

Date: 05 July 2021
Our ref: 354204- 357334
Your ref: MLA/2020/00506



Marine Management Organisation
Lancaster House
Hampshire Court
Newcastle Upon Tyne
NE4 7YH

Natural England
Lancaster House
Hampshire Court
Newcastle Upon
Tyne
NE4 7YH

VIA WEBSITE ONLY

Dear Emanuel,

Application: (Disposal of dredged material, Navigational dredging (capital), Other deposits, Other removals) South Bank Quay - Phase 1 NZ 64730 33257 Tees Dock, Middlesbrough

Thank you for your consultation dated 21 May 2021, the following constitutes Natural England's formal statutory response.

Documents reviewed in this response letter:

MLA_2020_00506-APPLICATION-FORM
MLA_2020_00506-PC1084-RHD-SB-EN-CO-EV-1116 Response to Cefas comments-21
MLA_2020_00506-PC1084-RHD-ZZ-XX-RP-Z-1115_South Bank Quay supplementary report-16
MLA202000506 and MLA202000507 Draft HRA
PC1084-RHD-SB-DN-NT-C-1800 P03
PC1084-RHD-SB-DN-DR-SK-0001 - MODIFIED PROPOSAL FOR PHASE 2 DREDGING PLAN-Rev P01

The Conservation of Habitats and Species Regulations 2017 (as amended) and The Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended)

We can confirm that the proposed works are located within Teesmouth and Cleveland Coast Special Protection Area (SPA) and adjacent to Teesmouth and Cleveland Coast Ramsar Site.

Assessment of likely significant effect

Natural England's advice is that this proposed development may contain (or require) measures intended to avoid or reduce the likely harmful effects on a European Site, which cannot be taken into account when determining whether or not a plan or project is likely to have a significant effect on a site and requires an appropriate assessment (noting the recent People Over Wind Ruling by the Court of Justice of the European Union).

For this reason, we advise that on the basis of the information supplied that the application may have a likely significant effect on these sites. The application requires an appropriate assessment in accordance with the Conservation of Habitats & Species Regulations 2017.

Appropriate assessment

We note that your authority, as competent authority under the provisions of the Habitats Regulations, has undertaken an Appropriate Assessment of the proposal in accordance with Regulation 63 of the Regulations.

Natural England is a statutory consultee on the Appropriate Assessment stage of the Habitats Regulations Assessment process.

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England currently **does not** concur with this conclusion.

Natural England advises that the HRA to be updated to reflect the possible in-combination effects for Phase 2 of this project with the mitigation strategy of the Northern Gateway Container Terminal (NGCT). Particular areas that should be considered include the potential for dredging for South Bank Wharf to be taking place at the same time as works to repair the training wall at North Tees Mudflat and recharge the sediment behind it, in terms of noise and levels of activity on the river (please note this is not an exhaustive list, and all factors that have the potential to act in-combination should be considered)

Natural England also requires an additional condition for Phase 2, as outlined below.

Additional condition for Phase 2

Natural England advises that before any dredging works takes place for Phase 2 of this construction, a programme of works must be put in place, and agreed with the Competent Authority (MMO in this case). This is to reduce the in-combination impacts to the North Tees Mudflat. Please see Annex 1 and 2 for more information.

Marine and Coastal Access Act 2009

The works, as set out in the information supplied by the applicant, are not sited within or near to a Marine Conservation Zone. Natural England have not identified a pathway by which impacts from the development would affect the interest features of the site(s). We are therefore confident that the works will not hinder the conservation objectives of such a site.

Wildlife and Countryside Act 1981 (as amended)

We can confirm that the proposed works are within the Teesmouth and Cleveland Coast Site of Special Scientific Interest (SSSI). Natural England advises that the proposal, if undertaken in strict accordance with the details submitted, is not likely to damage the interest features for which the site has been notified. However, we recommend that the following conditions are attached to the marine licence to ensure that the activity is undertaken as per the application and therefore compliant with the above legislation:

Condition:

Before dredging works take place on Phase 2 of this project, Natural England must be reconsulted. A programme of works must be produced and agreed upon by the Competent Authority in consultation with Natural England specifying the timings of the dredging and an assessment of the impacts and in-combination impacts of this project and those of the NGCT.

Reason:

To minimise the adverse effects and in-combination effects of the two projects to the SSSI features, particularly from increased noise and dredging.

Further comments

Natural England advises that all the conditions that were recommended in our previous advice letter,

named 338486 - 338489 NE formal response to SBW MLA 29.01.21 , are still applicable and we encourage them to be attached to this marine licence.

For any queries relating to the content of this letter please contact me using the details provided below .

Yours sincerely,

Lucy Stainthorpe

Marine Lead Adviser
Northumbria Area Team

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Annex 1. Comments on the applicant's comments and the supplementary environmental information and dredging plan

2. Sediment and Water Quality	
2.2.6	<p>Natural England notes the applicants additional information taken from the supplementary environmental information report site specific sediment quality survey.</p> <p>We concur with the findings and mitigation measures mentioned in this report regarding sample BH34 and welcome the decisions that a controlled grab sample will be used to excavate this area and the discarded contaminated dredge material will not be disposed of at sea.</p>
	Natural England's notes and thanks the applicant for referring to polybrominated diphenyl ethers as PBDEs
3. Marine Ecology	
3.1.1 And PC1084-RHD-SB-DN-DR-SK-0001 - MODIFIED PROPOSAL FOR PHASE 2 DREDGING PLAN-Rev P01	<p>We note the Applicant's response that the revised dredge footprint of Phase 2 is unlikely to have an impact on the stability of the North Tees Mudflat.</p> <p>However, Natural England advises the following condition be added to the licence:</p> <p><u>Condition:</u> the work programme should be created and submitted to the Competent Authority for review in conjunction with Natural England before any Phase 2 dredging can be completed. This work programme should include times of when this dredging will be taking place, as not to be in conflict with the maintenance dredging of the river and the mitigation works for NGCT at Tees Mudflat.</p> <p>The work programme should also have consideration for potential impacts to the protected features of the surround designated sites.</p> <p><u>Reason:</u> This is to reduce the impacts and in-combination impact to the North Tees Mudflat and the protected features of the surrounding SSSI, SPA and Ramsar sites.</p>
5. Ornithology	
5.2.2	<p>Natural England thanks the Applicant for providing the 2020-2021 bird survey data.</p> <p>These results confirm the importance of the North Tees Mudflat to waterbirds associated with the designated sites (sector 3 and 4) particularly during low tides and over the winter months.</p> <p>Because of this, Natural England maintains our previous advice that the conditions mentioned in the Ornithology sections of our previous advice letter are attached to this marine licence, particularly the condition mentioned under 'General: freezing weather.'</p>
Table 5.3	<p>We note the applicants comments stating that only the dredging in Phase 2 will be within 200m of the North Tees Mudflat and it is proposed to take 3 months.</p> <p>It is still unclear what the impacts of this dredging will have on the SPA, Ramsar and SSSI features, because of this, we may advise seasonal and or tidal restrictions to this Phase of the application. We would like to be reconsulted when the programme of works is completed and we can assess the potential impacts further.</p>

Annex 2. Comments on the HRA for Phase 1 and 2

General	We appreciate the revised HRA took onboard our previous comments, outlined in our previous response letter.
In-combination assessment for the Northern Gateway Container Terminal	The Northern Gateway Container Terminal (NGCT) mitigation strategy includes a plan to recharge the North Tees Mudflat. In light of this information, Natural England advises that the MMO update the HRA to reflect this and consider the in-combination effects in related Phase 2. Taking care to include effects from noise and dredging to the North Tees Mudflat and the features of the Teesmouth and Cleveland Coast SSSI, SPA and Ramsar Site.