

Immingham Green Energy Terminal

Environmental Impact Assessment

Preliminary Environmental Information Report

Volume II – Main Report

Chapter 4: Legislative and Consenting Framework

Associated British Ports



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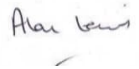
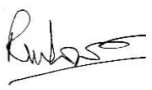
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4 Legislative and Consenting Framework

4.1 Introduction

4.1.1 This chapter provides a summary of the key legislation, policy and guidance against which the Project will be assessed, and which have been considered when defining the scope of the Environmental Impact Assessment (EIA). Where specific aspects of these policies are directly relevant to specific environmental topics, these are addressed further in **Chapters 6 to 24** of the Preliminary Environmental Information (PEI) Report.

4.2 Withdrawal of the UK from the EU

4.2.1 UK legislation is influenced by a variety of international agreements (including European Union (EU) directives, regulations and agreements), which are outlined in this chapter. Following the UK leaving the EU under the terms of the European Union (Withdrawal Agreement) Act 2020 (Ref 4-1) (the 'Withdrawal Act'), broadly, EU-derived domestic legislation and certain EU legislation continue to have effect in domestic law.

4.2.2 In exercise of the powers in the Withdrawal Act, the Government made The Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018 (Ref 4-2). These regulations provided for the The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (Ref 4-3) to be amended to ensure they functioned correctly after the UK exited the EU. In particular, the amendments updated references to the EIA Regulations (Ref 4-3) to EU law, Member States and related terms to reflect the UK leaving the EU. The regulations do not make substantive changes to the way the EIA regime operates following the UK leaving the EU.

4.3 Legislation

The Planning Act 2008

4.3.1 The *Planning Act 2008* (herein known as 'the PA2008') (Ref 4-7) is the primary legislation that establishes the legal framework for applying for, examination and determination of applications for Development Consent Orders (DCOs) for Nationally Significant Infrastructure Projects (NSIPs). As set out in **Chapter 1: Introduction** the Project is defined as an NSIP under s14(1)(j) and under Part 3, s24(2) and s24(3)(c) of the PA 2008. A set of regulations prescribe further detail on specific matters. Of particular relevance to the PEI Report are The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

4.3.2 Section 120 of the PA2008 (Ref 4-7) allows other types of consents to be included in a DCO. At this stage, consideration is being given to the requisite consenting and approval processes to be included within the DCO and further information on this is provided in **Section 4.6**. As part of the EIA process, pre-application discussions will be held with relevant stakeholders to seek to agree a

position with them on which legislation/consents can/will be disapplied through the DCO.

The EIA Regulations

- 4.3.3 The requirement for an EIA originates from the EU Council *Directive 85/337/EEC* on the assessment of the effects of certain public and private projects on the environment (Ref 4-8) (the 'EIA Directive') (as amended by *Directive 2011/92/EU* (Ref 4-9) and *2014/52/EU* (Ref 4-10)). This is directly transposed into English law for NSIPs by the EIA Regulations (Ref 4-3).
- 4.3.4 The EIA Regulations (Ref 4-3) identify which projects are likely to have significant environmental effects and would therefore require an EIA, and as described in **Chapter 1: Introduction**, the Project has been identified as an EIA Project. The EIA Regulations (Ref 4-3) also set out a procedure for assessing, consulting and informing the decision-making process for such projects and require the provision of an ES, which would be submitted alongside the DCO application for the Project.
- 4.3.5 Further details on the approach to the EIA are outlined in **Chapter 5: EIA Approach**.

Habitat Regulations Assessment

- 4.3.6 In accordance with Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the 'Habitats Directive') (Ref 4-4) and Directive 2009/147/ES of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (the 'Birds Directive') (Ref 4-5), a network of protected sites has been designated by EU member states for the protection of Europe's most valuable and threatened habitats and species. These areas are known as European sites. The Conservation of Habitats and Species Regulations 2017 (SI 2017 No. 1012) (the 'Habitats Regulations') transpose the EU Directives into UK law (Ref 4-6) and remain in place following the UK's exit from the EU.

Water Framework Directive

- 4.3.7 The Water Framework Directive (WFD), EC Directive 2000/60/EC (Ref 4-23) aims to protect and enhance the quality of the water environment across all European Union (EU) member states. England and Wales have adopted the WFD as national law by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (Ref 4-24). Following the departure of the United Kingdom from the European Union these Regulations continue to apply until they are revoked or superseded by new legislation.
- 4.3.8 The WFD takes a holistic approach to the sustainable management of water by considering the interactions between surface water, groundwater and water-dependent ecosystems. Ecosystem quality is evaluated according to interactions between biological, physico-chemical and hydromorphological elements (or 'Quality Elements').

4.4 Policy Context

National Policy Statements

- 4.4.1 Under the PA2008 (Ref 4-7), the national policy framework for examining and determining applications for a DCO is provided by National Policy Statements (NPSs). NPSs are produced by the UK Government to cover the energy, transport, water, waste water and waste sectors and comprise the Government's objectives for the development of NSIPs within each sector.
- 4.4.2 Section 5 of the PA2008 allows the Secretary of State (SoS) to designate NPSs setting out national policy in relation to the types of NSIP listed at Section 14 of the PA2008.
- 4.4.3 Section 104(2)(a) of the PA2008 sets out that in deciding an application, the Secretary of State must have regard to any national policy statement which has effect in relation to the development. The relevant NPS that applies to this Project is the National Policy Statement for Ports, designated in January 2012.
- 4.4.4 Section 104(2)(aa-d) of the PA2008 sets out other documents that the SoS must have regard to when deciding an application for development consent. This includes the appropriate marine policy documents, any local impact report submitted by a relevant local authority, any relevant matters prescribed in relation to the Project and any other matters that the SoS thinks are both 'important and relevant' to the decision.
- 4.4.5 In the case of the Project, other matters that are important and relevant include recent and relevant UK Government energy and climate change policy including national infrastructure plans and assessments. Other matters that the SoS thinks are both important and relevant may include the policies within the National Planning and Policy Framework (NPPF) (Ref 4-15), Planning Practice Guidance (PPG) (Ref 4-18) and local development plan documents (DPD) including the North East Lincolnshire Local Plan.
- 4.4.6 Section 104 (3-8) of the PA2008 (Ref 4-7) requires the SoS to determine applications for NSIPs in accordance with the relevant NPS unless this would:
- lead to the UK being in breach of its international obligations;
 - be in breach of any statutory duty that applies to the SoS;
 - be unlawful;
 - result in the adverse impacts of the development outweighing the benefits; or
 - any condition prescribed for deciding an application otherwise than in accordance with the NPSfP is met.
- 4.4.7 Each technical chapter of the PEI Report refers to the policies from the NPSs that are relevant to the assessment of the environmental effects reported within that chapter.

National Policy Statement for Ports

- 4.4.8 The *National Planning Policy Statement for Ports* (NPSfP) (Ref 4-11) provides the framework for decisions on proposals for new port development. The NPSfP applies to the Project by virtue of section 104(2)(a) of the PA2008.
- 4.4.9 The NPSfP (Ref 4-11) highlights the Government's recognition of the essential role ports perform in the national economy and the need for new infrastructure. The DCO application will set out how the Project complies with the policy contained within the NPSfP (Ref 4-11).
- 4.4.10 In particular, Section 3 'Government Policy and the Need for New Infrastructure' recognises the vital role that ports play in the import and export of energy supplies. Section 4 'Assessment Principles' of the NPSfP (Ref 4-11) sets out the key considerations the decision maker should take into account when making decisions on port developments. Section 5 'Generic Impacts' of the NPSfP (Ref 4-11) sets out general impacts relating to port development, split by topic.
- 4.4.11 The NPSfP have been considered in detail within **Chapter 3: Need and Alternatives**.

UK Marine Policy Statement

- 4.4.12 The *UK Marine Policy Statement* (MPS) (Ref 4-12) provides the framework for preparing Marine Plans and is key when making decisions directly affecting the marine environment. It contributes to the achievement of sustainable development in the UK marine area. The MPS applies to the Project by virtue of section 104(2)(aa) of the PA2008.
- 4.4.13 Paragraph 2.1.1 of the MPS (Ref 4-12) states that the UK vision for the marine environment is for "...*clean, healthy, safe, productive and biologically diverse oceans and seas*".
- 4.4.14 The MPS (Ref 4-12) provides the high-level policy context within which national and sub-national Marine Plans would be developed, ensuring that marine resources are used in a sustainable way in line with high level marine objectives to:
- a. Promote sustainable economic development.
 - b. Enable the UK's move towards a low-carbon economy, in order to mitigate the causes of climate change and ocean acidification and adapt to their effects.
 - c. Ensure a sustainable marine environment which promotes healthy, functioning marine ecosystems and protects marine habitats, species and our heritage assets.
 - d. Contribute to the societal benefits of the marine area, including the sustainable use of marine resources to address local social and economic issues.
- 4.4.15 The process of marine planning must contribute to the achievement and integration of these policy objectives.

East Inshore and East Offshore Marine Plans

- 4.4.16 The *East Inshore and East Offshore Marine Plan* (Ref 4-17), together with the Marine Policy Statement, underpin a new planning system for England's seas. This was adopted in April 2014 and provides a clear approach to managing the East Inshore and East Offshore areas, its resources and the activities and interactions that occur in this area. The East Inshore and East Offshore Marine Plan applies to the Project by virtue of section 104(2)(aa) of the PA2008.
- 4.4.17 The marine elements of the Project are located within the East Inshore Marine Plan. Relevant adopted policies to the Project are detailed in **Table 4.1**.

Table 4.1 East Inshore and East Offshore Adopted Marine Plan

Policy	Summary
Policy EC1	Economic Benefits
Policy EC2	Employment Benefits
Policy EC3	Offshore Wind and Energy Generation
Policy SOC2	Heritage Assets
Policy SOC3	Terrestrial and Marine Character
Policy ECO1	Cumulative Effects
Policy ECO2	Release of Hazardous Substances
Policy BIO1	Biodiversity Protection
Policy BIO2	Biodiversity and Geological Enhancement
Policy MPA1	Marine Protected Area network
Policy CC1	Climate Change
Policy CC2	Minimising Carbon Emissions
Policy GOV2	Co-existence in the Marine Environment
Policy GOV2	Displacement and Mitigation
Policy DEF1	Ministry of Defence Danger and Exercise Areas
Policy PS3	Ports and Shipping
Policy DD1	Dredging and Disposal Areas
Policy FISH1	Fishing Activity
Policy FISH2	Impacts on Fish Population

Policy	Summary
Policy AQ1	Sustainable Aquaculture Development Sites
Policy TR1	Tourism and Recreation during construction and operation
Policy TR2	Recreational Activity

The Energy White Paper: Powering our Net Zero Future

- 4.4.18 The *Energy White Paper: Powering our Net Zero Future* (Ref 4-13) was presented to Parliament in December 2020. At its core is a commitment to achieve net zero and tackle climate change, and a clear commitment from the UK Government to invest in new clean energy, with a target of 5GW of low-carbon hydrogen production capacity by 2030 being set. The Energy White Paper applies to the Project by virtue of it being important and relevant under section 104(2)(d) of the PA2008.

British Energy Security Strategy

- 4.4.19 The UK government published the *British Energy Security Strategy* (Ref 4-14) in April 2022, which focuses on providing secure, clean and affordable British energy for the long term. The British Energy Security Strategy applies to the Project by virtue of it being important and relevant under section 104(2)(d) of the PA2008.
- 4.4.20 It states that the UK is “going to produce vastly more hydrogen, which is easy to store, ready to go whenever we need it, and is a low carbon superfuel of the future”. It also outlines that the UK Government “fully support hydrogen as a relatively frictionless way to decarbonise our lives in the near-term” and commits to doubling its hydrogen production ambition to 10GW by 2030.

UK Hydrogen Strategy

- 4.4.21 The UK Hydrogen Strategy sets out the Government’s approach to developing a thriving low carbon hydrogen sector in the UK and the ambition for 5GW of low carbon hydrogen production capacity by 2030. The Strategy recognises that hydrogen comprises a low carbon solution that is critical to the UK’s transition to net zero. The UK Hydrogen Strategy applies to the Project by virtue of it being important and relevant under section 104(2)(d) of the PA2008.

National Planning Policy Framework

- 4.4.22 The latest version of the National Planning Policy Framework (NPPF) was most recently updated in July 2021 (Ref 4-15). The NPPF applies to the Project by virtue of it being important and relevant under section 104(2)(d) of the PA2008.
- 4.4.23 The NPPF sets out the Government’s planning policies for England and how these are to be applied and is a material consideration in planning decisions. Paragraph 5 of the NPPF (Ref 4-15) states that whilst it does not contain specific policies for NSIPs, it may be considered as ‘important and relevant’ in the

decision-making process in accordance with section 104 of the PA2008 (Ref 4-7). It sets out the Government's planning policies for England and how they should be applied. At the heart of the NPPF is a presumption in favour of sustainable development and to deliver this, the framework sets out the Government's economic, environmental and social planning policies for England and how these should be applied.

4.4.24 The NPPF is supported by the *National Planning Practice Guidance* (NPPG) (Ref 4-18), which is a web-based resource.

4.4.25 Paragraph 7 of the NPPF is clear that the purpose of the planning system is to contribute to the achievement of sustainable development and that the policies that are set out in the Framework, taken as a whole, constitute the Government's view of what sustainable development in England means in practice. Paragraph 8 goes on to identify three overarching objectives to achieving sustainable development:

- a. An economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure.
- b. A social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being.
- c. An environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

4.4.26 Sections of the NPPF that are of particular relevance to the scope of the EIA presented in **Chapters 6 to 24** of this PEI Report include:

- a. Section 2 – Achieving sustainable development.
- b. Section 6 – Building a strong, competitive economy.
- c. Section 11 – Making effective use of land.
- d. Section 12 – Achieving well designed places.
- e. Section 14 – Meeting the challenge of climate change, flooding and coastal change.
- f. Section 15 – Conserving and enhancing the natural environment.
- g. Section 16 – Conserving and enhancing the historic environment.

4.4.27 Relevant content from the NPPF (Ref 4-15) and NPPG (Ref 4-18) has been referenced directly in the environmental topic chapters of this PEI Report.

4.5 Local Planning Policy

North East Lincolnshire Local Plan 2013 to 2032

- 4.5.1 Local planning policy contained within Development Plans for the local authority administrative areas can be material considerations in the determination of NSIP applications and provide an indication of local environmental sensitivities.
- 4.5.2 The Project falls within the administrative boundary of North East Lincolnshire Council (NELC). NELC formally adopted the *North East Lincolnshire Local Plan 2013 to 2032* (the Plan) (Ref 4-16) in 2018 and relevant adopted policies are listed in **Table 4.2**. The Plan applies to the Project by virtue of it being important and relevant under section 104(2)(d) of the PA2008.

Table 4.2 North East Lincolnshire Local Plan Policies

Policy	Summary
Policy 6	Infrastructure
Policy 7	Employment Allocations – Operational Port Areas
Policy 9	Habitat Mitigation – South Humber Bank
Policy 11	Skills and Training
Policy 22	Good Design in New Developments
Policy 31	Renewable and Low Carbon Infrastructure
Policy 32	Energy and Low Carbon Living
Policy 33	Flood Risk
Policy 34	Water Management
Policy 36	Promoting sustainable transport
Policy 39	Conserving and Enhancing the Historic Environment
Policy 40	Developing a Green Infrastructure Network
Policy 41	Biodiversity and Geodiversity
Policy 42	Landscape
Policy 43	Green Space and Recreation

4.6 Other Consents and Notifications

Disapplication of Legislative Provisions

- 4.6.1 Consideration is being given to the requisite consenting and approval processes to be included within the DCO. As part of the EIA process, pre-application discussions will be held with relevant stakeholders to seek to agree a position with them on which legislation/consents can be disapplied through the DCO.
- 4.6.2 At this stage in the Project development process, the requirement to seek a deemed marine licence within the DCO, as a marine licence granted under the Marine and Coastal Access Act, has been identified. Section 149A of the PA2008 (Ref 4-7) enables DCOs for projects which affect the marine environment to include provisions which deem marine licences to have been granted subject to specified conditions. The Project would include works below Mean Water High Springs (MWHS), including a capital dredge and disposal of the arisings from the capital dredge at sea, subject to there being no contamination, and therefore the Applicant will be seeking a deemed marine licence, in consultation with the Marine Management Organisation (MMO), as part of the DCO.
- 4.6.3 Maintenance dredging will also be required. The Applicant has an existing marine licence (L/2014/00429/4) for maintenance dredging of the Port. This licence will need to be renewed by the end of 2025 and extended to include the area for maintenance dredging for the Project. A preliminary assessment of the potential environmental impacts associated with both the proposed capital dredge and the additional maintenance dredge and disposal requirements has been undertaken in this PEI Report and will be finalised in the Environmental Statement (ES).

Other Consents and Notifications

- 4.6.4 Given the nature of the Project, there will be a requirement to obtain a range of other consents and approvals outside of the DCO process.
- 4.6.5 At this stage, a likely requirement for the following consents and approvals has been identified:
- a. Protected species licences (The Conservation of Habitats and Species Regulations 2017) (Ref 4-19).
 - b. Hazardous Substances Consent (The Planning (Hazardous Substances) Regulations 2015) (Ref 4-20).
 - c. Control of Major Accidents and Hazards (COMAH) notification (The Control of Major Accident Hazardous Regulations (Ref 4-21).
 - d. An Environmental Permit for the processing facilities (The Environmental Permitting (England and Wales) Regulations 2016 (Ref 4-22).
- 4.6.6 In examining and determining the DCO application, the Examining Authority and the SoS should assume these processes will be completed as per the relevant prescribed process and consents forthcoming.

4.7 Summary

- 4.7.1 The designated ports NPS (Ref 4-11), and the MPS (Ref 4-12) represent the principal policy documents against which an application for the Project would be determined. They set out a number of generic impacts and considerations relevant to the scoping of projects, and assessment principles with which applications for NSIP are expected to comply.

4.8 References

- Ref 4-1 The Stationery Office Limited (2020). European Union (Withdrawal Agreement) Act 2020.
- Ref 4-2 The Stationery Office Limited (2018). The Environmental Assessment and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018.
- Ref 4-3 The Stationery Office Limited (2017). The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- Ref 4-4 The European Community (1992). Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the 'Habitats Directive')
- Ref 4-5 European Parliament (2009). Directive 2009/147/EC of the European Parliament and of the Council.
- Ref 4-6 UK Government (2017). The Conservation of Habitats and Species Regulations 2017.
- Ref 4-7 The Stationery Office Limited (2008). Planning Act 2008.
- Ref 4-8 European Commission (1985). Council Directive of 27 June 1985 of the assessment of the effects of certain public and private projects on the environment (85/ 337/ EEC).
- Ref 4-9 European Commission (2011). Directive 2011/ 92/ EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.
- Ref 4-10 European Commission (2014). Directive 2014/ 52/ EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/ 92/ EU on the assessment of the effects of certain public and private projects on the environment.
- Ref 4-11 Department for Transport (2012). The National Planning Policy Statement for Ports.
- Ref 4-12 The Stationery Office Limited (2011). UK Marine Policy Statement.
- Ref 4-13 Department for Business, Energy & Industrial Strategy (2020). Powering our Net Zero Future.
- Ref 4-14 Department for Business, Energy & Industrial strategy (2022). British energy security strategy.
- Ref 4-15 Ministry of Housing, Communities and Local Government (2021). National Planning Policy Framework.

- Ref 4-16 North East Lincolnshire Council (2018). North East Lincolnshire Local Plan.
- Ref 4-17 Maritime Management Organisation (2016). East Inshore and East Offshore Marine Plans.
- Ref 4-18 Ministry of Housing, Communities and Local Government (2021). Planning Practice Guidance.
- Ref 4-19 The Stationery Office Limited (2017). The Conservation of Habitats and Species Regulations 2017.
- Ref 4-20 The Stationery Office Limited (2015) The Planning (Hazardous Substances) Regulations 2015.
- Ref 4-21 The Stationery Office Limited (2015) The Control of Major Accident Hazardous Regulations 2015.
- Ref 4-22 The Stationery Office Limited (2016) The Environmental Permitting (England and Wales) Regulations 2016.
- Ref 4-23 European Commission (2000). The EU Water Framework Directive – Integrated River Basin Management for Europe (2000/60/EC).
- Ref 4-24 The Stationery Office Limited (2017). The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.

4.9 Abbreviations and Glossary of Terms

Table 4.3 Abbreviations and Glossary of Terms

Term	Acronym	Meaning
Control of Major Accidents and Hazards	COMAH	Aims to prevent and mitigate the effects of major accidents involving dangerous substances which can cause serious damage/harm to people and/or the environment.
Development Consent Order	DCO	The means of obtaining permission to construct and maintain developments categorised as NSIPs.
Environmental Impact Assessment	EIA	Process used to assess the effects of a project on the environment.
European Union Emissions Trading System	EU ETS	Sets an absolute limit or 'cap' on the total amount of certain greenhouse gases that can be emitted each year by the entities covered by the system.
Marine Management Organisation	MMO	UK Government public body who regulate marine activities.
UK Marine Policy Statement	MPS	The framework for preparing Marine Plans and taking decisions affecting the marine environment
Mean Water High Springs	MWHS	The average throughout the year, of two successive high waters, during a 24-hour period in each month when the range of the tide is at its greatest (Spring tides).
North East Lincolnshire Council	NELC	The local authority of North East Lincolnshire.
National Planning and Policy Framework	NPPF	Sets out the UK government's planning policies for England and how these are expected to be applied.
National Policy Statements	NPS	Set out the government's policy for the delivery of energy infrastructure and provide the legal framework for planning decisions.
National Planning Policy Statement for Ports	NPSfP	Provides the framework for decisions on proposals for new port development.

Term	Acronym	Meaning
Nationally Significant Infrastructure Project	NSIP	Developments that are decided upon by the secretary of State.
Preliminary Environmental Impact	PEI	Sets out the initial impacts and effects from a proposed development.
Secretary of State	SoS	The title typically held by Cabinet Ministers in charge of Government Departments.