

## Case History: The RICT [Rosyth International Container Terminal]

This is an NPF2 development – so it was quite challenging to expose and object to its deficiencies. Construction would involve the dredging of a 150 x 750 x 9.5 metre deep water channel at right angles to the shore and running across the tidal flow. Apparently the amount of dredge spoil would overflow Hampden stadium, to give you an idea of the size of the dredged channel.

- 1. Concerns:** It is anticipated that the dredged channel will silt up and that the muds and silts from the intertidal zones in the vicinity may be depleted. Adjacent to the site is part of the Firth of Forth SPA/Ramsar/Natura 2000 designated site. There are other designations in the area but this is the one that may be most affected by this development. There is a possibility that the dredged channel will silt up to such an extent that there will need to be regular maintenance dredging, so these substrates will never have the opportunity to stabilise. The qualifying objectives for the SPA are populations of overwintering migrant birds; and the conservation status of the individual species varies. Their food sources are based on the invertebrate flora and fauna of the intertidal and associated zones. If these are disrupted by, for example, loss of substrate, sedimentation, increased turbidity in the water column and so on, they will not thrive and the food resource will be compromised. Thus there will be impacts on habitat integrity and there will also be some habitat loss. The site also has a SSSI designation for the eel grass *Zostera noltii*, which may also be adversely affected by the development. *Zostera* species have several important ecological functions. Although the existing population is thriving surprisingly well at present, it is at the northern edge of its range and its existence is fragile. Of course, the SSSI is not covered by the Birds or Habitats Directives, as this is a national designation. There are additional concerns such as the impact of excessive and varied noise on birds and a changed light regime.

These concerns were raised with the developer [Babcock] and their agents [Jacobs] by members of the local community as soon as they became, rather belatedly, aware of the project. There was no illustration of predictive work on the dredging and other impacts in the scoping report or the ensuing ES, despite the fact that these omissions were highlighted by members of the local community. In the early 90s there had been a much smaller dredging project carried out at the RICT site and this is believed to have been responsible for sudden and alarming shore erosion, which necessitated emergency measures involving using layers of gabions along the shoreline to restore stability. The link between the dredging and the erosion has never been proved, and as it was carried out by the MoD, there was at that time never any need for environmental assessments or planning permissions. The developer thus had not shown beyond all reasonable doubt that the dredging would not impact on the Natura site, as the likely significant effects of this activity have not been scientifically explored or quantified.

- 2. What happened?** To cut a long [over 4 years and counting] story short, due to the level of objections, a PLI was held, and of course, throughout this, various issues were raised and discussed in relation to the proposal. However, SNH, RSPB [who worked together with SNH], Forth Ports and the local objecting coalition [JAG] emphasised that it was essential to carry out a full predictive hydrogeomorphological/hydrodynamic exercise, including modelling techniques, in order to, as far as possible, get an indication of the impacts of this scale of dredging on sedimentation and substrate movements in the local environment. This

is specialised work. This failure to do the necessary investigative work was [IMHO] the key feature of the PLI. Without reliable data on this it was not possible to assess the possible impacts of the project in the short and long term on the qualifying species of the designated sites.

**3. What was the outcome of the PLI?** We had 3 reporters including the Chief Reporter and her depute. One would have expected them to recommend that the developer should do the omitted essential investigative work and resubmit their proposals in the light of this, and bear in mind the precautionary principle. No. The importance of NPF developments is paramount to delivering on SEG of course. Instead the Reporters didn't really come to a firm conclusion; they said that Scottish Ministers should satisfy themselves that the project could go ahead safely. They emphasised that it was difficult to make a definite recommendation due to the non-availability of crucial evidence regarding the dredging impacts, so they hadn't been able to fully evaluate the project.

Parliamentary Committee meetings were held, but representatives of the JAG and RSPB were not asked for evidence – although a couple of us submitted written evidence anyway. We lobbied extensively, did press releases, wrote to MSPs and met with them etc. The Committees voted on party lines. There was a brief parliamentary debate [how well informed were these MSPs you might ask?] at which the SNP and Labour voted for the development [job creation you see, although this will not be much]. The Transport Minister consented the proposal. This project had come under the umbrella of Transport Scotland, and the environmental civil servants and Minister were not involved.

#### **4. Where are we now?**

Babcock cannot start any construction work before being granted a dredging licence. This is a function of Marine Scotland. MS have required that predictive work on dredging impacts is done and as a result in early 2014 Babcock produced another scoping opinion request report. I had been in contact with MS and they suggested that I should respond to the scoping report, which I did [as did SNH, RSPB and Forth Ports]. I now await the ES. Recently there was some sampling activity on the site. Surveys of migrating birds cannot of course start until the autumn [I hope Jacobs aren't going to regurgitate their previous ornithological data as this was shown by SNH to be substantially flawed. In fact, most of the marine ecological work in the original documentation from the developer was of poor quality and this was exposed during the PLI].

I have also complained to the European Commission. The complaint is in hand but I've no idea how this will progress.

#### **5. Have the B&H Directives been complied with?**

As a Natura 2000 site, the RICT case is covered by relevant articles of the Habitats Directive and also by Art 4[4] of the Birds Directive. Art 6[1] of the Habitats Directive doesn't cover SPAs but there are analogous provisions in Arts 4[1] and 4[2] of the Birds Directive.

I don't think there is compliance, as the development proposal fails the Directives tests in the following areas:

- Alternatives: the developer did not explore alternative ways of delivering the project that would avoid damage to the Natura site. (This was the flaw that resulted in proposals for a new container terminal at Southampton being rejected.)
- The likely significant effects of the project have not been quantified taking account of possible dredging impacts
- The mitigation suggested was inadequate on various counts.
- Therefore it has not been shown beyond all reasonable doubt that there would be no impact on site integrity.
- Although Jacobs produced a report to inform an Appropriate Assessment, there were important omissions and conclusions could not be drawn regarding likely significant effects. In addition there was inadequate consideration of cumulative impacts.
- IROPI does not apply [for various reasons but including the facts that there is a container terminal at Grangemouth which is operating at around 40% capacity and has scope for expansion, and this test does not apply to private ventures].
- Compensation measures were not considered at all.

An important environmental change hasn't been taken account of as it has not been shown beyond all reasonable doubt that the dredging will not affect the site, so the EIA Directive hasn't been complied with either.