

Mr David Pedlow
Redcar & Cleveland Borough Council
Regeneration Services Directorate
Kirkleatham Street
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Cleveland
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Our ref: NA/2020/115083/01-L01
Your ref: R/2020/0371/SCP
Date: 14 August 2020

Dear Mr Pedlow

SCOPING OPINION FOR NEW PORT FACILITY TO SUPPORT LANDSIDE PROPOSALS FOR GENERAL INDUSTRY AND STORAGE & DISTRIBUTION USES. LAND AT SOUTH BANK, SOUTH BANK WHARF, SOUTH BANK.

Thank you for consulting the Environment Agency on the above Scoping Opinion which we received 23 July 2020.

Environment Agency position

We have reviewed the submitted scoping report (South Bank Port Facility – Environmental Impact Assessment scoping review, Royal Haskoning DHV, 15 July 2020).

We have considered the recent response we provided to a scoping opinion for a largely similar development in 2019 (R/2019/0331/SCP) which we provided 19 June 2019.

We are in agreement with the topics/constraints to be scoped into the EIA document listed in page 4 of the report. The following comments will ensure that the environmental statement addresses the key environmental issues for this proposal.

Proposal

The proposal has the potential to impact on the water environment in respect to:

- Permanent loss of intertidal priority habitat designated as SSSI and pSPA in an already heavily modified waterbody,
- Impact to intertidal priority habitat designated as SSSI and pSPA not directly associated with the development,
- Dredging of the River Tees,
- Construction and operation,
- Accidental releases,
- Drainage within made ground.

The Environmental Statement should include an assessment of these impacts and specifically

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- The requirements of the Water Framework Directive by way of a WFD Assessment,
- The Environment Agency's tidal encroachment policy for use in all estuaries.
- How the development will achieve a biodiversity net gain

Water Framework Directive

The Water Framework Directive (WFD) is implemented in England and Wales through, 'The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003'.

- Under WFD, environmental objectives have been set out for each of the protected areas and water bodies in the Northumbria River Basin District Management Plan, updated December 2015.
- The current status of the Tees estuary (waterbody reference GB510302509900) is 'moderate' ecological potential.

The objective for this waterbody is to achieve 'good' ecological potential. Individual element classifications and objectives are provided below. These environmental objectives are legally binding. All public bodies must have regard to these objectives when making decisions that could affect the quality of the water environment.

The River Tees is important wildlife corridor and should remain as such and be enhanced where possible. The intertidal Tees estuary adjacent to the site is designated as a SSSI and pSPA.

The Tees estuary environment has been significantly improved over recent decades and implementation of future legislation from 2020 will achieve further improvements to the benefit of estuary habitat, with a view to achieving good ecological potential by 2027.

Developers should identify measures to comply with the requirements of the WFD through carrying out a WFD assessment of a proposal. As part of a WFD assessment, the applicant will need to demonstrate:

- Whether the proposed development will lead to a deterioration in status of any WFD waterbody
- Whether the proposed development will compromise the achievement of Good Status or Potential in any WFD waterbody
- Whether the proposed development will contribute towards a cumulative deterioration of WFD status or prevent cumulative enhancement of WFD status in any waterbody.
- Whether the proposed development will be sustainable and allow for a resilient habitat in the face of climate change, sea level rises and coastal squeeze. An assessment using up to date climate data (currently UKCP18) should be included and resilience built into the designs
- Whether the proposed development will support the delivery of measures identified in the Northumbrian River Basin Management Plan that are required to achieve waterbody objectives. In respect to the last of these points, the site



includes part of the tidal Tees Estuary WFD waterbody (GB510302509900). This waterbody is designated as a heavily modified waterbody, and as such, requires that all practicable mitigation is taken to achieve good ecological potential. The generic mitigation measures deemed applicable to this waterbody include,

- Enhance ecology
- Bank rehabilitation
- Remove or soften hard bank
- Preserve or restore habitats. The design process for the wharf should look to include an assessment of incorporating bio-engineered designs such as Estuary Edges, to mitigate on site impacts.

The WFD assessment should include consideration of attainment of overarching WFD objectives and those for the particular Tees estuary waterbody in respect to the supporting Mitigation Measures Assessment element of the WFD classification. The Tees estuary is designated as a heavily modified waterbody with an objective to reach Good Ecological Potential (GEP) through putting in place mitigation measures. The proposal involves further physical modification and the permanent loss of intertidal habitat with no ability to set back embankments in the future. This could jeopardise attainment of this objective. Where the Catchment Data Explorer or River Basin Plan does not contain data relevant to WFD assessments then the best available information should be used.

I have discussed further WFD considerations in the following comments, where relevant.

Hydrodynamic and Sedimentary Regime

Dredging

Dredging can have a number of negative impacts on the water environment. It can alter flow regimes, release contaminants accrued within the sediment, and create smothering effects, thereby damaging benthic habitats and migratory fish populations. Dredging should only be undertaken in a manner that protects the environment. The applicant should consider the methodology to be used, the disposal of dredged material, and the timing of works. Decisions should be underpinned by the fundamental scientific principles of hydraulics and geomorphology and take account of the multiple functions and services that a channel delivers. More information can be found here:

<https://www.gov.uk/guidance/water-framework-directive-assessment-estuarine-and-coastal-waters>

Impacts of dredging on the tidal prism of the estuary, and therefore the extent and condition of existing intertidal habitats and the resultant impact on WFD ecological classification elements should also be included within the WFD assessment.

Assessments

We are pleased to see that proposal to use 3D modelling to determine the impacts upon hydrodynamics and sedimentary regime of the Estuary.

The plume modelling will be especially helpful in understanding the impacts to fish within the estuary, however, the applicant should expect that additional mitigation will be required given the extensive nature of the dredge. In addition to the initial capital dredge,



consideration of the impacts associated with the continued maintenance of the dredged area in future years should be assessed too, in terms of the continued impact to fish, as well as water quality.

Marine Water and Sediment Quality

Quantitative Water Quality Assessments

We are pleased to see that a sediment quality survey would be carried out to accompany the hydrodynamic and sedimentary regime assessment. It states that if the sediment analysis is similar to previous samples within the Tees estuary no further assessment need to occur. However, it should be noted that we are not consultees in respect to sampling strategies with the MMO. It is understood that the purpose of these sampling strategies is to ascertain the acceptability of depositing the sediment offshore. Therefore we would recommend following the Clearing the Waters for All guidance before ruling out a quantitative assessment of water quality. Currently, the Tees does not meet good chemical status.

The applicant must ensure no deterioration in water quality occurs as a result of this development in terms of WFD. The applicant needs to ensure they can demonstrate no adverse impacts will be observed, and suggested mitigation may be required, such as water quality monitoring.

Marine Ecology and Marine Mammals

Protected and Priority Species/Habitats

It is recognised that a number of Habitats of Principal Importance may be present on or near to site. These habitats, which are listed under Section 41 (S41) of the Natural Environment and Rural Communities Act 2006, are considered in decision making with regards to the conservation of biodiversity in England. Therefore, impacts to these habitats will need to be considered, and the mitigation hierarchy used to protect these features. We have noted records for species including, but limited to: common seal, grey seal, common lizard, brown hare, toad, hedgehog and invertebrates.

The site is in close proximity to a number of internationally protected sites, such as SSSI, SPAs and Ramsar sites. Any change of land use or construction work in the vicinity or at these sites has the potential to have a detrimental impact on designated features of those sites. Any detrimental impacts on these sites or their designated features, or loss of these habitats will require a habitat regulations assessment and suitable mitigation and compensation.

These requirements are supported by paragraphs 170 and 175 of the National Planning Policy Framework (NPPF) which recognise that the planning system should conserve and enhance the environment by minimising impacts on and providing net gains for biodiversity. If significant harm resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated for, planning permission should be refused.

It would be beneficial for the EA to review benthic invertebrate survey design, as stated within the scoping document.



Demolition of existing timber wharf and jetties

Full ecological survey of current fauna and flora associated with structure will be required, including a full Invasive Non-Native Species INNS survey. The structure itself will likely be used by numerous species as a shelter, including for juvenile fish. EA survey data will not cover this location due to its inaccessibility, so we advise that this is included into any monitoring survey design being carried out. It is important we understand the habitat lost and its associated impacts (in respect to birds and fish) so that appropriate mitigation/compensation can be quantified.

In addition, depending what ecology is found living upon the structure, an understanding of how the structure will be removed, and the impacts associated with this (what will happen to the ecology living upon the current structure), needs to be considered. It is illegal to spread INNS between sites, and a river allows a perfect vector for spread so needs inclusion within the methods statement.

Construction of new quay and dredging (1km)

Methods statements need to ensure consideration for the sensitives during the build process, this should include surface run-off management during the build, and afterwards, as to ensure no impact to the water quality occurs.

Fish and Fisheries

Piling

The creation of a wharf involves a substantial amount of piling. The noise from piling, particularly impact piling may impact severely on fish migration. Salmon, sea trout, eel, lamprey and possibly smelt all frequent this area of the Tees on their upstream migrations. Some restrictions on piling activity should be expected in order to reduce the impact on protected migratory fish species such as Atlantic Salmon. We have noted that report states that as the piling would occur on land that the noise would be reduced, the EA are still concerned there would be a risk to fish. This would not be the case if the applicant were to provide noise/vibration assessment survey which demonstrated that this would not be the case

Dredging

Extensive dredging activity is planned for this area of the River Tees, and the effects of deepening this large section of the Tees estuary on intertidal mixing will be uncertain. In order to protect vulnerable fish species such as European Eel, Atlantic Salmon and Lamprey, it is likely that dredging activity will need to take into account the protection of these species during critical migration periods. This would entail limiting dredging activity to certain times of the year and/or providing suitable monitoring and mitigation such as stop start thresholds for parameters such as suspended sediment and dissolved oxygen levels.

Biodiversity Net Gain

Mitigation on site

This development will result in a loss of intertidal habitat, in already heavily modified estuary and we are supportive of the applicant's strategy to compensate for biodiversity net losses. We would like to state that in accordance with paragraph 175 of the National Planning Policy Framework, if significant harm to biodiversity cannot be avoided the

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initial step is to fully consider options for mitigation on site prior to compensation off-site. This could be included within the design of the development, using bio-engineered designs such as estuary edges techniques. Opportunities to soften and enhance estuary edges to provide habitat for a range of fish species and life stages, should be sought. Also methods to reconnect and improve connectivity to any watercourses discharging into the Tees estuary should be fully explored. These watercourses may provide valuable habitat for certain fish species most notably the critically endangered European Eel. This will provide an opportunity for some on-site mitigation.

Where on site design cannot adequately mitigate impacts, which would be determined through a sufficient justification, and achieve a biodiversity net gain, compensation would be suitable.

Emerging STDC biodiversity strategy and securing compensation

We are aware of the emerging biodiversity strategy for the STDC area to support the STDC masterplan, which would be a material consideration in any planning application however this plan is not yet approved. Should this EIA development be submitted, and determined, prior to this document being approved we would seek to ensure that any appropriate like-for-like compensation is adequately secured through a condition.

Tees Estuary Partnership (TEP)

The Tees Estuary Partnership (TEP) has developed a Tees Estuary Habitat Vision that aims to deliver WFD mitigation measure objectives. The Tees Rivers Trust are already leading an IMMERSE project that sets out to enhance the biodiversity of the intertidal zone of the Tees estuary. This project forms a contribution to achieving the TEP habitat vision of establishing coherent ecological networks that are more resilient to current and future pressures at a landscape scale across local authority boundaries.

The techniques employed have been drawn from successful Estuary Edges pilots on the Thames estuary where biodiversity benefits have also been shown to enhance the visual and aesthetic value afforded to new developments. Such measures have the potential to also enhance the impact of the adjacent Teesdale Way / England Coast Path for the benefit of the wider community. Such a scheme would complement the landscaping strategy for the proposal. There are other opportunities to implement WFD mitigation measures and the applicant should explore these with the TEP to compensate for impacts which cannot be mitigated through best practice design onsite.

Flood Risk and Coastal Defence

Sources of Flooding

The main source of potential flooding in the area is likely to be from the *River Tees* but there could be other local sources of flooding such as groundwater and surface water.

The Environment Agency have published a suite of interactive maps that indicate where possible flooding from different sources could occur (see 'Long term flood risk information' on our Environment Agency website). Our maps are unsuitable for a detailed Flood Risk Assessment (FRA), but they can indicate where further assessment may be needed.

FRA Advice

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The FRA must assess flood risk from all sources of flooding and recommend the mitigation measures that will be implemented to ensure a safe development in a 1 in 200 year flood event, taking account of climate change. It must also demonstrate that flood risk will not be increased elsewhere.

Climate Change

Under our latest climate change guidelines, we would expect the FRA to consider the impact of climate change on flood levels for the lifetime of the development under the *central and higher central* allowances. For information on our new climate change requirements, please see: <https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances>

For general information about Flood Risk Assessments it may be beneficial to visit the Environment Agency website and the NPPF Planning Practice Guidance on 'Flood Risk and Coastal Change'.

Further specific information regarding flood risk may be available from local sources, such as Strategic Flood Risk Assessments (SFRA) produced by the relevant local planning authority and normally accessible on their website.

Consents and Permitting

The Environmental Permitting (England and Wales) Regulations 2016 require a permit or exemption to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in a floodplain more than 8 metres from the river bank, culvert or flood defence structure (16 metres if it's a tidal main river) and you don't already have planning permission

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506 (Monday to Friday, 8am to 6pm) or by emailing enquiries@environment-agency.gov.uk.

The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

You can find more information on permit requirements using the following link: <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>. If a permit is required, it must be obtained prior to beginning the works.

However, the proposed quay would require a Marine License and as such, we would likely waiver our permitting requirements.

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Cumulative Impact Assessment.

We have noted that the scoping report listed 7 project/developments to be included in the cumulative impact assessment. We are in agreement with this.

However, special consideration needs to be taken to understand the knock on impacts to other intertidal habitats and created habitat enhancement projects within the Tees (e.g. Seal Sands, and Greatham managed realignment). A relatively small change in tidal elevation associated with dredging, can have a large effect upon habitats such as intertidal muds and saltmarsh. Plant species which survive within a saltmarsh community are adapted to a specific amount of tidal inundation, so any changes upon this can alter the zonation of the entire marsh.

Beyond this, I have the following additional comments:

Biosecurity – Advice to Applicant/LPA

Strict biosecurity measures should be implemented to avoid the importing of non-native invasive species. Equipment, plant and PPE brought to site should be clean and free of material and vegetation. To ensure measures are implemented, it is recommended biosecurity toolbox talks are given to all site staff and rigorous inspections are undertaken of all equipment delivered to site, following the Check Clean and Dry campaign.

Further information on biosecurity can be found at the following link
<https://secure.fera.defra.gov.uk/nonnativespecies/checkcleandry/index.cfm>

Information the EA hold (flood data) – Advice to Applicant

Sometimes we have information on historical flooding, and modelled flood levels on rivers where modelling has been carried out, and also information on our assets that may reduce the risk of flooding in the area.

In this area we have detailed flood modelling information for this section of the River Tees.

For further details about our products /service and to request information, please contact our local Customer & Engagement team on northeast-newcastle@environment-agency.gov.uk

Discharge of treated water and outfall construction – Advice to Applicant

Any outfall structure / discharge that is required to be constructed may require a flood risk activity permit under the Environmental Permitting (England and Wales) Regulations 2016.

As part of this application the Environment Agency will assess the application in relation to Fisheries, Biodiversity and Geomorphology. The application should also take into account impacts to protected and notable species and habitats along these watercourses, with survey information informing these impacts.

The design of any outfall should be sympathetic to the water environment and low impact design options that mimics greenfield runoff should be considered and not drain onto or impact Habitats of Principal Importance (such as mudflats or saltmarsh).

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Foul effluent – Advice to Applicant/LPA

We would require clarification on the details for amenity/welfare foul effluent during the construction phase to be submitted in the application.

Alternative uses of dredged material – Advice to Applicant

It is proposed to dispose of the dredged material offshore. Should there be a need for alternative use of the material then this reuse may require an Environmental Permit under the Environmental Permitting (England and Wales) Regulations 2010 from the EA, unless a waste exemption or a “cut and fill” operation applies. EA Guidance on the re-use of dredging materials may be found on the GOV website while any treatment on site will require a Mobile Plant Permit. The applicant is advised to contact NE-Waste@environment-agency.gov.uk to discuss any permitting issues.

If any controlled waste is to be removed off site, then the site operator must ensure a registered waste carrier is used to convey the waste material off site to a suitably permitted facility. Any offsite waste used in land raising is to be similarly conveyed and waste soils are to be correctly assessed and classified prior to import.

The developer must apply the waste hierarchy in a priority order of prevention, reuse, recycling before consideration other recovery or disposal options.

Dewatering – Advice to Applicant

If the proposal requires dewatering please be aware you may require a permit for this activity.

Further guidance can be found here: <https://www.gov.uk/guidance/surface-water-pollution-risk-assessment-for-your-environmental-permit>

Promotion of our charged planning advice service – Advice to Applicant

Should you wish us to review any technical documents or want further advice we may do this as part of our charged for planning advice service.

Further engagement will provide you with certainty of our position prior to submission. It should also result in a better quality and more environmentally sensitive development. As part of our charged for service we will provide a dedicated project manager to act as a single point of contact to help resolve any problems. We currently charge £100 per hour, plus VAT. We will provide you with an estimated cost for any further discussions or review of documents.

Due to ongoing reduced capacity in the Environment Agency we have stopped and slowed the majority of our cost-recovery (pre-application) work and are focused on our statutory responses. However, we will take a risk based view of any cost-recovery enquiries we receive. Should we agree to take on cost-recovery work please be aware this may be at a slower timescale than you may be used to.

If you would like more information on our planning advisory service, please contact us at: planning.nane@environment-agency.gov.uk

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

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Yours sincerely

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