may be acceptable. I have little confidence all the other further information required from other consultees will be satisfactory (or fit for purpose using NE phraseology) unless they actually take on board the advice they are given" (emphasis added)

[email Neale Hall to Jenni Meakins 29 January 2024]

30. As Bioscan confirms, conditioning the further surveys leaves an information gap on a principal material planning issue since the Council cannot determine at this stage in the absence of survey work what the impacts will be and whether any proposed conditions will be enforceable. As the applicant has failed to supply the necessary survey work, despite the requests from the statutory consultee, we see no reason why the Council's position cannot follow the officer's recommendation to refuse the application, particularly given that the situation remains that the statutory regulator's position is that the surveying remains inadequate.

Other outstanding ecology issues

31. Furthermore, the NE consultation reveals a significant number of colour-coded Purple, Red, Amber and Yellow coded matters which remain "not resolved". Where matters are 'resolved', many are done by way of conditions with NE pointing out that the lack of details is contrary to best practice and one sees that NE has changed the colour code from red to amber despite significant concerns still not resolved.

32. In particular: -

- (i) In A3 Marine and Coastal Processes the following points are unresolved, A1, A5 A6 and A8.

¹⁴ Bioscan letter 22 April 2025

- (ii) In B3.1 Protected Species the following points are unresolved, B2.1.1, B2.1.2, B2.1.3, B2.1.5, B2.1.8, B2.1.11 and B2.1.12.
- (iii) In B3.3 On shore ornithology the following points are not resolved B12, B2.3.4 and B2.3.5.
- (iv) In B3.4 Coastal habitats the following points are not resolved 2.7, 2.8, 2.19 and 2.22.
- (v) In C3 Marine Mammals the following points are not resolved 2.1 Worst, C2.4, C2.8 and C215.
- (vi) In E3 Benthic the following points are not resolved E5 Project Description – Plate 5.8, E6 Project Description – 5.9.13, E9 Project Description – App 5.1, E11 Project Description – App. 5.1. 4.1.2.2, E16 Analysis, Modelling and Reporting – General, E18 Identified impacts – 10.3.3 Table 10.8, E23 Identified impacts – Chapter 10 Para. 62, E24 Identified impacts – Chapter 10 Para 65, E25 Identified impacts – 20.3.1q0 Paras 44 & 45 , E32 Methodology – General.
- (vii) F3 Fish the following point is not resolved Additional Comments regarding impacts of electromagnetic fields.
- (viii) G3 Designated sites the following points are not resolved G7 Caen Valley Bats SSSI, 2.26 RIAA 9 Chapter 6 EIA Methodology-35/Section 9.5/ Sub-section 9.5.2.1.3, 2.28 and RIAA 10 Chapter 6 EIA Methodology-35/Section 9.5/ Sub-section 9.5.2.2.

33. Whilst some unresolved points might be deemed suitable for condition or future survey data to fill in what NE characterises the missing information or “data gaps”, careful consideration of NE comments where there is a “data gap” completely undermine the HRA legal standard of scientific certainty, and as NE suggested in February 2025 undermines the credibility of the EIA process. See, as one example, Annex A3 Marine and Coastal Processes point 22, ref 2.19 Data Gaps 8.4.2.

“there remains uncertainty regarding the depth of cable burial, thickness of beach sediments, future beach-dune rate of change and a need to further consider enhanced storminess and increased rate of sea level rise. Therefore, the conceptual model remains incomplete. We refer to our advice to A1 and A5 above.”

34. NE repeatedly notes the problem of the lack of detail as to the cable laying methodology and cable depth in their comments recorded as under A3 [ref ES 5.4.3.2/ Chapter 8/8.5.1]. And they note that the lack of detail for cable reburial has not been used to inform the ES/HRA and specifically notes that it may be necessary to update the ES/HRA – [Ref A3, point number 2.4 WCS ES - 5.9.1.3/.155].

“DISAGREE - As with our advice above, the WCS for reburial should be established including max width, as it is important to establish the WCS total area of seabed affected. If the WCS has not previously been established and assessed, then the relevant EIA/HRA may need to be updated.”

35. Other concerns arise where there is a “data gap” on the beach profile at the landfall point of the cable installation [point 75, 2.4.1 identified impacts ES 8.5.1] and specifically states the information is needed to assess the application with the clear implication that this cannot be left to condition.

It is stated that due to the short-term nature of the construction programme, and long term low rates of vertical change at Landfall, cable installation would lead to low and temporary changes to the beach. However, vertical change in beach profile throughout the lifetime of the development needs to be considered.

Natural England advises that vertical change in beach profile throughout the lifetime of the development, including consideration of future environmental change should be assessed as part of the Application (emphasis added).

36. Other examples include repeated reference to lack of certainty in the assessment process (see emphasis): -

- (i) Annex A3 [ref 2.44] Identified impacts – Sandwave/bedform recovery

It is stated that following sandwave removal, excavation of the trench, cable installation and backfilling, sandwaves will reform. Furthermore, can it be demonstrated that natural processes will sufficiently bury the cables in the dredged trench to target burial depth? There is no reference to estimated timescales for sandwave/bedform recovery.

We advise that as part of the application sandwave/bedform recovery timescale should be provided along with supporting evidence that natural processes will sufficiently bury cables to target burial depth.

*DISAGREE - The Applicant has included evidence from Race Bank OWF (Appendix A) to support their conclusion for sandwave recovery following sandwave removal and cable installation. **It is not known** how the environmental conditions at Race Bank provide a suitable analogue for those at White Cross. Especially, as noted for the ‘Cable Specification and Implementation Plan’ para. 21 we have concerns with the interpretation of the Race Bank advice noting specifically that the wrong designated site is referenced. Further advice is detailed in Annex B2.*

- (ii) Annex E3 – Benthic E32 Methodology – General

There are lots of statements through the chapters that identify relatively small impacts, but there are no assessment of the WCS provided in the chapters which use information from the project description to help determine 'relativity'

Natural England advises that the necessary evidence needs to be included to support conclusions drawn throughout these chapters.

Disagreed - this is not resolved as the project description provides insufficient detail and the assessments remain vague.

Natural England is unable to find the document the Applicant references that sets out all activities according to S66 and the maximum design scenarios and are therefore unable to comment further.

(iii) E24 Identified Impacts – Chapter 10 Para 65

In Table 18 of Appendix 8B there is a reef assessment, but it would be good to have close up maps along the export cable route in order to consider habitat types and potential impacts and significance thereof

Natural England advises that high resolution maps should be provided during the consenting phase, which include the habitats along the export cable route both in marine and intertidal

Partially Disagreed - Natural England are unable to advise further without maps for the marine environment. Natural England welcomes the CBRA for the terrestrial elements.

*No Change - Natural England advises that best practice is for maps to be provided to inform project decision making. **Therefore, we are unable to advise further on WCS in relation to potential impacts and required mitigation measures.** If regulators decide that a post consent assessment for this project is acceptable then we raise the potential risk for impacts being greater than predicted and the need for revision of the impact assessments.*

37. Elsewhere NE has identified the lack of in-combination assessment with e.g., Hinkley Point C Nuclear build and the Swansea Bay Tidal Lagoon Project as “gaps” which need to be assessed and which has not been done. NE’s final comment in relation to this lack of in-combination assessment records: -

Disagree – Natural England refers you to comments on the Fish Annex H in relation to EMF as this issue is not yet resolved.... Annex G3 Designated Sites [ref 2.28 RIAA Chapter 6 EIA Methodology 35/Section ...[(text missing)].

38. A similar issue, as explained by Bioscan is the absence of any consideration of the effects of dewatering during excavations (even within the loose parameters of what construction methodology will be utilised). This is another example of the lack of detail that the broad scope of this project presents.
39. Despite the above, the OR states (§2.17) that *“following the implementation of the mitigation measures described [in the OR], effects on onshore ecology and ornithology during operation will be negligible for all species and habitats”* and that mitigation can be secured by condition. This statement does not reflect the test imposed by the Habitats Regulations, which requires the Council to be satisfied beyond reasonable scientific doubt as to the absence of adverse effects on site integrity. NE’s most recent consultation response made clear that the Council could not, in its view, be so satisfied. It is established as a matter of law that, as the statutory consultee, great weight should be given to the views of NE on this matter and the Council should not depart from NE’s position without providing cogent reasons that deal with the specifics of the information gaps.¹⁵ It is also clear that Council officers have previously had doubts and, in these circumstances, it cannot be concluded that no reasonable doubt exists.
40. Finally, the summary of NE’s advice in the introduction of the OR is seriously misleading. It suggests that, in its initial advice, NE advised *“that the mitigation measures then proposed by the applicant are were [sic] sufficient to remove significant impacts”*. This is absolutely not what NE advised – in fact it advised that the mitigation measures were not sufficient. This must be corrected and members informed of the correct position.

HRA – inadequate/incomplete ecological information on cable installation effects

41. The March 2025 HRA deals only with the Braunton Burrows SAC and scopes out other designated sites in proximity.¹⁶

¹⁵ *R (Wyatt) v Fareham BC* [2023] Env LR 14, §9.

¹⁶ Due to the lack of access to HRA until last week the scoping out has not been checked by our ecologist and this remains a concern.

42. As explained in the HRA¹⁷ the use of the RE “project design envelope” means the impacts on the SAC as assessed in the HRA has been done when construction methodologies are uncertain with either open trench or trenchless (HDD) methodologies still to be decided when installing the cable through the Braunton SAC. At page 14 in relation to SSSI units 102 and 108 the HRA states that to “*the preferred technique for the landfall would be open-cut through the intertidal, rather than trenchless techniques.*”

43. Citing the Shadow HRA the March 2025 HRA concludes: - (page 17)

The intertidal sandflats (Annex 1 habitat 1140 Mudflats and sandflats not covered by seawater at low tide of the Braunton Burrows SAC) and their communities would not be disturbed or experience any form of alteration to the habitat or the geomorphological and physical processes as a result of the buried cable, therefore no change would occur.”

This is illustrated in Annex 1 of Appendix Y Outline Cable Landfall Plan (White Cross, 25 June 2024) which shows a series of cross sections including the completed works with no above-ground structures remaining. Therefore, there will be no direct effect on the extent and the spatial distribution of sandflats and dunes as no permanent features are to be left in situ. There will be no permanent restriction on natural processes such as wind-blown sand once construction is complete.

44. That may be so *post construction*. However, the problem with the RE approach to the cable installation through or adjacent (or even 5m) from the sensitive SAC units arises because the extent of damage or change caused by the cable installation is not known without the precise methodology for the cable trench being determined and therefore undermines the HRA conclusions of *no adverse effect on integrity (“AEol”)* on direct habitat loss.

45. This can be seen in relation to construction impacts, e.g., page 17 records “*Short-term changes in the form and function of the coast arising from cable installation would not be significant.*” The conclusion “would not be significant” does not support a finding of no AEol during construction.

46. For example at 6.6 under Habitat Alteration/Disturbance the HRA records: -

¹⁷ Section 6.4

Habitat alteration and temporary physical disturbance has the potential to affect conservation objectives of the SAC due to the loss of structure and function of qualifying habitats. This may include changes to natural processes, topography, supporting species etc.

47. These statements simply cannot be relied on to discharge the high bar of scientific certainty until the cable installation methodology is known and assessed. Particularly so when the Council's HRA is solely reliant on post-permission, and non-particularised conditions (including further surveying work) as mitigation.

48. In ***Orleans v Vlaams Gewest (C-387/15) [2017] Env LR 12*** the CJEU held that mitigation measures which had yet to be confirmed and where the outcome was not certain could not be relied upon. It said:

It is only when it is sufficiently certain that a [mitigation] measure will make an effective contribution to avoiding harm, guaranteeing beyond all reasonable doubt that the project will not adversely affect the integrity of the area, that such a measure may be taken into consideration when the appropriate assessment is carried out.

49. Thus, if the extent and nature of the ecological features which may be affected are not currently known, then it is not possible to conclude, with sufficient certainty (or beyond reasonable scientific doubt) that effective mitigation can be provided, let alone what form that mitigation should take.

50. Moreover, and for completeness, the Council should not be able to take any comfort from an assumption that any outstanding ecological concerns can be addressed by further HRA at the discharge of conditions stage. Although, following the decision of the Court of Appeal in ***C.G.Fry and Son v Secretary of State for Levelling Up, Housing and Communities*** [2024] PTSR 2000, the law currently suggests that HRA can be conducted at discharge of conditions stage, that decision has been appealed to the Supreme Court and judgment is awaited. It is entirely possible that the Supreme Court will reverse the Court of Appeal's decision meaning that, once this permission is granted, there will be no further opportunity to address possible impacts on European Sites.

s. 85 Duty CROW Act 2000 (amended)

51. As the Development is proposed to be within and surrounding the National Landscape, the application will need to be assessed under the revised s.85 duty that '*In exercising or performing any functions in relation to, or so as to affect, land*

in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.’ As set out in the recent guidance,¹⁸ this is an active duty and requires the demonstration of proportionate, reasoned, and documented evidence of how the duty has been discharged, including in the setting.

52. The analysis of this matter set out at §§13.59-13.72 of the OR is inadequate. In summary, it appears to be the officers’ position that the development will harm the natural beauty of the AONB but that this harm will be mitigated by the mitigation of climate change effects through the operation of an offshore windfarm. This is not a conclusion which is rationally open to the Council since (i) the extent of any mitigation of climate change effects arising from the development has not been quantified (indeed, the OR accepts that they are intangible - §13.65) and (ii) any such benefits are not specific to the national landscape in question and so do not allow for any kind of net balancing of harms versus benefits to this site. It is therefore simply not possible to conclude that the proposed development will further the purpose of conserving the natural beauty of the National Landscape

53. The fallback position (suggested in the OR at §13.71) that, even if the proposed development does not conserve the natural beauty of the National Landscape, it is nevertheless in accordance with the duty to further that purpose, is wholly unreasoned. In *New Forest NPA v SSHCLG* [2025] EWHC 726 (Admin), Mould J made clear (at §66) that, in these circumstances, a clear justification would be required. This is consistent with the DEFRA guidance on the s.85 duty which requires that a *“relevant authority should be able to demonstrate with proportionate, reasoned, and documented evidence the measures to which consideration has been given when seeking to further the statutory purposes of Protected Landscapes”*.¹⁹ There is no explanation of why, in this case, if the proposed development harms the natural beauty of the National Landscape, it can nevertheless be permitted consistently with the statutory duty.

Conclusion

54. Our clients are proponents of the swift need to decarbonise and the need for renewable energy. However, they maintain that any project of this scale in this sensitive location needs to respect and comply with the legislative EIA and HRA frameworks which protects the environment and not seek consent through a short

¹⁸ <https://www.gov.uk/government/publications/the-protected-landscapes-duty/guidance-for-relevant-authorities-on-seeking-to-further-the-purposes-of-protected-landscapes>

¹⁹ Ibid.

cut approach which side-steps at the full application stage a full review of the likely significant environmental effects.

55. They also maintain that the potential scale of environmental harm necessitates an objective assessment of the alternatives – something they have raised as a serious shortcoming in repeated objection letters mentioned above (see footnote 10). Indeed, had the applicants undertaken the legally essential survey work ‘at the earliest possible stage’ it could have resulted in an early realisation that an alternative routing could be desirable to reduce the environmental effects.

56. With such a sensitive landscape, and the legal onus on the Council as the decisionmaker, it is critical to have the full information on the likely significant environmental effects, and the scope and detail of the project, to undertake a policy and legally compliant assessment of the merits of the proposal. This information and detail, particularly as different approaches will have varying environmental impact, cannot be simply left to condition discharge. We therefore urge the Council to refuse the application on the basis of the lack of adequate information.

Yours faithfully

A solid black rectangular box used to redact the signature of the sender.

RICHARD BUXTON SOLICITORS