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Mark Pearson
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Case reference: EIA/2017/00041

12th December 2017

Dear Mr Pearson,

**The Marine Works (Environmental Impact Assessment) Regulations 2007, as amended ("the Regulations")
Request for a scoping opinion - Northern Gateway Container Terminal**

Thank you for your application dated 04 September 2017, requesting a scoping opinion from the Marine Management Organisation (MMO) in respect to the request to extend the period of time for completion of works, as stated in the Teesport Harbour Revision Order 2008.

In accordance with the regulations listed above, before reaching our scoping opinion, we have consulted such bodies that we considered likely to have an interest in the project by reason of their environmental responsibilities.

Details of the scoping opinion can be found in the attached Report. The items set out in the Report are those that have been highlighted by consultees and which we would expect to be fully considered within the environmental statement. However, we would not see this as a definitive list and other subsequent work may prove necessary following further discussion.

Also attached is a response letter detailing further comments that fell outside the scope of this scoping opinion.

If you have any queries or require clarification on any of the above, then please do not hesitate to contact me.

Yours sincerely,

Ms Melissa Gaskell-Burnup



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INVESTORS
IN PEOPLE



Mr Mark Pearson
Group Projects Director
PD Ports
(by email only)

Our reference: EIA/2017/00041

12 December 2017

Dear Mr Pearson,

Ref: EIA/2017/00041 – Northern Gateway Container Terminal

Additional comments were received during the scoping consultation in relation to the proposed extension of the Teesport Harbour Revision Order 2008 (the Order).

The Marine Management Organisation (MMO) consider the following comments to be outside the scope of considerations relevant to the proposed time extension for the Order.

Any development will also require a marine licence from the MMO which will be subject to a further application, the following comments should therefore be considered when submitting any application for a marine licence.

Topic Category	Comment
Marine ecology	The development should not encroach either physically, or via its associated infrastructure (roads, drains etc.) into the intertidal environment. There should be no net loss of habitat. When encroachment is shown in plans for any new works, considerable justification for this, together with details of mitigation and compensation would need to be included.
Marine ecology	The decision regarding whether further benthic ecology survey is needed should be based on the suitability of more recent data (e.g., that identified from 2014) to allow an appropriate comparison with those acquired during 2006. For example, if the spatial representation of new data is not sufficient or relevant then this would dictate that additional contemporary, fit-for-purpose data should be acquired through targeted survey work.
Coastal protection and flood defence	A Flood Risk Assessment (FRA) must also be submitted alongside any subsequent planning application in order that flood risk is given due diligence as part of the application process.
Coastal protection and flood defence	If there is any proposed works on or near a main river, on or near a flood defence structure, in a flood plain or on or near a sea defence you may need to apply to the Environment Agency



	<p>(EA) for a Flood Risk Activity Permit. For more information, please follow the link below. https://www.gov.uk/guidance/flood-risk-activities-environmental-permits</p>
Alternative use of dredged material	<p>Any future raising of land levels within the proposed terminal site, other than the landside elements that have commenced, as a result of reusing dredged material, 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. A Waste Recovery Plan may need to be submitted prior to an Environmental Permit application being submitted, which details the land raising scheme and the proposed environmental measures that will be put into place. 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 potential permitting issues.</p> <p>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 the land raising is to be similarly conveyed and waste soils are to be correctly assessed and classified prior to import.</p> <p>The developer must apply the waste hierarchy in a priority order of prevention, reuse, recycling before considering other recovery or disposal options. Government Guidance on the waste hierarchy in England is at: http://www.defra.gov.uk/publications/files/pb13530-waste-hierarchy-guidance.pdf</p> <p>Other environmental issues to consider include the impact on other businesses and operators. Odours may arise from the storage and re-use of dredged material, while the land raising works may involve increased dust, noise and traffic.</p>
Waterbirds, seabirds and European sites	<p>A Habitats Regulations Assessment will need to be submitted and reviewed prior to any works being consented.</p>
Waterbirds, seabirds and European sites & Fisheries resource	<p>The works to the watercourse should not be undertaken between the start of October and the end of April in any given year and if works are carried out between March and September, in any given year, a Silt Mitigation Plan must be in place and/or an appropriate water quality monitoring programme must be implemented in accordance with any scheme previously agreed with the EA.</p>
Water quality	<p>A full Water Framework Directive (WFD) assessment must be submitted and reviewed prior to any works being consented. The disturbance of sediments and potential release of contaminants</p>

	(priority substances) should be assessed within this. It is recommended that the EA is consulted with regards to the WFD assessment.
Marine and sediment quality	Disposal at sea will be subject to a marine licence and new samples and analysis of the dredge material may be required to assess the suitability of the material for disposal at sea. Sampling for a disposal licence should be designed through consultation with the MMO (and Cefas) via the pre-application licencing process. A regime of sediment sampling will be required to support a marine licence application for at sea disposal of the dredged material.
Noise and vibration and air quality	The MMO support the adoption of a 'soft-start' approach to any marine piling which occurs during construction. The highly audible percussive piling, in particular, has the potential to disturb, displace, injure or kill fish and marine mammals within the area. The Joint Nature Conservation Committee have guidance for the 'soft-start' approach to marine piling. The MMO would support the use of Auger Piling, as the noise and vibration disturbance is much lower than caused by other piling methods, such as percussive piling.
Noise and vibration and air quality	Underwater noise and vibration arising from the construction works, particularly the quay wall, should be revisited/reviewed as part of the environmental assessment works proposed to support the extension to the 2008 Harbour Revision Order and the potential impacts on sensitive marine receptors should be assessed.
Noise and vibration and air quality	The MMO recommend that underwater noise and vibration is considered, in line with the finalised construction activities, timings of works and updated baseline information (if applicable).
Noise and vibration and air quality	The ES concluded that the proposed development for fish populations is expected to be of negligible significance, with no overall effect on the estuarine populations of fish expected as a result of construction (as fish would be expected to move away from the noise source). No mitigation measures were proposed (see pages 389-391). The same was concluded for seals, although, the focus of the assessment seems to be on airborne noise more so than underwater noise. The MMO recommend that as part of the assessment, potential mitigation measures are also reviewed.
Fisheries resource	It is not clear whether the proposed SEIR will consider any impacts specifically related to underwater noise.
Fisheries resource	As piling is expected to be required for the construction of the quay wall, the MMO would expect that underwater noise and vibration arising from the construction works will be reviewed and the potential impacts on sensitive fish receptors assessed.
Fisheries resource	The final construction programme should be confirmed. This will help inform if any mitigation is required, e.g. for fish receptors.
Biosecurity	A biosecurity plan is expected to ensure best practice is used throughout the development.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'JB' followed by a stylized flourish.

Jayne Burns
Marine Licensing Case Officer

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Marine
Management
Organisation

Scoping Opinion

**Marine Works (Environmental Impact Assessment) Regulations
2007 (as amended) (“the Regulations”)**

**Title: Northern Gateway Terminal Harbour Revision Order
Extension**

Applicant: PD Teesport

MMO Reference: EIA/2017/00041

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1 Proposal

PD Teesport (“PDT”) are proposing to apply to the Marine Management Organisation (“MMO”) under article 6 of the Teesport Harbour Revision Order 2008 (“the 2008 Order”), for a time extension of 15 years to the period of completion for works within the 2008 Order.

1.1 Project Background

PDT applied for a Harbour Revision Order (“HRO”) in 2006 for the proposed Northern Gateway Container Terminal (“NGCT”). The construction for the NGCT will comprise capital dredging, construction of a new quay wall, reclamation and land-side development (including buildings, cargo handling equipment, etc.), a new intermodal rail terminal, road modifications and the disposal of dredged material.

The order came into force on 8 May 2008 and contained article 6 which states:

Period for completion of works

6.—(1) Subject to paragraph (2), if the works are not completed within ten years from the coming into force of this Order or such extended time as the Secretary of State may on the application of the Company allow, then on the expiration of that period or such extended time (as the case may be) the powers by this Order granted to the Company for making and maintaining the works shall cease except as to so much thereof as is then substantially commenced.

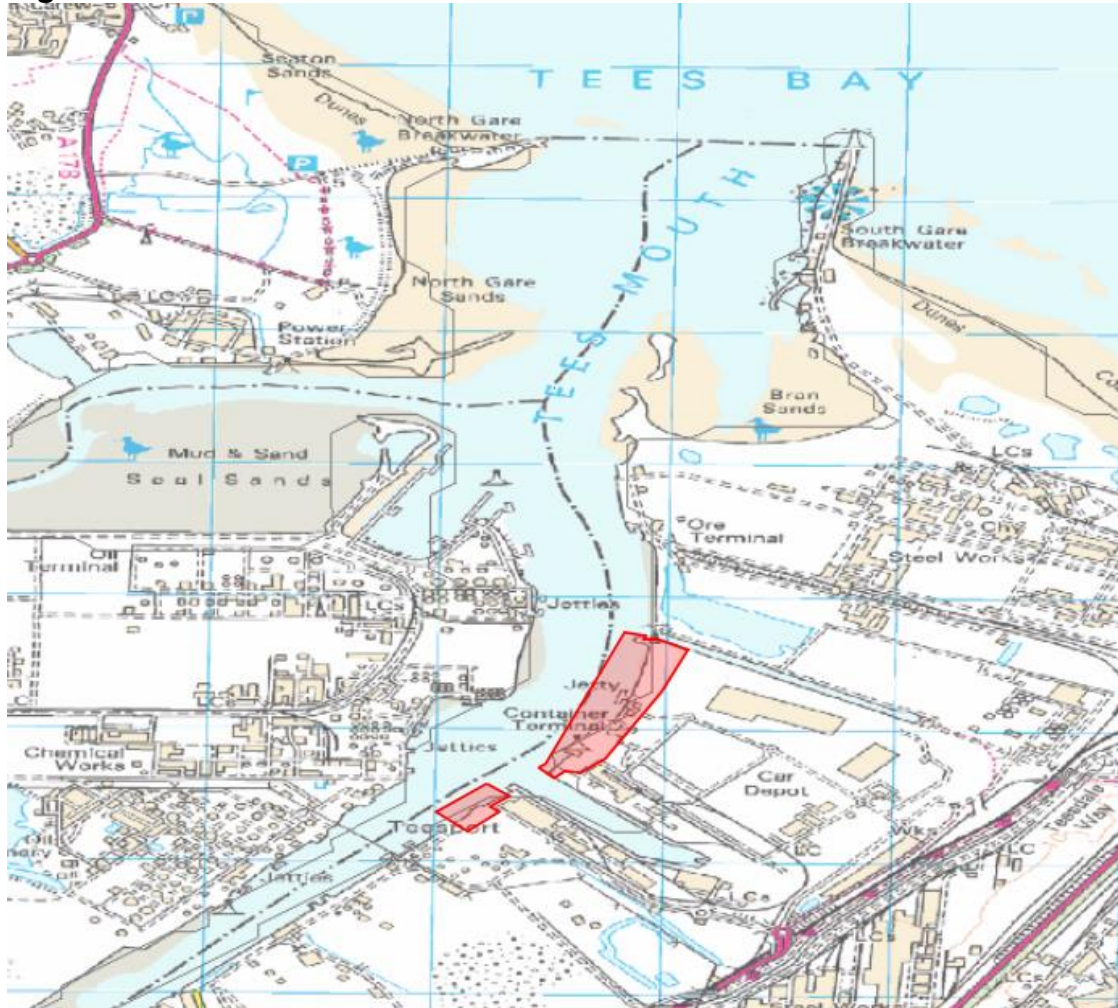
(2) Nothing in paragraph (1) shall apply to any works carried out under paragraph (3) of article 3 (Power to construct works) or article 5 (Subsidiary works).

The period for completion is due to expire on 8 May 2018. PDT is applying to extend the HRO for a further 15 years. An EIA scoping report was submitted to the MMO to identify whether the scope of the 2006 Environmental Statement (“ES”) is appropriate to support the application to extend the 2008 Order under article 6. This application does not include any amendments or additions to work already consented under the original HRO, it is only to extend the period for completion.

2 Location

The proposed NGCT is located in the River Tees, which is displayed in Figure 1 below.

Figure 1: Location of works



3 Environmental Impact Assessment (EIA)

Council Directive 2011/92/EU (as amended) on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”) aims to protect the environment and the quality of life by ensuring that projects which are likely to have significant environmental effects by virtue of their nature, size or location are subject to an EIA before permission is granted.

The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) (“the Regulations”) transpose the EIA Directive into UK law for marine licence applications.

The MMO considers the proposed works to be a Schedule A2 project under the EIA Directive, specifically, Schedule A2, article number:

63. Construction of harbours and port installations including fishing harbours (unless included in Schedule A1);

and

89. Any change to or extension of development of a description listed in paragraphs 1 to 87 of this Schedule where that development is already authorised, executed or in the process of being executed.

4 Scoping Opinion

Pursuant of regulation 13 of the Regulations, PDT have requested a Scoping Opinion from the MMO. In so doing a Scoping Report entitled “NGCT scoping document” has been submitted to the MMO for review.

The MMO agrees with the topics outlined in the Scoping Report and in addition, we outline that the following aspects be considered further during the EIA and must be included in the proposed Supplementary Environmental Information Report (“SEIR”) which will support the application to extend the Order.

4.1 Coastal Processes

The potential impacts of recent infrastructure and developments, such as the Teesside Offshore Wind Farm must be carefully considered within the SEIR as these projects may have altered the physical characteristics of the estuary since the original ES was written in 2006. This must also be considered for the review of “Marine and Sediment Quality” and “Water Quality” sections of the SEIR.

The statistics quoted in the 2006 ES for the local tidal record (Table 6.3) and wave climate (Table 6.4) should be updated in the SEIR to include all measurements to date.

4.2 Water Quality

The potential impacts of recent infrastructure and developments, such as the Teesside Offshore Wind Farm must be carefully considered within the SEIR as these projects may have altered the physical characteristics of the estuary since the ES was written in 2006.

The potential impact on water quality from the dredging works must be considered in the desk based review for the SEIR. This should consider the potential impact of release of sediment contaminants and localised increases in suspended sediments from the dredging activities.

4.3 Benthic Ecology

As stated in Table 2.1 of the Scoping report, more recent marine ecology surveys have been undertaken in the Tees, the most recent being those in

2014 for the York Potash Harbour Facilities. The 2014 marine ecology data to be reviewed must be suitably comparable to the 2006 NGCT data. The assessment of any changes from 2006 must be taken with due care to any issues that may arise with such a comparison exercise.

A decision upon whether the originally-proposed monitoring requirements remain valid must be undertaken and presented in the SEIR.

4.4 Ornithology

The surrounding Sites of Special Scientific Importance (SSSIs) must be considered, these sites include: Seal Sands; Seaton Dunes and Common; Cowpen Marsh; Tees and Hartlepool Foreshore and Wetlands SSSI; South Gare and Coatham Sands SSSI. The proposed extension to the Teesmouth and Cleveland Coast SSSI should be considered within this section. Formal consultation for the SSSI extension is expected in early 2018, and is likely to add harbour (common) seal and additional areas of coastal habitat.

Proposed additional features to the Teesmouth and Cleveland Coast SPA and Ramsar proposed extension include common tern and pied avocet, as well as the inclusion of supporting habitats and tern foraging areas. The impact of the proposal should be considered for the tern foraging areas and the impact upon prey availability for the tern species as well as visual and noise (above and below water) disturbance during both construction and long term use of the site. Barriers to species movements should also be considered in this way.

4.5 Shellfisheries

The original ES in 2006 lacked data on the commercial fisheries <10m fleet. The SEIR should include additional data to provide a better characterisation of commercial fisheries than was available in 2006. Landings data provides data on the <10m fleet and should be used in conjunction with available overflight data (if this data is available), Vessel Monitoring System (VMS) and consultation with local Inshore Fisheries Conservation Authority (IFCA).

4.6 Fisheries

A review of the originally-proposed monitoring requirements in 2006 must be undertaken in the SEIR, to assess if they are still valid.

The SEIR should consider any potential impact of dredging upon migratory salmonids.

Updated information could be sourced, the Environment Agency carries out annual fish surveys on the Tees Estuary, the data of which may be of use, in addition to data held by the IFCA.

Further information on fish resources can be obtained from internationally co-ordinated surveys. The ICES international bottom trawl surveys are conducted

in quarter 1 and quarter 3 in the North Sea. There are fishing stations located in ICES rectangle 38E8 (located off the Tees Estuary) which may provide useful fisheries data.

4.7 Navigation

The Department for Transport's 'A Guide to Good Practice on Port Operations 2017' ("the Guide") was prepared in conjunction with the 'Port Marine Safety Code 2016' and both are applicable to statutory harbour authorities. Section 7 of the Guide covers requirements under Navigational Safety and must be considered in the SEIR along with the additional consultation with the Harbour Master for navigational safety matters.

4.8 Noise, Vibration and Air Quality

In Table 2.1 of the Scoping Report of the proposed scope it is stated that further assessment of noise, vibration and air quality is not required. It is unclear if this is referring to noise underwater and in air, or just noise in air. This point requires clarification.

The environmental implications of noise generated during construction should be carefully considered. Understanding of the impacts caused by noise upon birds, fish and marine mammals has increased since the 2006 ES. Potential impacts of underwater noise and vibration on marine mammals, fish and marine invertebrates should be reviewed and considered as part of the SEIR. New evidence into the environmental impacts of noise should also be considered within the SIER.

4.9 Flood Defence

The Environment Agency have updated climate change allowances within flood risk assessments since 2006 and the SEIR should be updated in accordance.

The Environment Agency have flood modelling information in this area from 2011 to 2015 providing data for the 1 in 200 and 1 in 1000 year events which may be of use in the review of flood risk documents. This information may inform consideration of the additional topic of "Major accidents and natural disasters" in line with the 2017 amendments to the Marine Works (Environmental Impact Assessment) Regulations.

5 Cumulative Impacts

An updated Cumulative Impacts assessment of the proposed project must be included in the SEIR as there have been a number of developments built since the original ES was written, for example the Teesside Offshore windfarm. The assessment must identify any other works with may have an in-combination effect on the marine receptors identified. This should include the works site and the offshore disposal location(s).

6 Additional comments

A review of any changes to designated species, or changes to the designation status of any affected habitats, must be taken and any such changes be used to update the assessment of impacts in the SEIR.

Clarification must be provided in the SEIR regarding any plans to use dredged material for reclamation, such as at Bran Sands Lagoon.

The beneficial reuse of the dredged material within the Tees Estuary would be welcomed, especially if utilised to create intertidal habitat. Estuary Edge techniques are encouraged as an alternative way to improve habitats for wildlife.

7 Conclusion

The topics highlighted in this scoping opinion must be assessed during the EIA process and the outcome of these assessments must be documented in the SEIR in support of the time extension application. This statement, however, should not necessarily be seen as a definitive list of all EIA requirements. Given the scale and programme of planned works other work may prove necessary.

Jayne Burns
Marine Licensing Case Officer



12 December 2017