

Date: 15 June 2022
Our ref: 392938
Your ref: MLA/2020/00506/1



Marine Management Organisation
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VIA WEBSITE ONLY

Dear Ashley,

**Consultation: Disposal of dredged material, Navigational dredging (capital), Other deposits,
Other removals- South Bank Quay - Phase 1
Location: Tees Dock, Middlesbrough**

Thank you for your consultation dated 18 May 2022.

The following constitutes Natural England's formal statutory response.

We acknowledge that this application is a variation request to an existing permission (Licence reference L/2021/00333/1) however, we would like to take this opportunity to highlight that our advice and potential concerns, that to our best available knowledge, were not addressed during the initial licence determination and therefore remain outstanding and are relevant considerations to this variation request.

We acknowledge that this application is a variation request to an existing permission (Licence reference L/2021/00333/1) however, we would like to take this opportunity to highlight that our advice and potential concerns that were not addressed during the initial licence determination to our best available knowledge, remain outstanding and are therefore relevant considerations to this variation request.

Original Application

Natural England provided advice on the original application (MLA/2020/00506) through letters dated 29/01/2021 and 05/07/2021. In our advice we highlighted that further information was needed to support the application and that a number of conditions should be applied to the licence.

We note that the MMO subsequently approved the application and issued the marine licence. We are unclear how the MMO took onboard and considered our advice in determining the licence and would welcome clarification on this. We acknowledge that a number of conditions on the marine licence suggest that additional information would be provided prior to commencement of works, therefore we query whether the intention was to consult Natural England at this point and as such offer the opportunity to provide additional advice?

Variation Request

The advice that follows is provided to you to aid your determination of the variation request which comprises an additional dredge depth of 0.5m (11 metres to 11.5 metres) and change of dredging area and methodology.

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.

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.

Natural England is of the view that this variation request may have potentially damaging impacts on the Teesmouth and Cleveland Coast Special Protection Area (SPA) and Teesmouth and Cleveland Coast Ramsar Site. Natural England advises that a precautionary approach is adopted in regards to the additional capital dredging. Additionally, please note our position has not changed regarding our views on the original licence proposal, and the likely significant effects the project may have on protected sites.

We acknowledge that a Habitats Regulations Assessment (HRA) was undertaken for the original licence. It is unclear as to whether an updated HRA has been undertaken to support this application? If relying on the original HRA, then we advise that an update is undertaken to reflect the change in depth and dredging method as proposed by this variation request. Please note in our advice dated 05/07/2021 we advised that the in-combination assessment required updating to reflect the activities associated with The Northern Gateway Container Terminal (NGCT), it is unclear as to whether this was carried out following our advice, but we advise that you update the in-combination assessment now to ensure that any additional plans/projects that have come forwards since are incorporated in the assessment.

Natural England is a statutory consultee on the Appropriate Assessment stage of the HRA process, therefore please consult us on any updates made to the assessment.

Wildlife and Countryside Act 1981 (as amended)

We can confirm that the proposed works are located within the Teesmouth and Cleveland Coast SSSI. Natural England advises that the proposal, if undertaken in strict accordance with the details submitted (including all measures as set out within the EIA report, dated 06/11/2020), is not likely to damage the interest features for which the site has been notified. However, we recommend that the conditions on the existing licence and those referred in our previous advice (as relevant) are attached to the marine licence to ensure that the activity is undertaken as per the application and therefore compliant with the above legislation.

Natural England supports the conditions already applied to the licence and would like to receive notification and be consulted, as appropriate, on any matters that could influence understanding of impacts to the designated sites, such as any dredge monitoring reports available.

We specifically draw your attention to the following condition that was not included on the original licence and request that you consider applying this to any updated licence issued:

Condition

The applicant must ensure that if temperatures of zero degrees Celsius (or lower) occur on the site, at any point within a 24 hour period, for five consecutive days leading up to or during any instance of the licenced activities then any piling works must be suspended. Once temperatures have not reached zero degrees Celsius or below for three consecutive days then piling works can recommence.

Reason

To avoid disturbance impacts from percussive piling to the overwintering bird populations of the Teesmouth and Cleveland Coast SPA, Ramsar site and SSSI, during the most sensitive periods.

If the MMO is minded to grant consent for this application contrary to the advice relating to Teesmouth and Cleveland Coast SSSI contained in this letter, we refer you to Section 28(1) (6) of the Wildlife and Countryside Act 1981 (as amended), specifically the duty placed upon the MMO, requiring that you;

- Provide notice to Natural England of the permission, and of its terms. This notice should include a statement of how (if at all) the MMO has taken account of Natural England's advice; and
- Shall not grant a permission which would allow the operations to start before the end of a period of 21 days beginning with the date of that notice.

Other Relevant Matters

Natural England defer to Cefas and the Environment Agency for further detailed advice on impacts related to contaminated sediments. We acknowledge that Cefas will likely be consulted on any sediment sampling plan required, however we would like to take the opportunity to advise that you ensure that adequate testing for contaminants and pollutants within sediments is carried out down to the lowest levels of proposed dredging (-11.5m CD for all areas and 15.6m CD for the proposed berth pocket) before commencement of works. If hazardous levels of contaminants are discovered then methods to try and limit their release and spread during the project to the wider area may need to be considered. If safer methods cannot be established then mitigation for any potential damages to the surrounding ecosystems must be considered. Natural England would like to be kept informed and have an opportunity to provide further advice, particularly should the project methodology be amended following sampling results.

We advise you seek further advice from the Environment Agency on impacts to water quality as well as migratory fish. However, we support the additional conditions applied to the original licence around temporal restrictions for Atlantic Salmon and European Eel.

Phase 2 Dredging

We are aware that a marine licence has also been issued for the Phase 2 dredging works for the South Banks Wharf development (L/2021/00433/1). Part of Natural England's advice from our first two response letters mentioned above (dated 29/01/2021 and 05/07/2021) related to Phase 2 of the project. We are unclear how the MMO took onboard and considered our advice in determining this licence and would welcome clarification on this.

Maintenance Dredge Protocol

We acknowledge this variation application is for capital dredging, however we take this opportunity to advise that consideration is given towards any future required maintenance dredging and would

encourage the applicants to ensure that any information on dredging activity is made available to support future updates of the Maintenance Dredge Protocol in the Tees. This allows for a holistic approach to considering impacts associated with this activity.

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

Yours sincerely

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