

## 4 LEGISLATIVE FRAMEWORK

### 4.1 Marine and Coastal Access Act

Part 4 of the Marine and Coastal Access Act 2009 (MCAA) provides a framework for the marine licensing system for those 'licensable marine activities' undertaken within the UK marine area. Under the MCAA, the 'UK marine area' is defined as:

- The area of sea within the seaward limits of the territorial sea adjacent to the UK;
- Any area of sea within the limits of the exclusive economic zone;
- The area of sea within the limits of the UK sector of the continental shelf; or
- Including the bed and subsoil of the sea within the areas listed above.

The MMO is the regulatory authority for marine licensing in English inshore and offshore waters. As detailed in Part 4 of the MCAA, there are seven categories of activity that may need a marine licence from the MMO, namely:

- Construction;
- Dredging;
- Deposit of any substance or object;
- Removal of any subject or object;
- Incineration of any substance or object;
- Scuttling (sinking) of any vessel or floating container; or
- Use of explosives.

The elements of the proposed scheme which will require a marine licence comprise:

- Capital dredging (removal activity).
- Offshore disposal of dredged material (deposit activity).
- Removal / demolition of the existing timber wharf and concrete jetties (removal activity).
- Deposit of rock within the proposed berth pocket to form the rock blanket (deposit activity).

The proposed dredge footprint is located predominantly within an area subject to maintenance dredging by PD Teesport (PDT) (under licence L/2015/00427/1). However, the proposed berth pocket is located outside of the existing maintenance dredge footprint, and therefore a variation to the licence held by PDT is envisaged to increase the source area of maintenance dredged material following construction of the proposed scheme.

### 4.2 Harbours Act

The proposed scheme footprint is located partly outside of the existing harbour limits (given the requirement to construct the proposed quay on land). It is therefore anticipated that a non-works Harbour Revision Order (HRO) application would be required to vary the boundary of PD Ports' jurisdiction. As such an application would not directly or indirectly authorise a project, prior notification to the MMO under Harbours Act 1964 is not required. However, engagement with the MMO would be carried out throughout the non-works HRO application, to ensure that the correct process is followed.

The non-works HRO application is not linked to this EIA or the related marine licence application. However, reference to this has been mentioned for completeness.

### 4.3 Town and Country Planning Act

The Town and Country Planning Act 1990 (TCPA) regulates the development of land in England and Wales. Planning permission is required if the work being undertaken meets the statutory definition of 'development', set out in Section 55 of the TCPA. 'Development' includes:

- Building operations;
- Material changes of use to land and buildings;
- Engineering operations; and
- Mining or other operations in, on, over or under land.

The jurisdiction of the planning authority (in this case Redcar and Cleveland Borough Council (RCBC)) extends down to the level of mean low water. The elements of the proposed scheme to be located on land, namely demolition of existing infrastructure and construction of the proposed quay require planning permission from RCBC.

### 4.4 Environmental Impact Assessment Directive

The requirement for EIA is established by the European Directive 2011/92/EU (codifying previous EIA Directives), as amended by 2014/52/EU on the assessment of the effects of certain public and private projects on the environment (the EIA Directive). The EIA Directive is implemented via various regulations; in this instance, The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) and the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 are applicable to the proposed scheme.

An agreement was previously reached between a third party and the MMO to undertake an EIA for a very similar scheme to that currently proposed at South Bank under the Marine Works (Environmental Impact Assessment) Regulations 2007, as amended. We assume that RCBC is of the opinion that an EIA is also required under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, as a Scoping Opinion was issued by RCBC in 2019. We have therefore proceeded on the basis that an EIA is required under both sets of EIA Regulations, without undertaking a formal EIA screening process (on the basis that the fundamentals of the project previously presented to the MMO and RCBC by the third party remain the same).

### 4.5 Habitats Directive

The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) implement the Habitats Directive (92/43/EEC) in England and Wales. The Habitats Regulations also transport elements of the Wild Birds Directive (2009/147/EC) in England and Wales.

In accordance with Section 63 of the Habitats Regulations, Appropriate Assessment is required for any plan or project, not connected with the management of a European site, which is likely to have a significant effect on the site, either alone or in-combination with other plans or projects. European sites comprise Special Protection Areas (SPA) and Special Areas of Conservation (SAC). Appropriate Assessment is also required as a matter of government policy for potential SPAs (pSPA), candidate SACs (cSAC) and listed Ramsar sites for the purpose of considering development proposals affecting them (ODPM, 2005).

The proposed scheme footprint is located with the footprint of the Teesmouth and Cleveland Coast SPA and is immediately adjacent to the Teesmouth and Cleveland Coast Ramsar site. There is therefore potential for the proposed scheme to affect these designated sites. This is considered further via an HRA (see **Section 29**).

#### 4.6 Wildlife and Countryside Act (as amended)

Public bodies (such as planning authorities, in this case RCBC, and the MMO) are responsible for permitting others to carry out works that are likely to damage or affect SSSIs designated under the Wildlife and Countryside Act 1981.

Natural England has undertaken a review of SSSIs around the Teesmouth and Cleveland coast, which has resulted in the notification of the Teesmouth and Cleveland Coast SSSI. This site includes the majority of the area protected by the previous SSSIs in the area, linking and combining them with substantial extensions. The Seal Sands SSSI remains designated in part approximately 2.5km to the west of the Tees estuary. Part of the existing Seal Sands SSSI is not considered to be of special interest and has therefore been denotified.

Consent under Section 28 of the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act, 2000) would be intrinsic to Natural England's overall response to the marine licence application and planning application, and therefore a separate application under the Wildlife and Countryside Act 1981 has not been submitted.

#### 4.7 Water Framework Directive

The WFD (2000/60/EC) establishes a legal framework to protect and restore clean water across Europe to ensure long-term, sustainable use. It applies to waters out to one nautical mile from the baseline from which territorial waters are drawn.

One of the aims of the WFD is to ensure that all European waterbodies are of Good Ecological Status or Potential (for 'heavily modified' and 'artificial' waterbodies) by 2021 by the setting of Environmental Quality Objectives (EQOs) for water chemistry, ecological and hydromorphological quality parameters. The WFD is transposed into English and Welsh law through The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.

A WFD compliance assessment has been undertaken, the findings of which are presented in **Section 28**.

#### 4.8 Waste Framework Directive

The Waste Framework Directive (2008/98/EC) consolidates earlier legislation regulating waste. The Directive sets out the general rules applying to all categories of waste, a key objective of which is to provide measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use.

Article 3(1) of the Directive defines waste as:

*"...any substance or object....which the holder discards or intends or is required to discard"*.

More generally, the Directive provides a general duty to ensure that waste is dealt with in an environmentally-friendly way. The key to this is the 'waste hierarchy', which emphasises prevention (in the first instance) and then re-use, recycling and recovery of waste (see **Figure 4.1**). Disposal to landfill or at sea is the least favourable option. Further detail regarding applicable waste policy is outlined in **Appendix 1**.

Options for the disposal of waste (i.e. the material to be dredged from the approach channel, turning circle and berth pocket as well as material to be generated from proposed demolition activities) have been investigated in accordance with the waste hierarchy. Possible alternative options for dredged material have been presented in **Section 3.3**.



**Figure 4.1** The waste hierarchy

## 4.9 National, regional and local planning policy

All proposed development must take account of existing planning policy and guidance, and there are a number of national, regional and local plans and policies relevant to the proposed scheme.

### 4.9.1 North East Inshore and North East Offshore Marine Plan

The north east marine plan area includes the north-east inshore and the north-east offshore marine plan areas. The north-east inshore marine plan area covers an area of approximately 690km of coastline stretching from the Scottish border to Flamborough Head, and out to 12 nautical miles offshore, covering over 6,000km<sup>2</sup> of sea.

A review of the North East Inshore and North East Offshore Marine Plan (Draft for Consultation) (issued in January 2020) (MMO, 2020) has been undertaken. The following objectives for the marine plan area are defined (amongst others).

- (1) Infrastructure is in place to support and promote safe, profitable and efficient marine businesses.
- (2) The marine environment and its resources are used to maximise sustainable activity, prosperity and opportunities for all, now and in the future.
- (3) Marine businesses are taking long term strategic decisions and managing risks effectively. They are competitive and operating efficiently.
- (4) Marine businesses are acting in a way which respects environmental limits and is socially responsible. This is rewarded in the market-place.

Given the nature of the proposed scheme and its overall aims and objectives (predominantly to serve the offshore wind industry), it is considered to be in direct accordance with the aims of the plan.

The proposed scheme is also considered to be compliant with the applicable policies of the plan, namely:

- Policy NE-DD-3 – *proposals for the disposal of dredged material must demonstrate that they have been assessed against the waste hierarchy.* The waste hierarchy assessment is presented in **Section 3.3** and is examined further in **Appendix 1**.
- Policy NE-PS-1 – *only proposals demonstrating compatibility with current activity and future opportunity for sustainable expansion of port and harbour activities will be supported.* The requirement for the proposed scheme is detailed in **Section 2**.
- Policy NE-REN-1 – *proposals that enable the provision of renewable energy technologies and associated supply chains, will be supported.* The proposed scheme has been designed with a primary focus towards the renewable energy industry (however the proposed scheme could also be utilised by other industries depending on operational need). The need for the proposed scheme in this respect and the description of proposals are detailed in **Section 2** and **Section 3** respectively.
- Policy NE-EMP-1 – *proposals that result in a net increase to marine related employment will be supported.* The impact that the proposed scheme will have on the marine related employment market has been set out in **Section 3** and **Section 21**.
- Policy NE-AIR-1 – *proposals must assess their direct and indirect impacts upon air quality and greenhouse gas emissions.* The potential impacts of the proposed scheme on air quality have been assessed in **Section 18**.
- Policy NE-BIO-3 and Policy NE-NG-1 – *proposals that deliver environmental net gain for coastal habitats where important in their own right and / or for ecosystem functioning and provision of ecosystem services will be supported.* Information regarding the environmental enhancements to be included within the proposed scheme are detailed in **Section 3**. STDC is in the process of developing a South Tees Regeneration Masterplan Environment & Biodiversity Strategy (the Strategy), which will define the works required to offset the loss of habitat arising as a result of works being proposed by STDC (including the proposed scheme which is the subject of this report). The extent and location of compensatory habitat creation and enhancements will be agreed with Natural England and RCBC. It is anticipated that the measures outlined in the Strategy will mean that the proposed scheme results in a biodiversity net gain.
- Policy NE-CE-1 – *proposals which may have adverse cumulative effects with other existing, authorised or reasonably foreseeable proposals must demonstrate that they will, in order of preference avoid, minimise, mitigate significant adverse cumulative and in-combination effects.* **Section 27** of this report presents the CIA.

#### 4.9.2 National Policy Statement for Ports

Section 1.2 of the National Policy Statement for Ports (NPS) (Department for Transport, 2012) states that in addition to being part of the planning system established under the Planning Act 2008, the NPS is a relevant consideration for the MMO when deciding other port development proposals (i.e. projects that are not considered Nationally Significant Infrastructure Projects, such as the proposed scheme which is the subject of this report).

In summary, the UK Government seeks to:

- Encourage sustainable port development to cater for long term forecast growth in volumes of imports and exports by sea with a competitive and efficient port industry capable of meeting the

needs of importers and exporters cost effectively and in a timely manner, thus contributing to long term economic growth and prosperity.

- Ensure all proposed developments satisfy the relevant legal, environmental and social constraints and objectives, including those in the relevant European Directives and corresponding national regulations.

In order to help meet the requirements of the government policies on sustainable development, new port infrastructure should also:

- Contribute to local employment, regeneration and development.
- Ensure competition and security of supply.
- Preserve, protect and where possible improve marine and terrestrial biodiversity.
- Minimise emissions of greenhouse gasses from port related development.
- Be well designed, functionally and environmentally.
- Be adapted to the impacts of climate change.
- Minimise use of greenfield land.
- Provide high standards of protection for the natural environment.
- Ensure that access to and condition of heritage assets are maintained and improved where necessary.
- Enhance access to ports and the jobs, services and social networks they create, including for the most disadvantaged.

It is considered that the proposed scheme is compliant with the items stated above and is therefore compliant with the NPS.

### 4.9.3 RCBC Local Plan

Under the National Planning Policy Framework (NPPF), local planning authorities have been encouraged to develop a Local Plan where all relevant spatial and land use policies are combined within one document. In line with this, RCBC published a Local Plan in 2018 (Redcar and Cleveland Borough Council, 2018). Relevant policy from the Local Plan, and how the scheme is compliant with this is detailed below.

- ED6 Promoting Economic Growth – the proposed scheme lies within the South Tees Area, as identified under Policy ED6.2 and is planned to be developed and safeguarded for employment purposes. The area is identified within the Local Plan as being suitable for specialist uses, such as heavy processing industries and port logistics, falling within Use Classes B1, B2 and B8. This Policy also advises that suitable employment related sui-generis uses will be supported. The need for the proposed scheme and a description of the development are provided in **Section 2** and **Section 3**, respectively. In summary, the proposed scheme would directly promote economic growth of the area by regenerating an area of river frontage which contains a dilapidated wharf and unused jetties.
- LS4/ED6 South Tees Development Corporation – the proposed scheme is within the South Tees Development Corporation area, as illustrated on the Policies Map. This has been set up to promote the economic growth and commercial development of the Tees Valley by converting assets in the South Tees area into opportunities for business investment and economic growth. The need for the proposed scheme and a description of the development are provided in **Section 2** and **Section 3**, respectively.
- N4 Biodiversity and Geological Conservation – the proposed scheme is located within and adjacent to environmentally designated sites. Potential impacts and any associated conservation/net gain measures have been provided in **Section 5** and **Section 9**. As noted above, the South Tees Regeneration Masterplan Environment & Biodiversity Strategy will define the works required to

offset the loss of habitat arising as a result of works being proposed by STDC (including the proposed scheme which is the subject of this report).

- SD3 Development Limits – the proposed scheme is within the development limits identified in the RCBC Local Plan, Policies Map (Map 2).

In line with Policy ED6, this report has also reviewed the South Tees Area Supplementary Planning Document (SPD), which seeks to support the economic and physical regeneration of the South Tees Area. The SPD sets out the vision and core objectives for the Area and provides greater detail on how adopted planning policies will be interpreted during the decision-making process for planning applications. In this regard, the key reference point is Development Principle STDC14, 'South Industrial Zone', which indicates that development proposals for port-related uses, including port-based fabrication, offshore energy industries, including manufacturing, materials processing and manufacturing, contract fabrication and energy generation and, potentially, rig and large equipment decommissioning within the area will be encouraged. Given the nature of the proposed scheme, it is concluded that such development is in accordance with Development Principle STDC14 and consequently should be encouraged from a planning perspective.