

Date: 19 February 2025
Our ref: ID20049401
Your ref: **EN070009**



The Planning Inspectorate

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By email only, no hard copy to follow

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Dear Inspector

NSIP Reference Name / Code: H2 Teesside/EN070009
User Code: H2TS-SP014

Natural England's response to questions as posed by the ExA in the Rule 8(3), 9 and 17 letter

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Natural England is pleased to provide our answers to the questions outlined in the Rule 8(3), 9 and 17 letter dated 10th February 2025. We hope you find our responses in Appendix 1 helpful in your determination.

For any further advice on this consultation please contact the case officer [REDACTED] ([REDACTED]@naturalengland.org.uk) and copy to consultations@naturalengland.org.uk.

Yours faithfully

Northumbria Area Team

Appendix 1: Natural England's comments in response to questions posed in the Rule 8(3), 9 and 17 letter dated 10th February 2025

Questions/ matters raised under EPR Rule 17	Natural England Key Issues Reference	Question/ matter:	Natural England Response:
6	NE3	<p>With regard to NE's Key Issue NE3, please confirm you are satisfied with the Assessment of Permanent Loss of Functionally Linked Land (FLL) at Navigator Terminal, which can be located at Appendix A of the Applicant's 'Comments on Submissions received at DL6A' [REP7-024] submitted by Applicant at DL7? If not please explain why not.</p> <p>Additionally:</p> <ul style="list-style-type: none"> i. Provide any further evidence you hold that supports categorisation of those sectors of the main site being FLL; and ii. Comment on the Applicant's definition of FLL, and any implications for its advice on the main site if this definition is used given the survey shows gull using sectors 9 and 12 outside of wintering season. 	<p>Natural England is satisfied with the assessment of Permanent Loss of Functionally Linked Land (FLL) at Navigator Terminal and agrees with its conclusions.</p> <p>We have come to this opinion based on the photographs showing that the area of land to lost permanently in this area is unsuitable for SPA birds (tall sward with brambles) we agree that this loss will not be significant for SPA birds.</p> <ul style="list-style-type: none"> i) Natural England does not hold bird data on these sectors. ii) Natural England notes that the main site (Foundary) supports numbers of non-breeding herring gull of more than 1% of the SPA population <u>over the wintering period (October – March)</u>, as shown by Table J4-3 in Annex J. These include Sectors 9 (peak count of 28 in March 2022), Sector 10 (peak count of 38 in January), Sector 12 (peak count of 29 in March), and Sector 14 (peak count of 58 in March). The use of these sectors of numbers of birds greater than 1% of the SPA population during the overwintering period indicates that the site is functionally linked to the SPA

			<p style="text-align: right;">of the SPA qualifying population is equalled or exceeded.</p> <p>Table 6-1: Records of Herring Gull and Black-headed Gull Recorded with The Foundry</p> <table border="1"> <thead> <tr> <th>SECTOR NUMBER</th> <th>HERRING GULL</th> <th>BLACK-HEADED GULL</th> </tr> </thead> <tbody> <tr> <td>9</td> <td>High tide peak count – 28 (March 2022) High Tide Mean (freq) – 2.5 (3) Low tide peak count – 6 (January 2022) Low tide mean (Freq) - 0.5 (1)</td> <td>High Tide Peak Count – 10 (Nov 2022) Mean (freq) – 0.94 (3) Low tide – not recorded</td> </tr> <tr> <td>10</td> <td>High Tide Peak Count – 20 (Jan 2022) High Tide Mean (freq) – 1.25 (1) Low tide peak count – 6 (Jan 2022) Low tide mean (freq) – 0.5 (1)</td> <td>High Tide – not recorded Low tide – not recorded</td> </tr> <tr> <td>12</td> <td>High Tide peak count – not recorded Low tide peak count – 40 (April 2023) Low tide mean (freq) - 5.75 (2)</td> <td>High Tide – not recorded Low tide – not recorded</td> </tr> <tr> <td>13</td> <td>High tide peak count – 5 (Jan 2022) High tide mean (freq) – 0.31 (1) Low tide peak count 1 (Jan 2022) Low tide mean (freq) – 0.08 (1)</td> <td>High Tide – not recorded Low tide – not recorded</td> </tr> <tr> <td>15</td> <td>High tide peak count – 40 (June 23) High tide mean (freq) – 7.5 (4) Low tide peak count – 36 (March 2023) Low tide mean (freq) – 8.08 (5)</td> <td>High tide peak count –14 (May 2023) High tide mean (freq) – 1.81 (3) Low tide – not recorded</td> </tr> <tr> <td>18</td> <td>High tide peak count – 7 (June 2023) High tide mean (freq) – 1.54 (5) Low tide peak count – 5 (March 2023) Low tide mean (freq) - 2.08</td> <td>High tide peak count – 90 (Jan 2023) High tide mean (freq) – 24.46 (10) Low tide peak count – 105 (Feb 2022) Low tide mean (freq) – 44.62 (12)</td> </tr> </tbody> </table> <p>Table J4-3: Species Monthly Peaks - Herring Gull</p> <table border="1"> <thead> <tr> <th>Broad Area (foundry/SS/NTM)</th> <th>Sector</th> <th>J</th> <th>F</th> <th>M</th> <th>A</th> <th>M</th> <th>J</th> <th>J</th> <th>A</th> <th>S</th> <th>O</th> <th>N</th> <th>D</th> </tr> </thead> <tbody> <tr> <td>Foundry - Main Site</td> <td>9</td> <td>6</td> <td>0</td> <td>28</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>8</td> <td>4</td> </tr> <tr> <td>Foundry - Main Site</td> <td>10</td> <td>38</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>Foundry - Main Site</td> <td>11</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>Foundry - Main Site</td> <td>12</td> <td>0</td> <td>0</td> <td>29</td> <td>40</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>Foundry - Main Site</td> <td>13</td> <td>5</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>Foundry - Main Site</td> <td>14</td> <td>9</td> <td>9</td> <td>58</td> <td>1</td> <td>24</td> <td>0</td> <td>152</td> <td>24</td> <td>0</td> <td>0</td> <td>28</td> <td>31</td> </tr> <tr> <td>Foundry - Main Site</td> <td>15</td> <td>34</td> <td>36</td> <td>36</td> <td>39</td> <td>0</td> <td>40</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>Foundry - Bran Sands Lagoon</td> <td>16</td> <td>6</td> <td>12</td> <td>57</td> <td>13</td> <td>12</td> <td>0</td> <td>0</td> <td>1</td> <td>5</td> <td>0</td> <td>0</td> <td>62</td> </tr> <tr> <td>Foundry - Landfill</td> <td>17</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>Foundry - Dabholme Gut</td> <td>18</td> <td>7</td> <td>12</td> <td>5</td> <td>1</td> <td>3</td> <td>7</td> <td>0</td> <td>5</td> <td>3</td> <td>2</td> <td>3</td> <td>3</td> </tr> </tbody> </table> <p>We note that the Applicant has provided additional information on the significance of this loss of land to the herring gull and black headed gull SPA population in their response to this question (dated 17/02/25). We agree with their conclusions and regard this loss of land to not result in AEOI on the SPA bird populations.</p> <p>NE2 – Assessment of significance of impacts on SPA populations – resolved.</p> <p>Natural England notes the assessment undertaken in Annex J to determine the significance of the proposed works on birds using the whole site as a proportion of the SPA waterbird population. Natural England agrees with the methodology used and deems this a robust assessment on which to inform the impacts on the SPA. Please see our comments on NE Issue references 3 – 8 for more detailed comments on this.</p>	SECTOR NUMBER	HERRING GULL	BLACK-HEADED GULL	9	High tide peak count – 28 (March 2022) High Tide Mean (freq) – 2.5 (3) Low tide peak count – 6 (January 2022) Low tide mean (Freq) - 0.5 (1)	High Tide Peak Count – 10 (Nov 2022) Mean (freq) – 0.94 (3) Low tide – not recorded	10	High Tide Peak Count – 20 (Jan 2022) High Tide Mean (freq) – 1.25 (1) Low tide peak count – 6 (Jan 2022) Low tide mean (freq) – 0.5 (1)	High Tide – not recorded Low tide – not recorded	12	High Tide peak count – not recorded Low tide peak count – 40 (April 2023) Low tide mean (freq) - 5.75 (2)	High Tide – not recorded Low tide – not recorded	13	High tide peak count – 5 (Jan 2022) High tide mean (freq) – 0.31 (1) Low tide peak count 1 (Jan 2022) Low tide mean (freq) – 0.08 (1)	High Tide – not recorded Low tide – not recorded	15	High tide peak count – 40 (June 23) High tide mean (freq) – 7.5 (4) Low tide peak count – 36 (March 2023) Low tide mean (freq) – 8.08 (5)	High tide peak count –14 (May 2023) High tide mean (freq) – 1.81 (3) Low tide – not recorded	18	High tide peak count – 7 (June 2023) High tide mean (freq) – 1.54 (5) Low tide peak count – 5 (March 2023) Low tide mean (freq) - 2.08	High tide peak count – 90 (Jan 2023) High tide mean (freq) – 24.46 (10) Low tide peak count – 105 (Feb 2022) Low tide mean (freq) – 44.62 (12)	Broad Area (foundry/SS/NTM)	Sector	J	F	M	A	M	J	J	A	S	O	N	D	Foundry - Main Site	9	6	0	28	0	0	0	0	0	0	0	8	4	Foundry - Main Site	10	38	0	0	0	0	0	0	0	0	0	0	0	Foundry - Main Site	11	0	0	0	0	0	0	0	0	0	0	0	0	Foundry - Main Site	12	0	0	29	40	0	0	0	0	0	0	0	0	Foundry - Main Site	13	5	0	0	0	0	0	0	0	0	0	0	0	Foundry - Main Site	14	9	9	58	1	24	0	152	24	0	0	28	31	Foundry - Main Site	15	34	36	36	39	0	40	0	0	0	0	0	0	Foundry - Bran Sands Lagoon	16	6	12	57	13	12	0	0	1	5	0	0	62	Foundry - Landfill	17	0	0	0	0	0	0	0	0	0	0	0	0	Foundry - Dabholme Gut	18	7	12	5	1	3	7	0	5	3	2	3	3
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8	NE2, NE10, NE15, NE17	The ExA has not been able to locate any further detailed comments from NE, submitted at DL7, in regard to NE's key Issues NE2, NE10, NE15 and NE17. Please provide NE's detailed comments on NE's Key Issues listed above, which are outstanding or signpost where within NE's examination documentation submitted to date these detailed comments can be located.																																																																																																																																																																																

			<p>We would like to highlight that Paragraph 2.1.1 defines the wintering period as November to February. Natural England does not agree with this definition, and we regard the wintering period as October – March. However, given the outputs of the assessment of impacts on birds, in particular Annex J, we are satisfied that the conclusions are still valid despite this, however we would advise that any mitigation or monitoring that is required during the overwintering period for SPA birds is undertaken throughout the entire winter period (October – March).</p> <p>NE10 Natural England agrees with the overall scope of assessment of air quality impacts on Teesmouth and Cleavland Coast SPA and that AEOI can be ruled out for the SPA. We regard this issue as resolved.</p> <p>We note that the amended RiHRA confirms that critical levels and loads will not be exceeded except at 2 receptors in the SPA, which have been screening into the Appropriate Assessment. We welcome the screening in of construction impacts into Appropriate Assessment. The assessment in Section 6.6 outlines the impact of this on the qualifying features, highlighting that the dunes on slag spoil are not appropriate for nesting, due to their vegetation and topography, proximity of public roads and presence of infrastructure leading to disturbance of the birds. Natural England agrees with this assessment. APIS also highlights that several species are unlikely to be sensitive to broad habitat changes. Overall these considerations are relevant and the conclusion of no AEOI on the SPA/Ramsar from construction is evidenced. Natural England notes that Section 6.7 indicates that the impact of the project to the in-combination impact (0.3kgN/ha/yr) at the nearest tern/ avocet locations is "imperceptible" (0.004kgN/ha/yr). Similarly at South Gare (the nearest historic location) the in-combination impact is 0.02kgN/ha/yr which is referred to as "very small indeed". While admittedly a small contribution, we do not agree to the ruling out of impacts based on this factor alone. In this case however, the assessment of the relevance of the broad habitat to the nesting birds is considered sufficient that even if the Ndep did result in change to the saltmarsh habitat, this would not adversely affect the birds' nesting habitat.</p> <p>NE15 The revised RiHRA contains further information on the habitat and highlights that the affected dunes are not suitable for nesting due to their location, vegetation and topography. It is considered that this addresses concerns raised on why the full extent of the SPA boundary was not included in the assessment, with impacts only at known nesting sites considered. Natural England agrees that AEOI on nesting terns and avocets can be ruled out. We regard this issue as resolved.</p> <p>NE 17 As for NE10, the argument that the in-combination contribution of the project can be discounted is not accepted by Natural England. However, the assessment considers the entire in-combination impact against the SPA qualifying features, and how N-dep would impact the nesting birds. There is an exceedance at the closest point of the SPA to the project in combination (approximately 10% of the CL), however the Applicant provides evidence why this area would not be used by nesting birds, so would not result in AEOI (e.g. Para 6.6.6 for construction/6.7.6 onwards for operation). There is an exceedance at the historic nest site at South Gare in-combination - but the Applicant provides evidence why this would not be revisited. There is a small exceedance at the nearest tern/avocet nest locations (used since 2018) (below 0.3 kgN/ha/yr - approximately 2.8% of the CL). In this case, the assessment of the relevance of the broad habitat to the nesting birds is considered sufficient that even if the N dep did result in change to the saltmarsh habitat, this would not adversely affect the birds' nesting habitat. We regard this issue as resolved.</p>
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