

Fern Skeldon
Marine Management Organisation
PO Box 1275
Newcastle upon Tyne
NE99 5BN

Our ref: NA/2021/115283/01-L01
Your ref: MLA/2020/00507
Date: 22 February 2021

Dear Fern

SOUTH BANK QUAY - PHASE 2 WORKS COMPRISING OF DEMOLITION, CAPITAL DREDGING, OFFSHORE DISPOSAL OF DREDGED MATERIAL, PLACEMENT OF ROCK IN THE BERTH POCKET AND CONSTRUCTION AND OPERATION OF NEW QUAY. LAND AT SOUTH BANK WHARF, GRANGETOWN, LACKENBY.

Thank you for consulting us on the above marine licence application which we received 23 December 2021. We have also provided comments on Phase 2 of this development (MLA/2020/00506); the same comments apply for both phases.

Environment Agency position

We **OBJECT** to this activity, as submitted, as it may cause deterioration of the Tees Transitional waterbody (GB510302509900). The submitted proposal does not include an adequate Water Framework Directive (WFD) assessment.

We will maintain our objection until the applicant has provided an updated WFD assessment in respect to the points below:

- Site specific sediment surveys and assessments
- Site specific benthic ecology surveys and assessments

Reason(s)

Based on the information submitted, there is a significant risk that the development may

- cause deterioration of the water body status
- prevent achievement of good ecological potential

The Northumbria River Basin Management Plan (RBMP) sets out the environmental objectives for the river basin district, including statutory objectives for water bodies and protected areas. It also includes a summary programme of measures required to achieve these objectives.

Under the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WFD Regulations), public bodies must have regard to the relevant RBMP in exercising their functions which affect a river basin district.

i) Site specific sediment surveys and assessments

At this time, insufficient information has been provided to demonstrate that the risks of pollution posed to the Tees estuary water quality can be safely managed. The EIA considers the results of assessments undertaken for nearby licence applications, namely Tyneside House, Skinnerburn Road, Newcastle Business Park, Newcastle upon Tyne, NE4 7AR.

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the Northern Gateway Container Terminal Project. However, we would require site specific sediment surveys. The EIA notes in paragraph 7.4.3 that a site-specific sediment quality survey was proposed to be undertaken in 2020 and we understand through correspondence with agents for this site that this has been completed and is currently being analysed, with the final batch of results being anticipated into mid-April. It is agreed that the water quality assessment would be revisited and this would be undertaken using the Environment Agency's SeDiChem tool.

Requirement: Submit additional suite of site-specific sediment quality surveys prior to determination. The applicant should supply the raw specific data and then repeat the process within Section 7 of the EIA statement to show the site specific water quality impacts of the proposed application. This should then be considered within the updated Water Framework Directive assessment.

ii) Site specific benthic ecology surveys and assessments/adequate mitigation

The EIA discusses previous benthic ecology assessments in the Tees Estuary, notably from the Northern Gateway Container Terminal Project undertake in 2006 and 2019 and the Anglo American Harbour Facilities project undertaken in 2014. The EIA goes on to state that a site specific benthic ecological survey will be undertaken during 2020 to provide a detailed understanding of the benthic ecology with and adjacent to the proposed scheme footprint.

We have discussed with the applicant the overall scope and design of the ecology survey and we are in agreement with this in principle, although appreciate this will need to be considered by Natural England. We will need to see the results of the survey.

In respect to the terrestrial planning application for this scheme, it is understood that the applicant will be undertaking a biodiversity net gain assessment (as a condition) to quantify the loss from the proposal to feed into the Environment and Biodiversity Strategy for the wider Teeswork regeneration. The proposed activity is considered to result in a 2.5ha loss of intertidal area, 5ha loss of subtidal and an additional disturbance of 32.5 ha of subtidal. We acknowledge and support the use of vertipools, however the EIA does note that these would be poor quality overall, and this would still result in an overall net loss. We would appreciate some clarity from the MMO as to how this will feed into the marine licence and requirements for mitigation and/or compensation.

Requirement: We require the submission of the site specific benthic ecology surveys prior to determination to understand the impacts of the proposal. The results of the survey should also be considered within the updated Water Framework Directive assessment

Overcoming our objection

Please address the following points above and consider this within an updated WFD assessment.

Please consult us and we will respond with 21 days.

We also would require further clarification on the below matter:

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Potential increased erosion of the north bank mudflat

In respect to the impacts of sediment deposition resulting from the Stages 1 to 4 of the proposed dredging programme, the EIA assessment states this is predicted to be immeasurable. We contacted the agent to ask the impact of increased erosion to the north bank had been considered, in respect to a small area of elevated flow which had been modelled. We received the following response:

“The predicted localised increased in current speeds at the upstream end of the proposed scheme footprint would not occur through the whole tide cycle; this is only predicted at times of peak flow. In addition, the predicted effect is so ephemeral, localized in spatial extent and small in magnitude that erosion of the north bank mudflat is not predicted”

On the whole this is acceptable considering the project in isolation, but we request further clarity if this stance also considers the impact of the NGCT proposal, particularly if dredge activities were to happen concurrently. Please note the location of model point M1 shown on Figure 6.51

Should the above matter be resolved, we would seek to place the following conditions. We welcome discussion on the wording of these conditions with the applicant and the MMO:

Condition – Dissolved Oxygen monitoring

During 1 July to 1 September inclusive, dissolved oxygen levels must be monitored prior to the dredging activity, as a minimum, monitored every hour during the dredging activity. If a drop of 1mg of dissolved oxygen is observed, then the dredging activity must temporarily pause for a period of 6 hours (a tidal cycle) or until the reading returns to the previously observed level. Recorded data must be shared with the Environment Agency upon completion of the licensed activities, no later than 10 working days after their completion. The MMO must be sent a copy with 7 days of the data being issued.

Reason

The EA has a duty to maintain, improve and develop all salmon, trout, lamprey, smelt and freshwater fisheries, under the Salmon and Freshwater Fisheries Act. 1975 (SSFA) as modified by the Marine and Coastal Access Act, 2009.

We are aware the applicant would be against timing restrictions to the dredging schedule. We overall have concerns on the amount to be dredged in conjunction with other planned dredges in the estuary however the above condition would mitigate for this.

Condition - Programme of site characterisation and remediation

Prior to commencement of construction activities/relevant phase, a programme of site characterisation works is to be submitted to ascertain if contaminants are present in concentrations that could result in pollution to controlled waters. The programme shall include the following components:

1. A preliminary risk assessment which has identified:

- all previous uses

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- potential contaminants associated with those uses
- a conceptual model of the site indicating sources, pathways and receptors
- potentially unacceptable risks arising from contamination at the site

2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.

3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the MMO. The scheme shall be implemented as approved.

Reason

The land-based construction and riverbank excavation are noted in the EIA to have the potential to increase potential of mobilization of residual contamination, as the land is known to be contaminated through historic land-uses. These contaminants may ultimately migrate the estuary. The above condition will ensure that this will be investigated and, where necessary, remediated, to mitigate for this risk.

Beyond this, we have the following informative comments:

Flood Risk – Advice to MMO

Due to the minimal flood risk associated with the proposed works; the Environment Agency will not be requesting the applicant to apply for an Environmental Permit under the Environmental Permitting Regulations 2016 in addition to the marine license for this section of work.

Should you require any additional information, please don't hesitate to contact me.

Yours sincerely,

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