

The Crown Estate

Rochdale Envelope Workshop Report

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Annex 1 - Workshop presentations

Annex 2 – Extract from Encyclopedia of Planning Law and Practice

1. Introduction

The ‘Rochdale Envelope’ arises from two legal cases: *R. v Rochdale MBC ex parte Milne* (No. 1) and *R. v Rochdale MBC ex parte Tew* [1999] and *R. v Rochdale MBC ex parte Milne* (No. 2) [2000]. These cases dealt with outline planning applications for a proposed business park in Rochdale and provide the basis upon which a project can be described by a series of maximum extents – the ‘worst case’ scenario. The detailed design of the scheme can then vary within this ‘envelope’ without invalidating the corresponding EIA.

The Rochdale Envelope approach has been adopted for a number of offshore wind farm projects, particularly in the second consenting round (Round 2). For Round 2, Environmental Impact Assessment was based on assessing the realistic worst-case scenario where flexibility or a range of options is sought as part of the consent application.

The National Policy Statement for Renewable Energy Infrastructure (EN-3), alongside the Overarching National Policy Statement (EN-1), recognises that some details of a proposed scheme may be unknown to the applicant at the time of the application and it endorses a flexible approach of assessing maximum potential adverse effects, stating that:

“the IPC should accept that wind farm operators are unlikely to know precisely which turbines will be procured for the site until some time after any consent has been granted. Where some details have not been included in the application to the IPC, the applicant should explain which elements of the scheme have yet to be finalised, and the reasons. Therefore, some flexibility may be required in the consent. Where this is sought and the precise details are not known, then the applicant should assess the effects the project could have to ensure that the project, as it may be constructed, has been properly assessed (the Rochdale Envelope). In this way the maximum adverse case scenario will be assessed and the IPC should allow for this uncertainty in its consideration of the application and consent.”

The IPC have produced an advice note (Advice Note 9: Rochdale Envelope 2011) that acknowledges that some flexibility in the nature of the project description is acceptable, provided that the approach has been fully consulted on, all parties fully understand the implications of the flexibility proposed and the record of that consultation process is captured and presented alongside the DCO application.

There is still some uncertainty about the degree of flexibility that can be achieved by the use of the Rochdale Envelope approach in offshore wind consent applications. Decision makers are concerned about allowing too much flexibility and the effect that this may have on their ability to make judgments on consent applications. Due to the nature of the design process for offshore wind projects, project developers are unlikely to be able to provide precise design details in their consent applications. Without agreement and greater clarity on what can and should be included in a Rochdale Envelope, there is a risk of future delays to the delivery of offshore wind consents with applicants being asked for additional information before an application is considered further or applications potentially being rejected for not including sufficient detail.

To facilitate a greater understanding and appreciation of the issues, The Crown Estate hosted a workshop bringing together a number of regulatory and industry representatives. The main aim for the workshop was to provide a forum for both wind farm developers and regulators to discuss their respective concerns and to work towards an agreed view about how project design information should be presented as part of a consent application. This report provides an overview of the workshop including the presentations, a summary of the key discussion points and makes recommendations for future actions.

2. Workshop agenda

Rochdale Envelope Workshop

Wednesday 7 December, 10:00 – 15:30, Anderson Strathern offices,
1 Rutland Court, Edinburgh, EH3 8EY.

AGENDA

Chair: Tim Norman, NIRAS Consulting Ltd.

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|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10:00 | Tea and coffee |
| 10:30 | Welcome and introductions |
| 10:40 | Rochdale Envelope – a Legal Perspective (Julian Boswall, Burges Salmon)
A legal interpretation of the Rochdale Envelope, an overview of how it has been used in offshore wind consent applications to date and likely future implications. |
| 11:00 | Rochdale Requirements and Highlights for a Typical Development (Caterina Rei, EDP Renovaveis)
The engineering drivers for a Rochdale Envelope approach in consent applications and an overview of how a range of project design information can be assessed. |
| 11:20 | “Rochdale Envelope” and the EIA/HRA Processes (Lucy Greenhill, JNCC)
An overview of how lack of clarity can affect regulators’ ability to make an accurate assessment of the environmental information submitted and potential consequences for consent applications. |
| 11:40 | Workshop session: Identifying drivers and constraints when defining Rochdale Envelope information requirements
Discussion session to identify: <ul style="list-style-type: none">• Level of detail required for specific design elements;• Practical issues associated with providing detailed design information throughout the consent application process – consultation, EIA and planning permission;• Issues associated with assessing impacts using Rochdale Envelope information presented in EIAs. |
| 13:00 | <i>Lunch</i> |
| 13:30 | Workshop session: Identifying drivers and constraints when defining Rochdale Envelope information requirements cont’d
Continuation of the morning workshop session. |
| 15:15 | Summary and next steps |

3. Workshop Discussions

Overview of the Presentations

Three presentations were given at the workshop providing a legal, industry and regulator perspective of the issues associated with using the Rochdale Envelope approach in offshore wind farm consent applications. The following section summarises the key points raised by the presentations; the slides presented at the workshop are included in full at Annex 1.

Rochdale Envelope – a Legal Perspective (Julian Boswall, Burges Salmon)

A summary of the legal position regarding Rochdale Envelope, taken from the Encyclopedia of Planning Law and Practice, was circulated both prior to and during the workshop to support this presentation (copy included in Annex 2).

Key points:

- The Rochdale Envelope is supported in the National Policy statements (National Policy Statement EN1 (para 4.2.7 to 4.2.9)).¹
- Many Round 1 and 2 offshore wind farms have been consented using the Rochdale Envelope approach.
- The language used in consents to date for Round 1 and Round 2 wind farms has provided a level of flexibility, i.e. consent conditions have specified limits for design parameters.
- There is no provision in the new consent regimes in England and Wales (or Scotland) for the Secretary of State (or Minister) signing off the final design under DCO (or s36 in Scotland).
- The final design will be specified in the Marine Licence which is similar to the approach used in the previous consent regime i.e. using the Food and Environmental Protection Act (FEPA) as a model.
- The key concerns which have been expressed by the IPC are:
 - Deciding on the extent and justification of envelope
 - Ensuring that the pre-application consultation is clear and fair
 - Ensuring that the Environmental Statements (ES) are robust and intelligible
 - Ensuring that introducing flexibility into consent conditions does not compromise the legality of the DCO.

Rochdale Requirements and Highlights for a Typical Development (Caterina Rei, EDP Renovaveis)

Key points:

- The consent is a critical element in providing sufficient certainty to secure the necessary finance for developing an offshore wind farm. As a result, consent is sought at a relatively early stage in the project development process, many years before construction commences. Detailed site investigations (i.e. geotechnical and geophysical surveys) which will inform the project design are very expensive and it may not be possible for these to be undertaken until there is more certainty regarding the future of the project.
- To secure any major investment, developers have to demonstrate that the project is commercially viable. The consent is a major element in gaining commercial confidence and securing investment.

¹ Work is underway in consultation with the offshore wind industry and Scottish National Heritage to produce a Scottish Government policy/guidance document on the Rochdale envelope for developers in Scotland (Marine Strategy Forum, 2011).

- Given the early stage at which consent is sought, many elements of the design may not have been finalised and the project design team may still be considering a variety of options. As a result, developers must carefully consider how they describe the design envelope in their consent application and ensure that all of the different options under consideration are adequately assessed in the EIA. Furthermore, if the design envelope is too narrow, it could prevent future technological advances from being incorporated into the design at a later stage.
- The Rochdale envelope approach provides the flexibility required for developers to propose a realistic range of engineering options in the absence of necessary financial backing required to carry out detailed site investigations and finalise the site design.

“Rochdale Envelope” and the EIA/HRA Processes (Lucy Greenhill, JNCC)

Key points:

- The Rochdale Envelope can be defined as a series of maximum extents for which significant effects are assessed. The detailed design can then vary within this envelope without rendering the Environmental Impact Assessment (EIA) inadequate.
- The Rochdale Envelope approach is not new and is expected to be used as a standard across all Round 3 developments. The key issue for regulators is the unprecedented scale of development for Round 3 and the need for robust evidence-based decision making in the consent process – particularly where Habitats Regulations Assessment (HRA) is concerned. A bigger and more complex project is likely to consider a wider range of options (including different options in terms of construction methods) and require a greater level of evidence/research.
- The more detailed the proposal, the easier it is to ensure compliance with EIA regulations and this reduces the likelihood of legal challenge post consent. Regulators need to understand the impacts of all design permutations being considered for the development. A less well defined project results in greater uncertainty in quantifying impacts and introduces difficulties for Cumulative Impact Assessment (CIA) and HRA. For example, presenting a broad design envelope for the sake of flexibility could result in a level of cumulative impact being identified that is higher than will realistically occur. A collaborative approach is necessary (on a regional basis) to understand likely acceptable thresholds of impacts and identify design options which are likely to achieve consent.
- Applications should clearly identify and provide the rationale for the realistic worst case that is being assessed.
- Suggestions for managing Rochdale Envelope in the consent process:
 - Consent conditions can be used to provide flexibility to incorporate detailed design elements providing they remain within the worst case design envelope
 - Standard guidance could provide certainty on acceptable approaches to describing and assessing impacts using the Rochdale Envelope
 - Developers should ensure that the public are well informed about the various design elements being considered for the project and the timescale for design finalisation
 - Collaboration across industry is important to assist with defining impacts, particularly for CIA
 - In defining design options, developers need to consider key risks to achieving consent as these can inform the range of feasible design options specified in the application.

Workshop Discussion Summary

The discussion at the workshop focused on the issues raised by the presentations and was guided by a matrix identifying key design elements and information about the level of detail that may be presented at specific stages of the application process. As a consequence, the summary of the discussion is presented under the following subheadings:

- Pre-application discussions;
- Application;
- Consent conditions;
- Post consent/construction.

For clarity, where the discussion refers to “consents” this relates to both the DCO/Marine Licence regime (England and Wales) or for the Section 36/Marine Licence regime (Scotland).

Pre-application

Pre-application, for the purposes of the workshop feedback, was taken to be all steps involved prior to submitting an application either for DCO/Marine Licence (England and Wales) or for Section 36/Marine Licence (Scotland).

Throughout the discussion the following two issues were raised consistently:

- Detailed project design information can only be confirmed once detailed site investigations have been carried out. Detailed site investigations are costly and will only be funded once the viability of a project can be demonstrated. The consent is a vital component in assuring investors about the viability of an offshore wind farm project and therefore in securing on-going funding for an offshore wind farm project.
- There is a risk of major increases in infrastructure costs if detailed design options are confirmed at such an early stage in project development and a competitive tendering process is necessary to reduce costs. For example, confirming the intended turbine class in an application could adversely affect the outcomes of a tendering process as suppliers of the turbines specified in the consent would have little incentive to price their products competitively if they knew that developers had limited alternative options.

The only way for project developers to effectively manage both these issues is to identify a range of design options before defining a realistic ‘worst case’ scenario on which to base the assessment of significant effects in a consent application. However, defining a worst case scenario can create difficulties for regulators who need to understand the final design elements to make a robust assessment of effects. Problems with the Rochdale Envelope approach can manifest right from the very start of the application process, for example, in providing a detailed Scoping Opinion to inform what is required for a full EIA. In the absence of detailed design information about the project being provided in the Scoping Report, there is a risk that the Scoping Opinion will not identify all of the information that may be required to undertake a thorough and robust EIA. Later on in the application process, a lack of adequate information may result in delays related to difficulties for regulator/advisors in making a sound consent decision and in the drafting of consent conditions to ensure the development does not have any significant effects.

One of the key concerns developers raised during the workshop was the suggested “narrowing” of the Rochdale Envelope proposed by the IPC. Clarification from the IPC about what this actually means in practice would be helpful. For example, the Galloper application, which has been accepted by the IPC, has adopted a similar approach to defining a design envelope used consistently for Round 2. However, the IPC have pointed out that the application includes a wide

variety of design permutations and indicated that further information may be required to determine the likelihood of significant impacts, should it become apparent that the ES does not contain sufficient information about the effects of these design options. This could potentially lead to delays in the application process whilst information is requested, submitted and then assessed.

The Rochdale Envelope approach was accepted in Round 2. Consent conditions were drafted so that they were flexible enough to accommodate the detailed project design information as it was confirmed. Coupled with this, regulators and developers worked closely together in the months before construction to ensure that the project only went ahead provided that the detailed design parameters and construction plans remained within the envelope assessed in the EIA. Given that the Rochdale approach has been accepted in the past, developers questioned why the same approach would not be used for Round 3 applications. A number of approaches for defining the design elements within project applications are being followed by different developers. Gathering and describing successful examples of these approaches in a paper, alongside accepted approaches used for Round 2, was proposed as a useful way of pulling together lessons learnt and best practice to inform future applications.

Attendees also discussed the difficulties faced when defining and presenting a “worst case” to the general public, particularly in explaining what the public are being asked to comment on and when they can participate. This is a particular concern for developers given the extent to which the IPC are focusing on the feedback presented in consultation reports. Generally attendees felt that providing applications show how comments have been taken on board and clearly describe the rationale behind design permutations this should be sufficient detail for the application. SNCBs in particular stressed the need to present a clear and transparent narrative of the process used for identifying the design envelope, and why certain options have been discounted, taken forward etc. However, it was clear that there is a lack of certainty around approach, particularly on how to present this information in public exhibitions. It was agreed that a standardised approach to managing and documenting public consultation feedback in consent applications may be a helpful tool.

Key points raised:

- Important to raise awareness of the lessons learnt in describing and assessing applications using the Rochdale Envelope approach during Round 2. A means to consolidate and implement accepted best practice within the consent processes for Round 3 and future rounds of offshore wind farm leasing would be helpful.
- Scoping requests should clearly identify the range of options that are being considered in the development of the detailed design for the proposed project in order for scoping advice to be as focused as possible and be able to flag up key issues and consenting risks at an early stage. They should also provide a clear rationale, describing the thought processes for deriving the worst case scenario from this range of initial options.
- Consultation should not be viewed as a step in the process but an on-going process. It should commence at the outset before the application is made and continue all the way through the application process to ensure that decisions about issues, such as the worst case scenario, are made in partnership with consultees. Applications should clearly identify the process of defining the worst case, effectively providing an audit trail so that all consultees understand the thought processes behind the evolution of the proposed design envelope. Open and transparent discussion between developers and SNCBs regarding a project’s Rochdale Envelope and the range of design parameters under consideration can enable SNCBs to provide advice to developers focussing on the key issues and the likely variation in magnitude/severity of impacts for different design parameters.

- A best practice approach to presenting design envelope information could be produced for the offshore wind farm industry, drawing on direct experiences, to ensure that standard and accepted practices are followed when managing public consultations.
- There is no specific guidance to inform how best to present and assess impacts using the Rochdale Envelope approach. It was also suggested that it may be more appropriate to use the term ‘project design envelope’ instead since the Rochdale Envelope concept has its origins in terrestrial planning and can be confusing for the general public.
- There are some specific issues that regulators are particularly concerned about related to use of the Rochdale Envelope Approach. These are:
 - “Worst case” will be different for different receptors, and ways to present this will need to be considered carefully, particularly in cumulative impact assessments.
 - Regulators have a role in defining thresholds of acceptable impacts, which will provide a guide for the consenting of multiple projects in areas where there is likely to be a key limiting factor (e.g. declining bird population) If envelopes are broadly described, wider envelope thresholds will be set at a more restrictive and potentially non-consentable level than if more defined design parameters are described.
 - The risk of construction impacts on marine mammals.
 - Defining population level collision risks for birds.

Application

The issues experienced by developers once applications have been submitted were similar to those identified for pre-application. Developers reiterated the part that the consent plays in securing the necessary financing to progress to more detailed site investigations citing that geotechnical investigations cost in the order of £millions.

To demonstrate how developers manage these issues in practice, there was some discussion of the cable route as a specific example. The precise cable route can only be informed by detailed geotechnical investigations carried out post-consent (once financial backing has been confirmed). As a consequence, a wide corridor is proposed in the application to manage the risk that detailed site investigations force the cable route outside a narrowly defined corridor. This approach thereby avoids any material changes to the ultimate consent.

At the application stage, appropriate information must be provided to allow the regulator to understand and assess how the project is likely to affect a full range of potential receptors. The assessment must be undertaken in a way that allows regulators to understand the greatest impact that may arise from the different options being considered. It is possible, therefore, that the worst case scenario may be different for each of the receptors and hence the worst case scenario must be defined individually for each receptor. This assessment can be difficult for the regulator to undertake without a clear description of the various design permutations within the Rochdale Envelope. An approach that looks at receptor specific impacts, looking at all the design permutations, is more likely to streamline the assessment process. This was not discussed in detail but attendees agreed that some thought was needed about how this interrelationship could be more clearly addressed in future applications.

Key points:

- Guidance about the way in which the Rochdale Envelope should be described and presented within applications to clearly identify the interrelationship between receptors may be helpful.

Consent conditions

Consent conditions are applied as part of the DCO and Marine Licence (or as part of Section 36 consent and the Marine Licence). A FEPA Licence (given under the Food and Environment Protection Act – the predecessor to the Marine Licence) provided a degree of flexibility, since licence conditions could be amended to reflect changes to the project providing they still remained within the envelope described in the original ES for the project. It is not clear how much flexibility the Marine Licence will allow in this context and also, in England and Wales, how the MMO/Welsh Government will engage with the IPC in relation to requested changes to licence conditions. There is also no clear guidance on what constitutes a material change to the project.

Key points:

- The Marine Licence may include a similar level of flexibility to the FEPA licence enabling consent conditions to be drafted in such a way that they specify maximum limits and allow amendments to be made closer to when construction is due to commence and contracts have been signed.
- Clarity is required about the process and level of consultation required for making amendments to the Marine Licence (when the licence has been deemed or has been applied for separately) – particularly the level of amendment to the Marine Licence that can be permitted without impacting on the validity of the DCO.
- The Scottish Government is currently seeking legal advice about the degree of flexibility that can be included in the Marine Licence and any subsequent implications for the Section 36 consent. The outcome of this is likely to provide a useful insight into the consent process in England and Wales.

Post consent/construction

Once consent is granted, developers can secure financial backing and also move to the procurement stage. Contracts are signed and a detailed construction statement is drafted. The construction statement contains the finalised and detailed project design parameters and is submitted to the regulator for agreement prior to construction commencing, to ensure that the design and proposed construction methods/materials remain within the design envelope described in the ES.

This is the stage at which flexibility in consent conditions and the ability to amend conditions within the bounds of the design envelope described in the original application becomes key. A more open condition stating maximum extents, such as maximum number of turbines, ensures that the development will not exceed what has been assessed in the EIA. Equally, drafting licence conditions to allow more detail to be approved nearer the time of construction (e.g. detailed cable installation methodology) ensures that appropriate techniques can be specified once financing has been secured to facilitate more detailed site investigations. For example, in Round 2, the following text was included in FEPA licences:

“A detailed export and intra-array cable laying plan, including cable landfall works, should be presented to the Licensing Authority for approval, at least four months prior to the proposed commencement of construction works, as indicated in the schedule required under condition 9.1. The plan should use detailed geotechnical data to ascertain optimal cable burial depth along the length of the export cable (including works in the inter-tidal zone....”

Previous points raised about identifying whether the Marine Licence will provide this flexibility and how the process of amending consent conditions will be facilitated are valid here.

4. Conclusion

The workshop brought developers and regulators together to develop a common understanding of the issues faced during the consenting process and the difficulties providing detailed information at the application stage.

Overall, there was general agreement that greater emphasis needs to be placed on incorporating lessons learnt from Round 2 where Rochdale was an accepted approach to identifying the design parameters. This, coupled with the flexibility in the Section 36/FEPA process, enabled consented projects to develop as detail was defined prior to construction, with regulators and developers working together to ensure that developments remained within the confines of the EIA.

A best practice approach to presenting design envelope information could be produced for the offshore wind farm industry, drawing on direct experiences, to ensure that standard and accepted practices are followed when managing and documenting public consultations and also in presenting design envelope information in consent applications.

5. Recommended next steps

The following recommendations and associated actions are drawn from the discussions at the workshop.

For developers/regulators/advisors/The Crown Estate:

- i. Draw on past and current consent applications to explore lessons learned and work towards developing best practice for the offshore wind industry to presenting Rochdale Envelope information within consent applications. Possible sources of information include:
 - EDP Renovavais draft ES approach for Moray Firth development area;
 - The approach to define a realistic worst case scenario adopted by the Irish Sea Round 3 zone;
 - Forewind's use of a "limit of deviation" clause defining the maximum extent to which the design elements will change;
 - Rochdale Envelope approach adopted by the Galloper application (recently accepted by the IPC).
- ii. Preparation of an explanatory paper to describe how the Rochdale Envelope approach was used for Round 2. This paper could be drafted collaboratively between industry and regulators with the purpose of providing an agreed approach that developers can refer to in their consent applications. It would describe the Rochdale Envelope approach, set out the reasons why an envelope is required and look at its use in offshore wind applications. The paper could also present the findings of Recommendation i).
- iii. Develop guidance to provide greater clarity about how a realistic worst case should be defined in reference to impacts on different receptors e.g. which has the greater impact - less intense noise for longer or higher intensity sound for shorter periods. Although there will be project-by-project variations in the actual worst cases used, agreement could be reached on *which elements* of a design envelope are most pertinent for a developer to use to define the worst case. For example for benthic receptors, the key part of the design is foundation type, where larger foundations are the worst case. This recommendation could be developed further in the paper described in Recommendation ii).

For developers:

- iv. Developers should consider using the term "design envelope". The terminology, "Rochdale Envelope", can be confusing particularly in consultations with the general public. A joint regulator/industry standard paper (Recommendation ii) will help to implement this terminology across the offshore wind farm industry.
- v. Make greater use of expert groups and legal advice to help inform and define how issues such as Rochdale Envelope can be addressed in the consenting process and consider any variance in the application of the Rochdale Envelope concept within the different administrations.
- vi. Explore whether there is any merit in developing a standard approach to using Rochdale Envelope in public consultations, particularly in terms of consultation stage and presentation of visualizations of the proposed scheme. The aim would be to ensure that consultees better understand the way in which the project design evolves through the EIA and application process. This could include a recommended approach for clearly demonstrating the extent of the consultation, how the Rochdale Envelope approach has been explained to the public, how feedback has been taken in to account in the application and for ensuring that regulatory requirements have been met.

For regulators/advisors:

- vii. Identify how design elements will be described in consent conditions and particularly whether the terminology adopted will continue to provide the flexibility to work within defined maximum extents for certain design elements, e.g. a maximum number of specific size turbines (as adopted for Round 2 FEPA consent conditions).
- viii. Identify how the process to amend consent conditions will be facilitated, particularly how the IPC and MMO/WG will work together and to what extent the Marine Licence can be amended without impacting the legality of the DCO. Similar issues are likely to be experienced by the Section 36/Marine Licence regime in Scotland.

6. References

Scottish Government (2011). Marine Strategy Forum: Marine Management - Communication Paper.

Department for Energy and Climate Change (2011). National Policy Statement for Renewable Energy Infrastructure (EN-3)

Infrastructure Planning Commission (2011). Using the 'Rochdale Envelope' (Advice Note 9: Rochdale Envelope).