

Southampton City Planning & Sustainability
Planning and Rights of Way Panel meeting 29 March 2012
Planning Application Report of the Planning and Development Manager

Application address: Berths 201/202, Western Docks, Western Avenue			
Proposed development: 1) Application for approval under Regulation 75 of the Conservation of Habitats and Species Regulations 2010 2) Application for the Prior Approval of Plans And Specifications under Part 11 Of The Town And Country Planning (General Permitted Development) Order 1995 (Environmental Impact Assessment Development).			
Application number	1) 12/00139/FUL 2) 12/00138/OPA	Application type	1) 'Appropriate Assessment' 2) 'Prior Approval'
Case officer	Richard Plume	Public speaking time	5 minutes
Last date for determination:	1) 12.03.2012 2) 07.05.2012	Ward	Millbrook
Reason for Panel Referral:	Referred by the Planning and Development Manager as an application of wider public interest	Ward Councillors	Cllr Furnell Cllr Thorpe Cllr Wells

Applicant: Associated British Ports	Agent: Adams Hendry
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Recommendation Summary	1) To confirm the appropriate assessment in Appendix 1; and, 2) Delegate to Planning and Development Manager to grant prior approval subject to criteria listed in report
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Reason for Granting Prior Approval

The proposed works comprise the deepening of the dredge pocket for Berths 201/202, the reconstruction of the quay wall and the disposal of materials arising from the dredge. The works for rebuilding the quay wall are permitted development under a private Act of Parliament, subject to prior approval being granted for the detailed plans and specifications. Under the habitats regulations the Council has undertaken an appropriate assessment on the basis of advice from Natural England. The appropriate assessment concludes that there will be no adverse effect on the integrity of European Sites. On the prior approval application officers are satisfied that the development could not reasonably be carried out elsewhere on the land given the nature of the project. Furthermore, the design and external appearance of the building is such, in comparison to the existing arrangements and the nature of the surroundings, that it would not injure the amenity of the neighbourhood. As the applications in question are not applications for planning permission development plan policies are not directly applicable to the decision making process. However, the Core Strategy supports the growth of the port through Policy CS9.

Therefore, under the terms of the legislation there are no grounds or material considerations for withholding approval.

Appendix attached			
1	Appropriate Assessment		

Recommendation in Full

Conditionally approve

Delegate to the Planning and Development Manager to grant prior approval subject to the completion of a S.106 Legal Agreement to secure:

- i. Submission and implementation of a Construction Environment Management Plan (CEMP) to cover construction noise and vibration, construction traffic, construction traffic and pollution control;
- ii. Limitations on the time percussive piling can take place to avoid major impacts to migratory salmon;
- iii. Monitoring of the overwintering wildfowl population of the Bury and Eling Marshes unit of the SPA during the piling phase and the following winter; and,
- iv. To ensure that the development hereby agreed shall be carried out in accordance with the approved plans.

That the Planning and Development Manager be given delegated powers to vary relevant parts of the Section 106 agreement and to vary or add conditions as necessary as a result of further negotiations with the applicant.

1. Introduction

- 1.1 The applications before the Panel relate to a project within the operational Port of Southampton, more specifically the container terminal within the Western Docks. The project requires the approval of the Marine Management Organisation (MMO) and the Council as Local Planning Authority. This report concentrates on the Council's decision making process but the applications before the MMO are included as background to the proposals.
- 1.2 The purpose of this project is to enable the Port of Southampton to accommodate the latest generation of large container ships being brought into service by the worlds major shipping lines that use Southampton. This increase in the length of container ships has meant that the existing deep sea berths at the Container Terminal (Berths 204-207) cannot accommodate four large vessels simultaneously. The works in question will restore the capacity of the terminal so that it will be able to accommodate four large vessels and minimise delays for ships waiting for an empty berth. The deepened Berths 201/202 will also be able to accommodate the new generation of wider vessels.
- 1.3 In December 2008 Associated British Ports (ABP) submitted applications to the Marine and Fisheries Agency (MFA) for consent to deepen the berth pocket and carry out associated works of reconstruction to the quay at Berths 201/202. These

applications were accompanied by an Environmental Statement (ES). In April 2010, the MFA were replaced by the Marine Management Organisation (MMO). In June 2011, a decision was made that the ES submitted in 2008 was limited in its assessment to the marine environment and did not cover the scope of the project as a whole. As a result, the MMO requested a new ES to be submitted in support of the original applications covering all the environmental impacts (terrestrial and marine) of the proposed project, which includes operational use. The new ES has been submitted in support of the project including these applications before the Panel.

- 1.4 ABP Southampton have submitted two marine licence applications to the MMO. The first is for the dredge and disposal of material and the second is for the re-construction of Berths 201/202. The ES covers both the construction and the dredging works. The Council has been consulted by the MMO on these licence applications and specifically asked to comment on the findings of the ES. The Council's consultation response was sent on 5 March 2012.

2 The site and its context

- 2.1 The application site is Berths 201 and 202 within the container terminal of the Port of Southampton (Western Docks). The container terminal occupies a large area of originally reclaimed land within the River Test. Berths 201 and 202 which are not currently used by container ships run along the eastern extent of the container terminal. The existing deep water berths at Berths 204 -207 run along the southern extent of the container port.
- 2.2 The surroundings are commercial in character with dock related activities adjoining to the north and east. The only non dock related activity in the immediate vicinity is the Southern Water Waste Treatment Works which adjoins to the north and is accessed off Western Avenue. New Forest District Council area with the New Forest National Park beyond adjoins to the south-west on the opposite bank of the River Test.

3. Proposal

- 3.1 The proposed works comprise the following three components: firstly, the deepening of the dredge pocket for Berths 201/202; secondly, the reconstruction of the quay wall; and finally, the disposal of materials arising from the dredge. All these works are included within the marine licence applications currently before the MMO but it is only the second item above, namely the works to be undertaken to the quay wall which is for the Council to consider.
- 3.2 The proposed works are designed to provide a deep water berth capable of accommodating a 400 metre long, 15.5 metre draught vessel alongside the existing Berths 201/202. The existing berths have depths of 10.2 metres and 12.2 metres below Chart Datum (CD). This would be dredged to a new depth of 16 metres below CD. The application for prior approval includes a series of construction drawings, a specification of works, the ES and various items of correspondence between ABP and the MMO.
- 3.3 The existing quay structure is neither deep enough nor strong enough to permit the berth to be deepened and therefore a new quay wall is to be constructed. The proposal is for a steel combi-wall which is stronger than a conventional single-skin

sheet pile wall. The new steel wall would be built between 3 and 5 metres in front of the existing quay wall with a granular fill insert between the new and old structures. The length of the new quay wall is approximately 575 metres. The new retaining structure will comprise tubular steel king piles of approximately 1.8 metres diameter and approximately 35 metres in length which will be driven to a depth of around 30 metres below Chart Datum. These steel piles will have to be installed using percussive pile driving techniques because of the size of the piles required and the below ground conditions. These king piles will be linked together via intermediate interlocking sheet steel piles which will be driven to a lesser depth of approximately 20 metres below CD. The new piles will be anchored by means of horizontal tie bars that connect to an anchor wall approximately 40 metres behind the quay. When the existing wall is in place, the existing cope and front crane rail will be removed and replaced by a new reinforced concrete cope beam along the full length of the new quay. Bollards, fenders and access ladders will be installed at appropriate spacing along the length of the quay. A new reinforced concrete beam supported on piled foundations will be constructed 35 metres landside of the front crane beam to carry the rear rail of the quayside cranes.

- 3.4 Once the construction works have been completed up to six ship-to-shore gantry cranes will be provided along the quay. In addition replacement lighting columns will be installed, amendments will be made to the security fencing and a small electricity sub-station will be relocated. A construction site compound will be provided to the north of the quay wall construction area.
- 3.5 It is proposed that the construction works will commence in July 2012 and will take approximately 14 months to complete. The quayside piling will be carried out between 16 September and 31 March to mitigate against any potential impact on Atlantic Salmon. Following completion of the quay wall, the dredging of the berth pocket will take place and the removal of the material will probably take place at sea at the Nab Deposit Ground. These later works are a matter for the MMO to control not the Council.
- 3.6 The majority of new building works which take place within the Port of Southampton fall within 'permitted development' under Part 17 of The Town and Country Planning (General Permitted Development) Order (GPDO) 1995 as they are incidental to the purposes of shipping or the movement of goods by sea. In this case the works fall within a local or private Act of Parliament, the British Transport Docks Act 1966 and are permitted by that Act. Consequently the works constitute permitted development under Part 11 of the GPDO. This permitted development right is subject to the applicant seeking the prior approval from the Council of the detailed plans and specifications of the building or structure. In this case the quayside wall is the building or structure in question.
- 3.7 Before the Council can issue the decision on the prior approval application it is required to make an appropriate assessment of the implications of the development for the European site or European offshore marine site in view of the site's conservation objectives. In the light of the conclusions of the assessment the Council may approve the development only after having ascertained that it will not adversely affect the integrity of the site. This is a requirement of Regulation 75 of The Conservation of Habitats and Species Regulations 2010. A copy of the appropriate assessment prepared by the Council's Planning Ecologist is attached at **Appendix 1** to this report.

4. Relevant Planning Policy

- 4.1 As the applications in question are not applications for planning permission development plan policies are not directly applicable to the decision making process. However, members will be aware that the Core Strategy supports the growth of the port through Policy CS9.

5. Relevant Planning History

- 5.1 Berths 201 and 202 were the original container berths for the Port and opened in 1969 although they ceased to handle containers in the 1980's.
- 5.2 There have been a series of planning decisions for various new buildings, alterations and extensions to existing buildings and temporary uses as far back as the 1950's but none are directly relevant to these applications.

6.0 Consultation Responses and Notification Representations

- 6.1 Following the receipt of the application for prior approval a publicity exercise in line with department procedures was undertaken by placing a press advertisement 09.02.2012 and erecting a site notice 06.02.2012 as well as notifying 12 statutory bodies and interest groups. At the time of writing the report **0** representations had been received from surrounding residents or landowners. On Application 1 (the appropriate assessment) the Council is only required to notify Natural England. Their comments are included in Paragraph 6.3 below
- 6.2 **New Forest District Council** - does not object to the prior approval of the plans and specifications for this proposal. It supports the principle of upgrading of the existing berths and has asked the MMO to apply conditions dealing with noise and vibration issues on the consents they are determining.
- 6.3 **Natural England** – (Response to the Appropriate Assessment application): having considered the information contained within the proposals Environmental Statement, Natural England considers that this proposal is likely to have a significant effect upon the following European designated sites: Solent and Southampton Water Special Protection Area/Ramsar; Solent Maritime Special Area of Conservation; and the River Itchen Special Area of Conservation. Natural England is satisfied with the City Council's approach of using the Marine Management Organisations appropriate assessment as a basis for their own appropriate assessment to satisfy Regulation 61 of the Conservation of Habitats and Species Regulations 2010. Natural England believe that the scope of the appropriate assessment is valid and agree with the assessment's conclusions. Therefore, Natural England has no objection to the proposal as they do not believe it will have an adverse effect upon the integrity of the European sites listed above, either alone or in combination with other plans or projects. It is also unlikely to have a detrimental effect upon the interest features of the Sites of Special Scientific Interest (SSSI's) nearby. This view is subject to various mitigation measures being in place relating to noise during construction. These measures are a key part of the appropriate assessment and should form a condition of the Council's approval or be secured through an alternative delivery mechanism. In addition the applicant has agreed to undertake monitoring of the

overwintering wildfowl population of Bury Marshes, part of the Eling and Bury Marshes SSSI and a component of the Solent and Southampton Water SPA/Ramsar site. This monitoring will not mitigate the impacts of the proposal but it will assist with assessing the impacts of this and other future developments in this area. Natural England has no ecological concerns regarding the terrestrial impacts of the proposal.

6.4 **Environment Agency** – The proposed dredging will only be acceptable if a licensing condition is imposed relating to the dredge methodology to ensure that the work is managed in such a way as to protect the environment. **The following measures must be taken for all piling activities at berths 201 and 202, Southampton:**

- **Installation of the quay wall piling must only be undertaken during the period 16 September to end of March.**
- **This is to include up to 2 ‘stop’ periods for a maximum of 3 days each on request of the Environment Agency.**

Reasons: Salmonids migrate along Southampton Water. Piling has been identified as having potential to impact upon migratory Salmonids. The mitigation techniques outlined in the condition, will reduce the impact of the work on fish in this estuary. Restricting piling activity to between 16 September and the end of March will avoid key migration periods. Salmonids are known to ‘switch’ between the lower reaches of the River Test and River Itchen whilst awaiting suitable conditions to migrate up river. A three day stop period will allow Salmonids to move freely between these two waterbodies should a ‘run’ be identified by Environment Agency staff.

6.5 Providing that the new quay wall is to be built to a minimum level of that of the existing, the Environment Agency have no objection to the proposed development in terms of flood risk. The proposed works are located within the River Test (tidal), which is designated as a ‘Main River’ by the Environment Agency. Under the terms of the Water Resources Act 1991, the proposed works will require the prior written permission of the Environment Agency in the form of a Flood Defence Consent. However, since the introduction of the Marine License in 2011, the Environment Agency can dis-apply the requirement for Flood Defence Consent where it is satisfied that flood risk is not an issue and where any conditions requested by the Environment Agency can be applied to a Marine Licence issued by the MMO. The Environment Agency therefore requests that any conditions specified in response to this consultation be applied to a Marine Licence, if granted, and that confirmation of the Marine Licence application decision be provided to the Environment Agency. If, for any reason, the conditions of the Environment Agency cannot be applied to the Marine License, it may be that a Flood Defence Consent would be required.

Response

The comments relating to the construction of the quay wall are relevant to the Council's consideration of the Prior Approval application but those relating to the dredge methodology are a matter for the MMO to consider as part of the Marine Licence. These comments have been made direct to the MMO.

- 6.6 **Southern Water** –The site lies adjacent to the Southern Water Morestead Wastewater treatment works and shares the site access. It is imperative that access to the Southern Water site is retained at all times in case of emergency. The proposed development site is also crossed by Southern Water easements for services, which must be protected. The applicant is advised to discuss with Southern Water Legal and Property Team the provision of access and protection of apparatus.

Response

The roads within the Port are privately owned and rights of access and easements are not a planning matter for the Council. These comments have been passed on to ABP as landowner.

- 6.7 Highways Agency - Raises no objection to the prior approval application.
- 6.8 **SCC Environmental Health (Pollution & Safety)** - with regard to noise and vibration during the construction process liaison meetings have taken place between ABP, their acoustic consultants and Environmental Health Officers from the adjoining Councils. Noise and vibration monitoring monitoring points have been agreed. Operational noise has been properly assessed through the Environmental Statement. Mitigation measures for operational noise can be conditioned for later agreement through the Control of Pollution Act or other measures.
- 6.9 **SCC Environmental Health (Air Quality)** - with regard to construction dust, it is anticipated that the works will be undertaken in accordance with a construction management plan which would detail methods to manage fugitive dust emissions. This could be a condition of the consents being sought. With regard to Air Quality Management Areas officers are satisfied that the current arrangements with ABP and DP World being directly involved with the ongoing development and implementation of the Council's Air Quality Action Plan is an effective way to identify and deliver improvements.
- 6.10 **SCC Ecology** – satisfied with the ecological assessment within the Environmental Statement and the conclusions drawn from it.

7. Planning Consideration Key Issues

- 7.1 As the applications before the Panel are not for planning permission the normal considerations relating to policies in the development plan and other material considerations do not apply in the same way. The applications have to be determined in a prescribed manner having regard to the relevant legislation. There are two matters to determine: firstly, whether or not approval should be given under Regulation 75(7) of the habitats regulations, this is the so-called appropriate assessment; and secondly, the prior approval under Part 11 of the GPDO. The first application effectively operates as a condition that has to be satisfied before the prior approval application can be considered.
- 7.2 Appropriate Assessment
As stated above an appropriate assessment for this project has been undertaken by the Council's Planning Ecologist. Natural England's advice has been taken into account in the production of the appropriate assessment. As can be seen from the

comments in paragraph 6.3 above, Natural England believe that the scope of the appropriate assessment is valid and agree with the assessment's conclusions. The proposed works are likely to have a 'relevant effect' which is defined in the legislation as 'likely to have a significant effect on a European site...either alone or in combination with other plans and projects.' The proposed works are judged to have a potential likely significant effect on the migratory Atlantic Salmon feature of the River Itchen SAC and the internationally important features of the of the Solent and Southampton Water SPA/Ramsar site because of the bird species associated with the area. Members attention is specifically drawn to the overall conclusions on site integrity given in Section 7 of the appropriate assessment and to the conclusion in Section 9 that there will be no adverse effect to the integrity of European Sites from the proposed construction and dredge works at Berths 201 and 202. The appropriate assessment relies on certain mitigation measures which cannot be secured through planning conditions given the limitations of the prior approval procedure. Discussions have taken place with the applicants about securing the necessary mitigation through a Section 106 agreement. Members are recommended to endorse the appropriate assessment on this basis.

7.3 Prior Approval procedure

This application is submitted under Part 11 of the GPDO which specifies that development authorised by a local or private Act of Parliament is permitted development. The quay wall works are authorised by the British Transport Docks Board Act 1966. However, the Part 11 rights can only be exercised for the erection, construction, alteration or extension of a building once the prior approval of the Council has been obtained to the detailed plans and specifications. In this case the works in question are to the quay wall which is considered to fall within the definition of a building or structure. The Council's consideration of the application is limited in extent by the legislation. The application is not to be refused nor are conditions to be imposed unless the Council is satisfied that-

(a) the development ought to be and could reasonably be carried out elsewhere on the land: or

(b) the design or external appearance of the building would injure the amenity of the neighbourhood and is reasonably capable of modification to avoid such injury.

7.4 Turning to these issues, ground (a) relates to the location of the development. It is difficult to see how this criteria would apply to this case as the quay wall structure to be replaced is a fixed location. As part of the supporting Environmental Statement ABP have considered alternative options within the port. This would require the identification of an alternative berth able to accommodate deep draught vessels adjacent to the infrastructure already in place at the container terminal. However, all of the suitable adjacent terminals are already fully occupied. A further alternative would be the development of Dibden but this would require considerable works in terms of dredging, construction of new quay walls, associated infrastructure as well as seeking the necessary approvals. ABP have concluded that the current proposal involving the reconstruction and deepening of these berths is the most sustainable option. These findings are acceptable and therefore there would be no justifiable grounds for refusing the application on ground (a).

- 7.5 Ground (b) relates to the design or external appearance of the quay wall structure and the impact this would have on the amenity of the neighbourhood. The application site and the immediate environs are an industrial dockyard setting and it is difficult to see how these alterations would fundamentally change the amenities of the neighbourhood. The rebuilt quay wall structure and the associated works would incrementally add to the dockside skyline which is a significant part of the character of the City and Southampton Water. The conclusion of officers on this issue is that the design or external appearance of the new structure would not injure the amenity of the neighbourhood. Consequently there is no need for the Council to go on to consider whether the development is reasonably capable of modifications to avoid the injury. The top of the quay wall and cope would be exactly the same as the existing structure so the risk of flooding affecting adjoining land would be unchanged from the existing situation. Because the GPDO limits the powers to impose conditions on the means of construction a Section 106 agreement is recommended to cover the necessary mitigation measures relating to noise and vibration and impact on nature conservation interests.
- 7.6 The whole project is supported by an Environmental Statement which has been expanded to cover the full range of marine and terrestrial impacts. The terrestrial issues covered in the ES are: noise and vibration; road and rail traffic; landscape and visual impact; air quality; cultural heritage; socio-economic considerations and the cumulative and in-combination effects. The ES has been considered by the relevant officers within the Council as part of the prior approval application and the consultation with the MMO on the marine licence. Officers are satisfied that sufficient information has been provided to assess the environmental impacts of this project sufficient for the Council to determine the prior approval application.

8.0 Summary

- 8.1 In procedural terms this is a complicated project requiring marine approval from the MMO and 'landside' approval from the Council. The starting point is that the works for rebuilding the quay wall are permitted development under a private Act of Parliament subject to prior approval being granted for the detailed plans and specifications. Under the habitats regulations the Council has to make an appropriate assessment of the effect on European sites before it can determine the prior approval application. The appropriate assessment has been undertaken by the Council's Planning Ecologist on the basis of advice from Natural England. The appropriate assessment concludes that there will be no adverse effect on the integrity of European Sites. Members are recommended to endorse this conclusion to allow the prior approval application to be decided.
- 8.2 On the prior approval application officers are satisfied that the development could not reasonably be carried out elsewhere on the land given the nature of the project. Furthermore, the design and external appearance of the building is such, in comparison to the existing arrangements and the nature of the surroundings, that it would not injure the amenity of the neighbourhood. Therefore, under the terms of the legislation there are no grounds for withholding permission.

9. Conclusion

It is recommended that the appropriate assessment be formally made and prior approval subsequently granted subject to the completion of a Section 106 agreement and conditions.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1 (a), 1(b), 1(c), 1(d), Environmental Statement dated October 2011 and subsequently updated, relevant legislation including The Conservation of Habitats and Species Regulations 2010 and The Town and Country Planning (General Permitted Development) Order 1995.

RP2 for 29/03/2012 PROW Panel

Southampton City Council
Record of Appropriate Assessment (under regulation 75 of the Conservation of Habitats and Species Regulations 2010 (the "Habitats Regulations"))
Berth 201-202 Western Docks – Application for approval under regulation 75 of the Conservation of Habitats and Species Regulations 2010 (the "Habitats Regulations")
Application ref: 12/00139/FUL
February 2012

Prepared by	Lindsay McCulloch, Planning Ecologist Southampton City Council incorporating information and contributions by Natural England, the Marine Management Organisation and Associated British Ports
Issued by	Lindsay McCulloch
Approved by	Planning and Rights of Way Panel meeting on 29 th March 2012

Appropriate Assessment Record

Title	Redevelopment of Berths 201 and 202, Western Docks. Application for approval of plans and specifications under Part 11 of the Town and Country Planning (General Permitted Development) Order 1995, (the "GPDO")
Location	Berth 201/202 Western Docks, Western Avenue Southampton, SO150BU
International Nature Conservation Sites	<ul style="list-style-type: none"> ▪ Solent Maritime Special Area of Conservation (SAC) ▪ Solent and Southampton Water Special Protection Area (SPA) under the EU Birds Directive ▪ Solent and Southampton Water Ramsar Site under the Convention of Wetlands of International Importance ▪ River Itchen SAC (additional qualifying interest feature only)
Description of project/application	<p>Redevelopment to provide a deep-water berth capable of accommodating a 400m long, 15.5m draught vessel alongside the existing Berths 201 and 202.</p> <p>To achieve this, it will be necessary to:</p> <ul style="list-style-type: none"> • construct a new quay wall • undertake dredging to deepen the existing berths from depths of -10.2m and -12.2m Chart Datum (CD) to a new dredged depth of -16m CD. • dispose of dredged material at sea at the Nab Deposit Ground
Date of Appropriate Assessment	29 February 2012

1. INTRODUCTION

This is a record of the appropriate assessment, required by Regulation 75 of The Conservation of Habitats and Species Regulations 2010 (Habitat Regulations), in accordance with the EC Habitats Directive (Council Directive 92/43/EE), undertaken by Southampton City Council (SCC), as Local Planning Authority (LPA) in respect of the above plan/project. This assessment is required before the LPA as the 'competent authority' under the Regulations can give approval for the project. The assessment is also made in relation to sites listed under the 1971 Ramsar convention.

2. NEED FOR AN APPROPRIATE ASSESSMENT

Having considered that the plan or project would be likely to have a significant effect on the Solent Maritime SAC, Solent & Southampton Water SPA and Ramsar site, and interest features of the River Itchen SAC, and that the plan or project was not directly connected with or necessary to the management of the site, an appropriate assessment has been undertaken of the implications of the proposal in view of the site's conservation objectives.

Natural England's advice has been taken into account during the production of this appropriate assessment. The opinion of the general public was not specifically taken under Reg. 61(4) during the preparation of the Appropriate Assessment.

3. INFORMATION ABOUT THE PROJECT

ABP Southampton is seeking to redevelop Berths 201 and 202, within the Port of Southampton, in order to allow use of the facility by the next generation of containerships.

An application has been made to the Marine Management Organisation for a licence to deepen the dredged pockets of berths 201 and 202 and to reconstruct the quay wall. The licence is to dispose of approximately 182,000 m³ of capital dredged greensand and silt, comprising a thin layer of soft sediment overlying stiff clay and dense sand, and to rebuild the existing quay structure which is neither deep enough nor strong enough to permit the berth to be deepened. Approval for works to the quay wall has also been sought under Part 11 of the Town and Country Planning (General Permitted Development) Order 1995, (the "GPDO").

Alternative options to meet the identified need, namely the provision of suitable berthing to accommodate longer, wider and deeper draught container ships elsewhere within the Port of Southampton, as well as the implications of not going ahead (i.e. 'do nothing'), have been identified but discounted. These options included:

(a) **Do nothing:** the practical effect of which would be that the container terminal would increasingly be operating with only 3 deep-sea berths rather than 4 by reason of the increased length of the new-build vessels currently being brought into service. This would inevitably lead to more severe berthing delays, which could make Southampton a less attractive port of call.

(b) **Alternative Options within the Port:** this would require the identification of an alternative berth able to accommodate deep draught vessels adjacent to the infrastructure already in place at the Southampton container terminal. All of the adjacent suitable berths, however, are already fully occupied.

A further alternative would be the development of a container terminal on an area of open land at Dibden, which is within the port and is allocated for port use. Reclaimed for port operations between 1930 and 1970, it is currently designated as a Site of Special Scientific Interest (SSSI) and considerable works would be required in terms of dredging,

construction of new quay walls as well as the introduction of necessary infrastructure to bring that site on line.

Although there is nowhere else within the current operational Port of Southampton onto which the current container operation could expand, ABP are of the view that the sustainable option offered by the reconstruction and deepening of Berths 201 and 202 should be pursued before the option of Dibden is taken forward.

As a consequence, SCC agrees with the conclusion by ABP that there are no viable alternative locations, which can deliver the required facilities within the necessary timescale.

This dredge is required to provide a second deep-water berth at the container terminal capable of accommodating a 400m long, 15.5m draught vessel alongside at all states of the tide.

4. EUROPEAN SITES POTENTIALLY AFFECTED BY THE PROPOSED WORKS

SACs and SPAs are defined as European Sites in the Habitats Regulations. Where the European Site lies below highest astronomical tide i.e. land covered (continuously or intermittently) by tidal waters, or any part of the sea, in or adjacent to Great Britain, up to the seaward limit of territorial waters, it is described as a European Marine Site. Ramsar sites are wetlands of international importance, designated under the Ramsar Convention 1971. Wetlands are defined as areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres. The following European Marine Sites and corresponding international designations are located in the study area:

- 1) Solent European Marine Site, comprising:
 - a. Solent Maritime SAC
 - b. Solent and Southampton Water SPA and Ramsar site
- 2) River Itchen SAC

Southampton Water and the Solent have long been recognised as being of high biological and nature conservation importance. There are a number of sites of designated nature conservation interest in the area, including Ramsar sites, Special Protection Areas (SPAs) and Special Areas of Conservation (SAC), (Figure NTS5 of the Environmental Statement for Port of Southampton: Berth 201/202 Works, R1494).

The boundaries of these international nature conservation and European Marine Sites in relation to the proposed scheme are shown in Figures 6.1 and 6.2 of Environmental Statement for Port of Southampton: Berth 201/202 Works. Further information about the qualifying criteria and interest features for each of the international designations is given in Appendix D of the tables D1, D2 – D6.

5. IDENTIFICATION AND ASSESSMENT OF IMPACTS

When screened, the proposed works were judged to have a potential likely significant effect on the migratory Atlantic salmon feature of the River Itchen SAC and the internationally important features of the Solent and Southampton Water SPA/Ramsar, namely the bird species associated with the area.

Construction Phase

Noise and Vibration Impacts

Salmon

The River Itchen Migratory Salmon - a feature of the River Itchen SAC were considered likely to be affected by noise and vibration disturbance as a consequence of piling techniques. However, mitigation as proposed in chapter 7 of the Environmental Statement for Port of Southampton: Berth 201/202 Works (as summarised below) will be put in place to avoid major impacts to migratory salmon:

- The percussive piling will only take place between mid September and the end of March when the potential for migratory salmon to be present in Southampton Water or the Test Estuary is at a minimum.
- Between mid September and mid November the Environment Agency may call two 'stop' periods to percussive piling activities if it becomes apparent that a late salmon run is underway. ABP will then cease activity for a period of 3 days to allow salmon to transit Southampton Water and the Test Estuary.

SPA Birds

As a consequence of conditioning the piling works to avoid any impact on Salmon, the piling works will be required to be undertaken during the over-wintering bird period. As a result, there is potential for temporal effect of noise and vibration disturbance on overwintering birds in particular the birds utilising Bury Marsh. An investigation on noise has taken place and a threshold for piling level set at the Humber which was 55Db. The justification for this comes from a report by the Institute of Estuarine and Coastal Sciences – University of Hull (IECS) to the Environment Agency (IECS, 2004. Avifaunal Disturbance Assessment: Flood Defence Works, Saltend), which reported that 'documentary evidence from the Wadden Sea suggests that at levels in excess of 84dB(A) there is a flight response in waterfowl; whilst below 55dB(A) there is no effect, although at levels between 43 dB(A) and 87 dB(A) no effect on levels of diversity were recorded. Preliminary results from monitoring at Saltend reported by IECS, 2004 relating to recorded noise suggested a 'grey area' between 55dB(A) and 84 dB(A), with responses to regular noise in this range being limited to 'heads-up' anxiety displays by wildfowl with no apparent variation in feeding rate by waders. (Sudden occasional noises are known to create a more substantial level of disturbance than regular noise at an equivalent level – ie; sudden occasional noise in the 55 – 84 dB range would be expected to have more marked impacts, and for example initially caused a flight response in wildfowl in the Saltend study).

Displacement may occur for a winter period, however it is not expected that there would be a resulting adverse impact that could have a long term negative impact on the functionality of the designated site. In summary there is potential for temporal significant impact to the interests of the SPA near to the construction site, but that the impacts are unlikely to affect the integrity of the SPA and the functionality once the construction is completed.

There is an agreement with EA and NE that recognises the fact that birds can move away from the disturbance, whilst fish cannot. Also, the impact on fish is more severe as they would suffer injuries that could lead to death.

Changes to water quality

The dredging works has the potential to result in elevated levels of suspended sediment and a reduction in dissolved oxygen in the water column which has the potential of

affecting the interest features within the European Sites. This will be mitigated against by the use of the back-hoe dredging method with no overspill. With such mitigation, the potential effect caused by the dredge is minimal.

Hydrodynamics and Sediment budget

The proposed capital dredge and disposal of material at the Nab Tower disposal site, W1060 bound by coordinates 50 36.900 N 00 56.200 W, 50 36.100 N 00 55.000 W, 50 34.100 N 00 58.500 W, 50 35.000 N 00 59.800 W, 50 36.900 N 00 56.200 W is in the order of approximately 15% of the annual deposition of maintenance dredging deposits at the site from all the estuaries and harbours in the Solent. Due to the highly dispersive nature of the Nab Deposit Ground, the disposal of dredged material is unlikely to result in a measurable change to the background quality of the seabed sediments. This is not considered to have a significant effect on the interest features of the European sites.

The proposed Berth 201/202 works and disposal of dredge arisings proposed at the Nab Deposit Ground, however, lie outside all of the internationally, nationally and locally designated nature conservation sites and, therefore, any impact on designated sites will be via indirect pathways i.e. as a consequence of the effect of the proposed works on the hydrodynamic and sedimentary regime, for example erosion and accretion of intertidal sediments or the dispersal of sediments arising from the disturbance of bed material during dredging.

SCC agrees with ABP that changes to water levels resulting from Berth 201/202 works are limited to the locality of Berth 201/202. These impacts have been assessed against the relevant standards existing through a range of European Directives and have been determined not likely to have an adverse effect on the designated sites.

Operation Phase

No impacts

European site interest features and impacts

Solent and Southampton Water SPA

Interest feature	Potential impact	Description of effect
Internationally important populations of regularly occurring Annex 1 species namely Mediterranean gull, Sandwich tern, Common tern, Little tern and Roseate tern	YES, piling activity, noise,	Disturbance could significantly reduce bird numbers from an established baseline
Internationally important waterfowl assemblage >51,000 Wintering population (5 year peak mean 1992/93 - 1996/97) (Regulation 33) including internationally important regularly occurring migratory species namely Dark-bellied brent goose, Teal, Ringed plover and Black-tailed godwit	YES, piling activity and associated noise from construction works	Noise of piling and construction could disrupt over wintering birds, flight response to sound. Temporal effect during works

Solent and Southampton Ramsar

Interest Feature	Potential Impact	Description of effect
Particularly good representative example of natural or near natural wetland characteristics of the appropriate bio geographical region	NO	No significant effect to Estuaries, saline lagoons, salt marsh or intertidal reefs
Hosting an appreciable assemblage of rare, vulnerable or endangered species or sub species of plant or animal, or an appreciable number of any of these species namely Dwarf spike-rush, foxtail stonewort, smooth cordgrass and water beetle	YES	Effect on salt marsh sub feature, a feeding site for migratory birds

Regularly supports over 20,000 waterfowl	YES	Noise of piling and construction could disrupt over wintering birds
Regularly supporting 1% or more of individuals in a population of one species or a sub species of waterfowl including Dark-bellied brent goose, Teal, Ringed plover and Black-tailed godwit, Sandwich Tern, Common Tern, Little Tern and Roseate Tern	YES	Noise of piling and construction could disrupt over wintering birds

River Itchen SAC

Interest Feature	Potential Impact	Description of effect
Salmon	YES	Noise and vibration effects from piling. Dredging activity resulting in elevated suspended sediment levels

Solent Maritime SAC

Interest Feature	Potential Impact	Description of effect
Cordgrass Swards	NO	Physical changes that are predicted to occur during dredging are negligible
Intertidal mudflats and sand flats	NO	Physical changes that are predicted to occur during dredging are negligible
Atlantic Salt Meadows	NO	Physical changes that are predicted to occur during dredging are negligible
<i>Salicornia</i> and other annuals colonising mud and sand	NO	Physical changes that are predicted to occur during dredging are negligible

The tables show the potential impacts on the European sites and their effects. It shows the potential impacts are associated with birds and salmon.

6. CONSIDERATION OF IMPACTS AND MITIGATION

The main operational timings of construction are set to not overlap with salmon migration; this temporal mitigation removes the potential significant impact on this interest feature.

During consultation with Natural England on the proposals from APB and the associated ES, Natural England advised that the proposed developments were likely to have a significant effect on SPA/Ramsar site birds through noise disturbance as a consequence of piling and the construction of the quay wall. Several mitigation measures have been included in the ES against this issue and include:

- Noise reducing shrouds will be used during percussive piling operations for the main tubes. A system will be used that seals the shroud to the top of the gate with an additional shroud located around the sides of the gate and section of pile beneath the gate extending into the water. As a further precaution, to avoid re-radiated noise from the gate structure, it will be necessary to ensure no metal to metal contact between the pile and the gate through the use of a resilient lining on the inner faces of the gate;
- The latest version of British Standard BS 5228 will be adopted as the basic code of practice on controlling the noise from construction activities and contractual arrangements will be put in place to delegate noise management requirements to all contractors and subcontractors. Regular monitoring of the noise levels, to an approved scheme, will be undertaken; conditions on the licence will ensure noise restrictions for certain time periods.
- All plant and equipment will be required to be fitted with effective silencers and be maintained in accordance with manufacturers' instructions. Plant will not be left running unnecessarily. Plant and equipment will be required to comply with the requirements of EC Directive 2000/14/EC as amended by EC Directive 2005/88/EC.

In-Combination Effects

The in-combination effects of the proposed Berth 201/202 works have been assessed with respect to other relevant plans or projects that are in the planning domain. Where the designs for these schemes are available, they have been included in the numerical model in order to ascertain the detailed morphological effects on the hydrodynamic and sedimentation regimes.

There are a number of plans and projects that have been identified through extensive consultation with a range of stakeholders as potentially having in-combination effects with the Berth 201/202 works. Further details for each of the developments and their current position in the planning process are provided in Table 18.1 within chapter 18 of the ES.

ABP have committed to implementing an environmental window, whereby percussive piling activities will be undertaken between 15th September and the 31st March when the potential for migratory salmon to be present in Southampton Water or the Test Estuary is at a minimum, as mitigation for the impact to migratory salmon. A condition to enforce this will be applied to the licence.

The in combination effects with respect to the proposed Southampton approach channel dredge have been assessed and SCC has concluded that no adverse additive or synergistic impacts to the integrity of the interest features of the European Sites alone or in combination with other plans or projects will occur. The Appropriate Assessment for the approach channel dredge has yet to be written.

The issues assessed to come to this conclusion and their outcomes are addressed below:

Water Quality – Suspended sediment, dissolved oxygen, chemical contamination, nutrient concentration, microbiological contaminants and changes due to future maintenance dredging. SCC agrees with the assessment by ABP in their document 'Environmental Statement for Port of Southampton: Berth 201/202 Works' that there will be no adverse impact to site integrity due to water quality issues.

Sediment Budget - Sediment budget refers to the balance between sediment added to and removed from the coastal system. The issue of this on the 201 & 202 berth dredges although not a large issue on its own has the potential to be greater when incorporated with the main channel dredge. ABP will incorporate the figures involved with this dredge into the main channel dredge. SCC recognises the potential impact of sediment budget, but concludes that alone berths 201 & 202 will have a small effect but this must be factored into the large effort of the main channel dredge.

Tidal currents – Water levels, flow speeds Marine Management Organisation agrees with ABP that changes to water levels resulting from Berth 201/202 works are limited to the locality of Berth 201/202. Therefore, there will be no cumulative and/or in-combination impacts from changes to water levels from any developments that occur outside of the immediate area of the container terminal.

As these impacts are expected to be localised to the site of works, it is not expected to create adverse impacts on site integrity due to inter tidal habitat loss.

7. OVERALL CONCLUSION OF SITE INTEGRITY

The disturbance to Salmon has been mitigated effectively as the works have been scheduled out of the migration season. The works will now be undertaken during the overwintering bird season. Any disturbance as a result of the works to SPA birds has the potential to have a significant adverse effect on the interest features of the SPA designated sites. The Salmon mitigation removed the impact on the Salmon feature, and noise levels will be monitored and reduced to lessen any potential impact to birds. In order to ensure no adverse impact on SPA birds, the noise produced by piling of the quay wall of berths 201 and 202 shall not exceed 71dB Laeq 1 hour (free field) at a point adjacent to Eling and Bury Marshes mudflat. The first five hammer blows will be made with minimum impact energy. The impact energy will then be increased over a period of 1 minute to the minimum level required to achieve the necessary pile penetration. The Marine Management Organisation is of the opinion that the mitigation measures are sufficient to mitigate for the impact to SPA birds. Furthermore, it is SCC's opinion that any SPA birds that may be disturbed near the area of construction have the capacity to move elsewhere within the network of European Sites for the duration of the works during the overwintering period, thus avoiding permanent impact to the SPA .

8. MONITORING

Due to the potential disturbance to overwintering birds caused by piling noise ABP will undertake monitoring of the overwintering wildfowl population of the Bury and Eling Marshes this data will provide useful research on bird activity and movements during construction works. Such monitoring will be a condition of attaining consent for the proposed works from the Local Planning Authority and has been agreed with NE and RSPB. This monitoring unit of the SPA will take place during the piling phase and for the following winter. It is expected that will help inform bird dynamics for future developments.

ABP will undertake monitoring of the overwintering wildfowl population of the Bury and Eling Marshes unit of the SPA during the piling phase and for the following winter to inform

whether there is long-term damage to the interest feature of this site, as advised by Natural England. Reports of bird monitoring will be detailed back to SCC.

The bird monitoring will consist of the following elements:

1. The area to be monitored is the Bury Marsh section of the Eling and Bury Marshes SSSI, being part of the Solent and Southampton Water SPA
2. The counts should be undertaken monthly between September and March, or during the actual period of construction if shorter, and again during the corresponding period in the winter following construction
3. Counts should be undertaken during the period between two hours before and two hours after low water
4. All water birds should be counted and, as far as possible, their location and any significant movements plotted spatially. However, the species of greatest interest are those comprising a qualifying interest of the SPA, namely black-tailed godwit, dark-bellied brent goose, ringed plover and teal.

Compliance with the piling noise levels limit shall be verified by attended noise monitoring using a held-held sound level meter with the microphone at a height of 1.5 m above ground level, at not less than weekly intervals (except in the first 2 weeks of the piling works, when noise readings will be carried out twice a week).

9. CONCLUSION

SCC concludes no there will be no adverse effect to the integrity of European Sites from the proposed construction and dredge works at berths 201/202 alone. SCC understands the potential for sediment budget effects in combination with the main channel dredge but recognises this will be rolled into the larger main channel dredge assessment.

