



Immingham Green Energy Terminal

TR030008

Volume 6

6.2 Environmental Statement

Chapter 4: Legislative and Consenting Framework

Planning Act 2008

Regulation 5(2)(a)

Infrastructure Planning (Applications: Prescribed
Forms and Procedure) Regulations 2009 (as
amended)

September 2023

Infrastructure Planning

Planning Act 2008

The Infrastructure Planning
(Applications: Prescribed Forms and
Procedure) Regulations 2009 (as amended)

Immingham Green Energy Terminal

Development Consent Order 2023

6.2 Environmental Statement

Chapter 4: Legislative and Consenting Framework

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Table of contents

Chapter	Pages
4	Legislative and Consenting Framework.....4-1
4.1	Introduction4-1
4.2	Withdrawal of the UK from the EU.....4-1
4.3	Legislation4-1
4.4	Policy Context4-4
4.5	Local Planning Policy4-9
4.6	Other Consents and Notifications.....4-11
4.7	Summary.....4-14
4.8	References.....4-15

Tables

Table 4-1: East Inshore and East Offshore Adopted Marine Plan	4-5
Table 4-2: North East Lincolnshire Local Plan Policies.....	4-10

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 is assessed, and which have been considered as part of the Environmental Impact Assessment (“EIA”) of the Project and the consenting framework of relevance to the Project.

4.1.2 In addition to the overarching information provided in this chapter, specific legislation, policy and guidance directly relevant to specific environmental topics, are addressed and discussed in the relevant chapter **Chapters 6 to 24** of this Environmental Statement (“ES”) [TR030008/APP/6.2].

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 United Kingdom (“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 Infrastructure Planning (Environmental Impact Assessment) Regulations 2017* (Ref 4-3) (the “EIA Regulations”) to be amended to ensure they functioned correctly after the UK exited the EU. In particular, the amendments updated references to the EIA Regulations 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* (the “2008 Act”) (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** [TR030008/APP/6.2] the Project is defined as an NSIP under s14(1)(j) and under Part 3, s24(2) and s24(3)(c) of the 2008 Act. The Project is defined as an NSIP as it comprises the alteration of harbour facilities wholly in England and in waters adjacent to England where the effect of the alteration would be to increase the quantity of material the embarkation or disembarkation of which the facilities are capable of handling by at least the relevant quantity of material per year, which in the case of facilities for cargo ships is 5 million tonnes.

- 4.3.2 A set of regulations prescribe further detail on specific matters. Of particular relevance to the ES are *The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009* (Ref 4-25) and the EIA Regulations.

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.
- 4.3.4 The EIA Regulations identify which projects are likely to have significant environmental effects and would therefore require an EIA, and as described in **Chapter 1: Introduction [TR030008/APP/6.2]**, the Project has been identified as an EIA Project. The EIA Regulations 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 has been 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 [TR030008/APP/6.2]**.

Habitat Regulations

- 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. Relevant aspects of the marine ecology and ornithology assessments for the Project presented in **Chapter 9: Nature Conservation (Marine Ecology) [TR030008/APP/6.2]** and **Chapter 10: Ornithology [TR030008/APP/6.2]** have informed the **Without Prejudice Report to Inform Habitats Regulations Assessment (HRA) Derogation [TR030008/APP/7.3]**.

Environmental Permitting (England and Wales) Regulations 2016

- 4.3.7 Installations which carry out one or more defined prescribed activities are subject to the *Environmental Permitting (England and Wales) Regulations 2016 (EPR)*. This legislation requires operators to supply detailed information to the regulator (the Environment Agency) in the form of a permit application and only when the application is fully determined and the relevant environmental permit granted, is operation allowed to commence. Compliance with EPR requires operators to regularly submit information and data such as emissions monitoring results to the

Regulator to confirm the Site is operating within permitted limits (as set out in the environmental permit).

- 4.3.8 Details of the Environmental Permits required to be obtained are included in **Section 4.6** below and in the **Consents and Agreements Position Statement [TR030008/APP/7.4]**.

Water Framework Directive

- 4.3.9 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 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 UK from the EU these Regulations continue to apply until they are revoked or superseded by new legislation.
- 4.3.10 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”). A **Water Framework Directive Compliance Assessment** for the Project is provided in **Appendix 17.A [TR030008/APP/6.4]**.

Marine and Coastal Access Act 2009

- 4.3.11 *The Marine and Coastal Access Act 2009* (“MCAA”) (Ref 4-26) introduced a number of measures including the introduction of a marine planning system as well as establishing the Marine Management Organisation (“MMO”). Under Section 104(2)(aa) of the 2008 Act the Secretary of State must have regard to “*the appropriate marine policy documents*”. The appropriate marine policy documents are the *Marine Policy Statement* (“MPS”) (Ref 4-12), March 2011 and the *East Inshore and East Offshore Marine Plans*, April 2014 (Ref 4-17)
- 4.3.12 The MPS provides the framework for preparing Marine Plans and taking decisions affecting the marine environment. Marine Plans set out how the MPS will be implemented in specific areas. Paragraph 1.3.1 of the MPS sets out that the MPS and marine planning systems will sit alongside and interact with existing planning regimes across the UK. In England and Wales this also includes the DCO regime for NSIPs.

Environment Act 2021

- 4.3.13 *The Environment Act 2021* (Ref 4-27) serves as enabling legislation for future regulations and policy making in respect of environmental protection. Section 99 and Schedule 15 of the Environment Act relate to the provision of a biodiversity net gain (“BNG”) for NSIPs. However, these sections of the Environment Act have not yet come into force (they do so in November 2025), and there is currently no relevant secondary legislation in force stemming from the same. Similarly, the *National Policy Statement for Ports* (“NPSfP”) (Ref 4-11) has not yet been updated to include a requirement to provide BNG. As such, BNG is not yet a formal legislative or policy requirement for the Project.

4.4 Policy Context

Overview

- 4.4.1 The PA 2008 establishes that the primary policy considerations for NSIPs are set out in a series of national policy statements ("NPSs"). The NPSs are produced by the Government pursuant to specific legislative requirements under the PA 2008 to set out policy for nationally significant development in a particular sector and to provide the framework for the decisions on applications for NSIPs in that sector.
- 4.4.2 In this case, the NPSfP, designated in 2012, is the relevant national policy statement. Whilst the Government has announced a review of the NPSfP, the NPSfP remains extant national policy.
- 4.4.3 Section 104(2)(aa-d) of the 2008 Act sets out other documents that the Secretary of State 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 Secretary of State identifies as both '*important and relevant*' to the decision.
- 4.4.4 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 (please see **Appendix E: Government documents that support Net Zero** of the **Planning Statement [TR030008/APP/7.1]**). Other matters that the Secretary of State identifies as 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 2013 to 2032* (Adopted 2018) ("the Plan") (Ref 4-16).
- 4.4.5 Where, as here, an NPS has effect, section 104(3) of the PA 2008 requires that the Secretary of State must decide an application for an NSIP in accordance with the relevant NPS, except in a limited number of specified circumstances:
- Lead to the UK being in breach of its international obligations.
 - Be in breach of any statutory duty that applies to the Secretary of State.
 - Be unlawful.
 - Result in the adverse impacts of the development outweighing the benefits.
 - Any condition prescribed for deciding an application otherwise than in accordance with the NPSfP is met.
- 4.4.6 Each technical chapter of the ES (**Chapters 6 to 24 [TR030008/APP/6.2]**) refers to the policies from the NPSs that are relevant to the assessment of the environmental effects reported within that chapter. Chapter 7 of the Planning Statement **[TR030008/APP/7.1]** provides an assessment of the Project against the NPSfP, and **Appendix A** of the **Planning Statement [TR030008/APP/7.1]** demonstrates where the contents of the NPSfP have been addressed in the DCO application.

National Policy Statement for Ports

- 4.4.7 As set out above, the NPSfP ‘has effect’ in relation to the Project for the purposes of section 104(2)(a) and provides the framework for decisions on proposals for new nationally significant port infrastructure. Importantly, the NPSfP sets out the Government’s assessment and conclusions on the need for new port infrastructure. It explains the approach that decision makers should take to proposals, including the main issues which will need to be addressed to ensure that port development is sustainable.
- 4.4.8 The NPSfP has been considered in detail within **Chapter 3: Need and Alternatives [TR030008/APP/6.2]** and Chapter 7 of the **Planning Statement [TR030008/APP/7.1]** which sets out an overall assessment of the Project against the NPSfP and Appendix A of the Planning Statement identifies where the contents of the NPSfP have been addressed in the Application.

Marine Policy Documents

- 4.4.9 As the Project is located in the Humber Estuary, the appropriate marine policy documents for the purposes of section 104(2)(aa) are the UK Marine Policy Statement (“MPS”) (March 2011) and the East Inshore Marine Plan (“EIMP”) (April 2014).
- UK Marine Policy Statement*
- 4.4.10 The *UK Marine Policy Statement* (“MPS”) (Ref 4-12) sets out a series of high-level marine objectives in order to achieve clean, healthy, safe, productive and biologically diverse oceans and seas. Chapter 3 of the MPS sets out the policy objectives for the key activities that take place in the marine environment which have been considered where relevant in chapter 7 of the Planning Statement. The Project is in accordance with the MPS.
- East Inshore and East Offshore Marine Plans*
- 4.4.11 The *East Inshore and East Offshore Marine Plan* (Ref 4-17), sets out, and is underpinned by, a number of strategic objectives and includes policies that guide the regulation, management, use and protection of the marine plan areas. Appendix B of the Planning Statement sets out how the Project accords with the EIMP. The Project is in accordance with the policies set out within the EIMP.
- 4.4.12 The marine elements of the Project are located within the East Inshore Marine Plan. Adopted policies relevant 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 SOC1	Support for health and social well being

Policy	Summary
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 GOV1	Provision of supporting onshore infrastructure
Policy GOV2	Co-existence in the Marine Environment
Policy GOV3	Displacement and Mitigation
Policy DEF1	Ministry of Defence Danger and Exercise Areas
Policy OG1	Consideration of oil and gas production areas
Policy TIDE1	Consideration of tidal energy areas
Policy CCS1	Consideration of CCS areas
Policy PS1	Consideration of static, sea surface infrastructure
Policy PS2	Consideration of static, sea surface infrastructure
Policy PS3	Ports and Shipping
Policy DD1	Dredging and Disposal Areas
Policy AGG1	Consideration of aggregate extraction areas
Policy AGG2	Consideration of aggregate extraction areas
Policy AGG3	Consideration of aggregate extraction areas
Policy FISH1	Fishing Activity
Policy FISH2	Impacts on Fish Population
Policy TR1	Tourism and Recreation during construction and operation

Policy	Summary
Policy TR2	Recreational Activity

4.4.13 Appendix B of the **Planning Statement [TR030008/APP/7.1]** sets out an assessment of the Project against the East Inshore and East Offshore Marine Plans (Ref 4-17).

Other national policy

4.4.14 Other national policy may also be considered ‘relevant’ and ‘important’ to the decision-making process by the Secretary of State. In this regard, the overarching NPS for Energy (EN-1), the draft Overarching NPS for Energy (draft EN-1), the NPS for Renewable Energy Infrastructure (EN-3), and the draft NPS for Renewable Energy Infrastructure (draft EN-3) are important and relevant in that they set out the Government’s current and emerging policies as to the need for and benefits of new energy infrastructure, including facilities for to the extent they refer to hydrogen production and carbon, capture and storage.

4.4.15 Other government policy documents have been considered in the preparation of the DCO application which the Project has had regard to and are set out at Appendix E of the **Planning Statement [TR030008/APP/7.1]**. These are outlined in below.

The Energy White Paper: Powering our Net Zero Future

4.4.16 The *Energy White Paper: Powering our Net Zero Future* (Ref 4-13) was presented to Parliament in December 2020. The White Paper 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 5 Gigawatt (“GW”) 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 2008 Act.

British Energy Security Strategy

4.4.17 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 2008 Act.

4.4.18 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

- 4.4.19 The *UK Hydrogen Strategy* (Ref 4-28) 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 2008 Act.

National Planning Policy Framework

- 4.4.20 The latest version of the NPPF was published in July 2021 (Ref 4-15). On 22 December 2022, the Department for Levelling Up, Housing and Communities announced a consultation on revisions to the NPPF. The proposed changes relate to a range of topics including good design and planning for climate change which are relevant to the Project. The Applicant will keep the revisions, where these are applicable to the Project, under review as the Application progresses. The NPPF applies to the Project by virtue of paragraph 5 of the NPPF confirming that it may be a matter that is relevant for the purposes of assessing DCO applications and therefore the Project has regard to the relevant policies of the NPPF as part of the overall framework of national policy.
- 4.4.21 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 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 2008 Act. It sets out the UK 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 UK Government's economic, environmental and social planning policies for England and how these should be applied.
- 4.4.22 The NPPF is supported by the PPG (Ref 4-18), which is a web-based resource.
- 4.4.23 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 UK 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.

4.4.24 Sections of the NPPF that are of particular relevance to the scope of the EIA presented in **Chapters 6 to 24 [TR/030008/APP/6.2]** 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.

4.4.25 Relevant content from the NPPF and PPG has been referenced directly in the environmental topic chapters of this ES (**Chapters 6 to 24** of the ES **[TR030008/APP/6.2]**).

4.5 Local Planning Policy

North East Lincolnshire Local Plan 2013 to 2032

- 4.5.1 Policies in Local Plans are prepared, examined and adopted for the purpose of guiding decision making on Town and Country Planning Act applications, and not applications made under the PA 2008. They can nevertheless provide local context and policies that influence the content of local impact reports which the Secretary of State must have regard to in decision making (section 104(2)(b)).
- 4.5.2 Additionally, as part of the PA 2008 process, relevant local authorities can submit a Local Impact Report ("LIR") which provides detail of the likely impacts of the project at a localised context. Local planning policy will therefore be an influence on the content of LIRs, which the Secretary of State ("SoS") must have regard to in its decision making (s104 (2)(b) of the PA 2008).

- 4.5.3 The relevant Local Plan is the North East Lincolnshire Local Plan (“NELLP”) (March 2018) (Ref 4-16) which contains land use policies as well as minerals and waste policies. The relevant adopted policies are listed in **Table 4-2**. Where relevant, reference is made in this Planning Statement to policies within the NELLP. Appendix C of the **Planning Statement [TR030008/APP/7.1]** provides a summary of the extent to which the Project accords with relevant policy contained within the NELLP.
- 4.5.4 The Plan applies to the Project by virtue of it being important and relevant under section 104(2)(d) of the 2008 Act. North East Lincolnshire Council (“NELC”) has commenced a review of the adopted plan and a Scoping and Issues Paper (Ref 4-29) was subject to a period of informal public engagement from 26 September 2022 to 4 November 2022. As the scope of the new plan is still being defined, it is at too early a stage to be considered within this ES. However, this will be kept under review as the Project progresses.

Table 4-2: North East Lincolnshire Local Plan Policies

Policy	Summary
Policy 1	Employment Land Supply
Policy 5	Development Boundaries
Policy 7	Employment Allocations – Operational Port Areas
Policy 8	Existing Employment Areas
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

The Development Consent Order

- 4.6.1 Consideration has been given to the requisite consenting and approval processes to be included within the DCO Application.
- 4.6.2 The principal consent for the Project will be the DCO which provides consent for the works and includes powers for compulsory land acquisition and temporary possession, along with other consents and powers.
- 4.6.3 The Project will include a deemed marine licence within the DCO, as a marine licence granted under the MCAA has been identified as being required. Section 149A of the 2008 Act 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 High Water Springs (“MHWS”) including, construction of the approach jetty, construction of the jetty head and disposal of the arisings from the capital dredge at sea, subject to there being no contamination, and therefore the Applicant has sought a deemed marine licence, in consultation with the MMO, as part of the DCO.
- 4.6.4 **The Consents and Agreements Position Statement [TR030008/APP/7.4]** sets out further detail of the other consents and powers incorporated within the **draft DCO [TR030008/APP/2.1]**.

Disapplication of Legislative Provisions

- 4.6.5 As part of the EIA process, pre-application discussions have been held with relevant stakeholders to seek to agree a position with them on which legislation/consents that can be disappplied. The consents for which s150 is applied for are as follows:
- a. Land Drainage Consent from the North East Lindsey Drainage Board under section 23 of the Land Drainage Act 1991.
 - b. Byelaws for Drainage Consent from the Environment Agency under Paragraph 5 of Schedule 25 of the Water Resources Act 1991 and under the Land Drainage Act 1991.
 - c. Flood Risk Activity Permit from the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016.
- 4.6.6 Discussions are ongoing as to disapplication (including with the Environment Agency and North East Lindsey Drainage Board in relation to the matters set out in **Paragraph 4.6.5**) and also whether further consenting requirements will be disappplied in addition to those listed in **Paragraph 4.6.5**. As a result, some consents listed in the **Consents and Agreements Position Statement [TR030008/APP/7.4]** may ultimately be disappplied. Further details are presented in the **Consents and Agreements Positions Statement [TR030008/APP/7.4]**.

- 4.6.7 Maintenance dredging would also be undertaken by the Project. The Applicant has statutory powers to dredge being designated as a Harbour Authority under s.75 of the MCAARef 4-26. The Applicant also has an existing maintenance dredge disposal marine licence (L/2014/00429/4) that relates to such activity at the Port. It is intended that this licence will be renewed by the end of 2025 and extended to include the area for maintenance dredging for the Project. An assessment of the environmental impacts associated with both the capital dredge and the additional maintenance dredge and disposal requirements is included in this ES.
- 4.6.8 Flood risk activities are regulated under the *Environmental Permitting (England and Wales) Regulations 2016* (Ref 4-22). An environmental permit is normally required if works are proposed on or near a 'main river', on or near a flood defence structure (including a sea defence), or within a flood plain. It is considered that an environmental permit is required for the Project in respect of the construction works associated with the flood defence. As explained above, the Applicant is therefore seeking to disapply the requirement to apply for a permit relating to flood defence work within the DCO.
- 4.6.9 A Flood Risk Assessment ("FRA") has been prepared and is provided at **Appendix 18.A [TR030008/APP/6.4]**. This assessment has given consideration to both the flood risk to the proposed development and the implications of the development for flooding elsewhere. The outputs of the FRA have informed **Chapter 18: Water Quality, Coastal Protection, Flood Risk and Drainage [TR030008/APP/6.2]**.

Other Environmental Permits, Consents, Licences and Notifications

- 4.6.10 An environmental permit may be required, during the construction phase of the Project, it became necessary to undertake any groundwater pumping/dewatering. Again, in such circumstances an environmental permit for such activity would be sought and obtained after the making of the DCO but prior to the relevant works taking place. If such a permit were required, the Applicant does not consider that there are currently any reasons why such a permit would not subsequently be granted.
- 4.6.11 An environmental permit may also be required for activities at the hydrogen production facility which fall under Schedule 1 (production of inorganic chemicals) of the *Environmental Permitting (England and Wales) Regulations 2016* (Ref 4-22). As above, the Applicant does not consider that there are currently any reasons why such a permit would not subsequently be granted.
- 4.6.12 It is not currently anticipated that an environmental permit will be required in respect of any waste management activities. However, in the event that one were required, a hazardous waste assessment would be undertaken and the contractor will be responsible for ensuring that the necessary permit application or applications are made prior to the relevant works taking place. Again, if such a permit were required, the Applicant does not consider that there are currently any reasons why such a permit would not subsequently be granted.

- 4.6.13 In addition to the above, the following other consents are required or requirements apply in respect of the Project:
- a. *Protected species licences (The Conservation of Habitats and Species Regulations 2017) (Ref 4-19)*, for bats and water voles may be required.
 - b. *Hazardous Substances Consent (The Planning (Hazardous Substances) Regulations 2015) (Ref 4-20)*.
 - c. *Control of Major Accidents and Hazards (COMAH) pre-construction notification (The Control of Major Accident Hazardous Regulations 2015) (Ref 4-21)*.
 - d. *COMAH pre-operation notification (The Control of Major Accident Hazardous Regulations 2015) (Ref 4-21)*
 - e. *COMAH Safety Reports (Regulation 8 and 9 of The Control of Major Accident Hazardous Regulations 2015) (Ref 4-21)*.
 - f. *Pipelines: Pre construction notification (Pipelines Safety Regulations 1996) (Ref 4-30)*
 - g. *Prior consent to carry out noise generating activities during construction / Construction Noise Consent (Section 61 of the Control of Pollution Act 1974) (Ref 4-31)*
 - h. *Transport of Abnormal Loads Permit (The Roads Vehicles (Authorisation of Special Types) (General) Order 2003 (Ref 4-32); The Road Traffic Act 1988 (Ref 4-33))*.
 - i. *Building Regulations Approval (The Building Regulations 2010 (as amended) (Ref 4-34)*
 - j. *Discharge of trade effluent consent (Water Industry Act 1991) (Ref 4-35)*
- 4.6.14 These other consents and approvals are considered and discussed in the relevant topic chapters and summarised in the Consents and Agreements Position Statement.
- 4.6.15 In relation to the Hazardous Substances Consent, it is anticipated that the HSE, as statutory consultee, will “advise against” the grant of consent due to the existing residential properties on Queen’s Road. Air Products are therefore undertaking negotiations with affected landowners with a view to acquiring their properties by agreement. The **draft DCO [TR030008/APP/2.1]** includes compulsory acquisition powers to be exercised in the event that acquisition by agreement is unsuccessful. It also includes a commitment to acquiring the properties and securing the cessation of residential use ahead of the hydrogen production facility becoming operational.
- 4.6.16 Once the properties are no longer in residential use it is anticipated that the HSE will withdraw its “advise against” and NELC will be able to issue the consent. Subject to the acquisition of the residential properties and cessation of their residential use (see the **Statement of Reasons [TR030008/APP/3.2]** for further information in this regard), Air Products do not consider there will be any further impediment to obtaining this consent.

4.6.17 The Applicant has no reason to believe that any of the necessary consents outlined above will not be obtained and therefore in examining and determining the DCO Application, the Examining Authority and the Secretary of State should assume these processes would be completed as per the relevant prescribed process and consents forthcoming, as per paragraph 4.11.8 of the NPSfP.

4.7 Summary

4.7.1 The NPSfP (Ref 4-11), and the MPS (Ref 4-12) represent the principal policy documents against which the DCO Application for the Project should 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 NSIPs 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). Energy White Paper: 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 2013 to 2032 (Adopted 2018).
- 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.
- Ref 4-25 The Stationery Office Limited (2009). The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- Ref 4-26 The Stationery Office Limited (2009). The Marine and Coastal Access Act 2009.
- Ref 4-27 The Stationery Office Limited (2021). The Environment Act 2021.
- Ref 4-28 The Stationery Office Limited (2021). UK Hydrogen Strategy.
- Ref 4-29 North East Lincolnshire Council (2022). North East Lincolnshire Local Plan Review Scoping and Issues Paper.
- Ref 4-30 The Stationery Office (1996). The Pipelines Safety Regulations 1996.
- Ref 4-31 The Stationery Office (1974). Section 61 Control of Pollution Act 1974.
- Ref 4-32 The Stationery Office (2003). The Road Vehicles (Authorisation of Special Types) (General) Order.
- Ref 4-33 The Stationery Office (1988). The Road Traffic Act 1988.
- Ref 4-34 The Stationery Office (2010). The Buildings Regulations 2010.

Ref 4-35 The Stationery Office (1991). Water Industry Act 1991.