

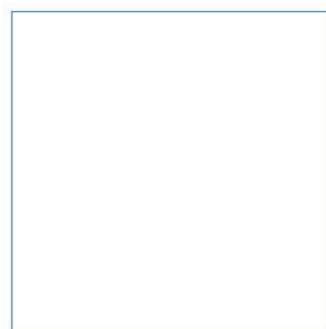
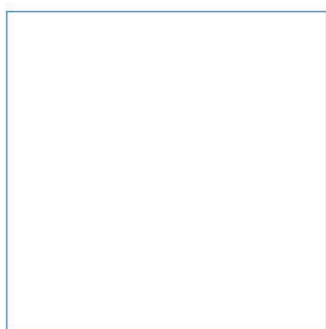
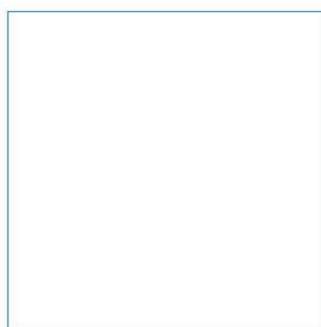
Associated British Ports

Immingham Eastern Ro-Ro Terminal

Preliminary Environmental Information

Chapter 5: Legislative and Consenting Framework

January 2022



Innovative Thinking - Sustainable Solutions

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5 Legislative and Consenting Framework

5.1 Planning Act 2008 - Development Consent Order

- 5.1.1 As detailed in the previous chapters, the Immingham Eastern Ro-Ro Terminal (IERRT) project, in summary, comprises on the marine side the construction of a new four berth facility consisting of an approach jetty with two separate finger piers and on the landside, surface improvements and the construction of new Terminal buildings.
- 5.1.2 The new facility, which will support the embarkation and disembarkation of “wheeled cargo” (as explained in Chapter 1), will be capable of handling, with four berths, some 880,000 units per year. As such, the project exceeds the thresholds set down in the Planning Act 2008 (PA 2008) - as summarised below - and will be promoted as a Nationally Significant Infrastructure Project (NSIP). Associated British Ports (ABP) will, therefore, in early summer 2022, be submitting to the Secretary of State for Transport an application for a Development Consent Order (DCO) which if granted, will authorise the construction and consequent operation of the IERRT.
- 5.1.3 In terms of the legislative framework for an application for a DCO, section 14 of the PA 2008 identifies the “*construction or alteration of harbour facilities*” as an NSIP if, as provided by section 24 of the PA 2008, the Project comprises –
- The “alteration of harbour facilities” – (section 24 (2));*
 - “wholly in England” – (section 24 (1) (a)); and*
 - “the effect of the alteration is expected to be to increase by at least the relevant quantity per year the quantity of material the embarkation or disembarkation of which the facilities are capable of handling” – (section 24(2)(b)); where*
 - “the relevant quantity is ... in the case of ro-ro ships, 250,000 units” – (section 24(3)(b)).*
- 5.1.4 In light of the above, the proposed IERRT development constitutes an NSIP, the development of which can only be authorised by the granting of a DCO under section 37 of the PA 2008.
- 5.1.5 **National Policy Statement** - Section 104 (2) of the PA 2008 provides that in deciding an application for a DCO, the Secretary of State must have regard to, amongst other things, “*any relevant national policy statement to which the application relates*”. For the purpose of this Project, the relevant national policy statement is the National Policy Statement for Ports (NPSfP) (Department for Transport (DfT), 2012) which is discussed in Section 5.9 below.

- 5.1.6 As far as the DCO itself is concerned, whilst the Order will be ‘all-encompassing’ in terms of granting the necessary authorisations for the construction and operation of the new facility, the IERRT will require a range of consents and approvals in compliance with different enabling and authorising legislative provisions.
- 5.1.7 The principal consents/approvals and studies that are likely to be required, along with key policies and documents that are relevant to the principle of the proposed development, are summarised in the following sections. In addition to this overarching review, specific legislation and policy of relevance to different topics is referenced in each Environmental Impact Assessment (EIA) topic chapter within this Preliminary Environmental Information Report (PEIR) (Chapters 7 to 19).

5.2 European Union Legislation

- 5.2.1 As the United Kingdom (UK) is no longer a member of the European Union (EU), European legislation which applied directly (by Regulation) or indirectly (by Directive) to the UK before 11.00 p.m. on 31 December 2020 has, if required, been retained in UK law as a form of domestic legislation known as ‘retained EU legislation’. This is set out in sections 2 and 3 of the European Union (Withdrawal) Act 2018. Section 4 of the 2018 Act ensures that any remaining EU rights and obligations, including directly effective rights within EU treaties, continue to be recognised and available in domestic law after exit.
- 5.2.2 References to applicable EU Directives as well as relevant UK legislation are provided in each of the topic chapters of this PEIR.

5.3 Marine and Coastal Access Act 2009 - Marine licence

- 5.3.1 The Marine and Coastal Access Act 2009 (MCAA) is the principal Act which regulates, through the Marine Management Organisation (MMO), works carried out in the marine environment. In the context of this Project, it will be necessary for ABP to secure the MMO’s approval for works undertaken below mean high water springs (MHWS) and this approval, known as a “marine licence”, will give ABP the necessary consent to undertake certain specified works in the marine environment
- 5.3.2 In the context of the IERRT project, however, it should be noted that section 149A of the PA 2008 provides that a DCO may include as part of the Order, the terms of a marine licence as agreed with the MMO and if the application for the DCO is approved, the marine licence will be “deemed” to be issued under Part 4 of the MCAA.
- 5.3.3 ABP will, therefore, be seeking approval for a deemed marine licence, in consultation with the MMO, which will cover those works that impact upon the marine environment, specifically the:

- Construction of the two jetties and associated fixed structures to the seabed;
- Capital dredge; and
- Possibly, the disposal of capital dredge material at HU056 (Holme Channel) and HU060 (Clay Huts) if it does not prove possible to identify a beneficial use for the dredged arisings.

- 5.3.4 The approvals for the consequent maintenance dredge and disposal requirements once the new facility is operational (see Chapter 3 Details of Project Construction and Operation, Section 3.2), will be taken forward within ABP's existing marine licence (L/2014/00429/2). 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 PEIR and will be finalised in the Environmental Statement (ES).
- 5.3.5 The implications of the proposed development in the context of marine policy have been summarised, as appropriate, in the relevant chapters of this PEIR and will be fully addressed in the ES.

5.4 Local Act Powers

- 5.4.1 In this context, it should also be noted that ABP has statutory powers to dredge in the Humber Estuary under the provisions of the Humber Conservancy Act 1905. At this stage, consideration is being given to the requisite consenting and approval process to be included within the DCO, with Protective Provisions being provided as appropriate.

5.5 Flood risk

- 5.5.1 Flood risk activities are regulated under the Environmental Permitting (England and Wales) Regulations 2016. Flood risk activity permits are required for works in, over, under or near a main river or flood defence (including a sea defence), or within a flood plain although in this context, it should be noted that ABP has the status of protected undertaker under the Water Resources Act 1991.
- 5.5.2 Exclusions for a flood risk activity permit include circumstances when an application has been made for a marine licence. The exclusion must be agreed in writing by the regulator and the requirements of an environmental permit for a flood risk activity must be fulfilled by, in the case of this proposed development, the deemed marine licence.
- 5.5.3 A preliminary Flood Risk Assessment (FRA) has been prepared and is included within Appendix 11.1 (Volume 3) of this PEIR. This assessment has given initial consideration to both the flood risk to the proposed development and the implications of the development for flooding elsewhere. The outputs of the preliminary FRA have informed the PEIR chapter for the Coastal Protection, Flood Defence and Drainage topic

(Chapter 11). An updated and final version of the FRA will be provided as an appendix to the ES that accompanies the DCO application.

5.6 Protected species licence

5.6.1 Various species of marine animal are protected from being killed, injured or disturbed under the Conservation of Habitats and Species Regulations 2017 (as amended) (commonly referred to as the Habitats Regulations)¹ and Section 9(4) and Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). Regulation 43 of the Habitats Regulations makes it an offence deliberately to disturb wild animals of any species that are subject to European protection in such a way as to be likely:

- *“To impair their ability:*
 - *To survive, to breed or reproduce, or to rear or nurture their young; or*
 - *In the case of animals of a hibernating or migratory species, to hibernate or migrate; or*
- *To affect significantly the local distribution or abundance of the species to which they belong”.*

5.6.2 Section 9(4) of the Wildlife and Countryside Act 1981 (as amended) makes it an offence intentionally or recklessly to disturb dolphins, whales or basking sharks subject to prescribed statutory defences.

5.6.3 The response from Natural England provided as part of the Scoping exercise indicated that the ES that will be submitted in support of the DCO application, should assess the impact of all phases of the proposed development on marine protected species. The advice of Natural England has been taken forward in the preliminary assessment provided in the Nature Conservation and Marine Ecology chapter of the PEIR (Chapter 9) and the Preliminary Ecological Appraisal (PEA) included in Appendix 6.1 (Volume 3) and will be fully developed for the final ES.

5.7 Environment Act

5.7.1 The Environment Act received Royal Assent on 9 November 2021. This Act is designed to support the Government’s overarching vision to leave the environment in a better state for the next generation.

5.7.2 Not all of the provisions of the Act have been brought into force, but some of the key provisions include: the creation of a new post-Brexit environmental watchdog (the Office for Environmental Protection); a new direction for resources and waste management; the setting of air quality targets including for fine particulate matter; a requirement to reduce sewage discharges and a

¹ These have been modified by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. Available at: <https://www.legislation.gov.uk/ukxi/2019/579/contents/made> (accessed November 2021).

requirement, when it is eventually brought into force, to provide Biodiversity Net Gain (BNG) in the context of new development proposals.

5.8 Assessment requirements

5.8.1 The following sections summarise the assessments and documentation that it is considered will be required to support the DCO application.

Environmental Impact Assessment

5.8.2 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the “EIA Regulations”) set out the procedure that must be followed before the appropriate Secretary of State will approve an application for a DCO.

5.8.3 An EIA is mandatory for Schedule 1 projects. The IERRT is considered to be a Schedule 1 project given that it falls within Schedule 1 paragraph 8(2), namely:

“Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes”.

5.8.4 The ES which will accompany the application for a DCO will document all of the relevant EIA information as prescribed by the EIA Regulations.

5.8.5 EIA is a systematic process which assesses a project’s likely significant effects on the environment. This process enables decision makers to determine applications for consent with the full knowledge of the likely significant environmental effects that may result from a project’s development. It also provides the opportunity for the public and relevant consultation bodies to engage with applicants during the pre-application stage and to participate in the decision-making process. This enables potential environmental effects to be identified early in the application process and where possible for design changes to be made to avoid any effects or to provide mitigation measures which will reduce or indeed remove any potential significant adverse environmental effects or maximise likely significant beneficial effects.

5.8.6 For NSIPs, the EIA process is undertaken in two principal stages:

- Consultation on the preliminary environmental information. This is part of the statutory consultation process, the principal written element of which is this PEIR (this document); and
- The preparation of the final ES, which will accompany the application for the DCO.

5.8.7 In September 2021, ABP submitted a request for a Scoping Opinion from the Secretary of State for Transport as to the scope of information that

should be included in the ES. The Scoping Opinion was received in October 2021 and can be found on the National Infrastructure Planning website.

- 5.8.8 The comments received in the Scoping Opinion have been fully taken into account in the preparation of this PEIR. Further information on the EIA process is found in Impact Assessment Approach (Chapter 6) of this document.

Policy Conformance Assessment

- 5.8.9 A policy conformance assessment will be produced as part of the ES to support the application for the IERRT. This will provide a review of the proposed development against the NPSfP and the vision, objectives and policies of the East Inshore Marine Plan, as well as other key policies (see Section 5.9). This policy conformance assessment will itself be informed by the ES.

Habitats Regulations Assessment

- 5.8.10 Part 6 of the Habitats Regulations requires the competent authority, in this case the Secretary of State for Transport, to determine whether the proposed development has the potential to result in a likely significant effect (LSE) on a European site and, if so, to undertake an Appropriate Assessment (AA) of the implications of the proposals in light of the site's conservation objectives. The AA takes account of the in-combination effects of the proposal on European sites in association with other relevant projects and plans.
- 5.8.11 The entire Humber Estuary is designated as a Special Area of Conservation (SAC) and a Special Protection Area (SPA) under the Habitats and Birds Directive. It is also classified as a 'Ramsar site' under the Ramsar Convention due to the presence of internationally important wetlands. These designations form the Humber Estuary European Marine Site (EMS). Given that the proposed IERRT falls within these designated sites, ABP is of the view that as part of the DCO application process, it will be necessary to undertake a Habitats Regulations Assessment (HRA).
- 5.8.12 As detailed in the Planning Inspectorate (PINS) Advice Note 10 (PINS, 2017), the HRA process follows a four-staged approach:
- **Stage 1 Screening:** The process of identifying potentially relevant European sites, and whether the Project is likely to have a significant effect on the qualifying features of the site, either alone or in-combination with other plans and projects. If it is concluded at this stage that there is no potential for LSE, there will be no requirement to carry out subsequent stages of the HRA;
 - **Stage 2 Appropriate Assessment:** Where LSE for a European site(s) cannot be ruled out, either alone or in-combination with other plans and projects, assessment of the potential effects on the integrity of the site(s), again either alone or in-combination with other plans and projects, in

view of its qualifying features and conservation objectives is required. Where there are potential adverse effects, an assessment of mitigation options has to be carried out and mitigation measures (where available) are proposed to address the effects. If, despite the identified measures of mitigation, there still remains a potential adverse effect on site integrity (AEOI), the HRA must progress to Stages 3 and 4;

- **Stage 3 Assessment of Alternative Solutions:** Identifying and examining whether there are any alternative solutions which would offer a means to achieve the objectives of the Project but which would also avoid or have a lesser effect on the site(s); and
- **Stage 4 Imperative reasons of overriding public interest (IROPI):** Where no alternative solution exists and where an AEOI remains, the next stage of the process is to assess whether the development is necessary for IROPI and, if so, the identification of compensatory measures needed to maintain site integrity or the overall coherence of the designated site network.

5.8.13 The current design for the proposed development in terms of marine works will result in the loss of interest feature habitat and supporting habitat (intertidal mudflat), as well as disturbance to interest features. Depending on the scale of these impacts, it may not be possible to exclude the potential for an AEOI of one or more European sites. Should this be the outcome of the AA (and should the competent authority agree with that outcome, taking advice from Natural England), it will be necessary to demonstrate that there are no alternative solutions that would avoid or have a lesser effect on the European site(s) (Stage 3 of the HRA process) and the Project is necessary for IROPI (Stage 4). If it is possible to satisfy Stages 3 and 4, compensatory measures will need to be delivered.

5.8.14 The Nature Conservation and Marine Ecology chapter of this PEIR (Chapter 9) provides further information on the specific habitat and species interest features of the Humber Estuary and includes a preliminary consideration of the effects of the proposed development on these features.

5.8.15 An HRA will be prepared as part of the DCO application so as to provide the competent authority with sufficient information to undertake an AA. This HRA will be provided as an appendix to the submitted ES.

Water Framework Directive assessment

5.8.16 The Water Framework Directive (WFD) (2000/60/EEC) establishes a framework for the management and protection of Europe's water resources. It is implemented in England and Wales through the Water Environment (WFD) (England and Wales) Regulations 2017, known as the Water Framework Regulations².

² Following the UK leaving the EU, the main provisions of the WFD have been retained in English law through the Floods and Water (Amendment etc.) (EU Exit) Regulations 2019. Available at: <https://www.legislation.gov.uk/uksi/2019/558/contents/made> (accessed November 2021).

- 5.8.17 The overall objectives of the WFD as implemented by the Water Framework Regulations is to achieve “good ecological and good chemical status” in all inland and coastal waters by 2021 unless alternative objectives are set or there are grounds for time limited derogation.
- 5.8.18 To support the DCO application, a WFD Compliance Assessment will be required to determine whether the proposed development complies with the objectives of the WFD. This will be undertaken in two stages; an initial screening/scoping stage to review the potential for the proposed development to cause a ‘deterioration’ or failure of the water body to meet its WFD objectives, followed by a full assessment if required. A full WFD Compliance Assessment will consider the potential implications of the proposed development on the achievement of ‘good’ status within adjacent WFD water bodies.
- 5.8.19 The Physical Processes chapter (Chapter 7), Water and Sediment Quality chapter (Chapter 8) and Nature Conservation and Marine Ecology chapter (Chapter 9) of this PEIR provides a preliminary consideration of the effects of the proposed development on the receptors relevant to the WFD Compliance Assessment, specifically hydromorphology, biology (habitats), biology (fish), water quality, protected areas and invasive non-native species (INNS).
- 5.8.20 A separate WFD Compliance Assessment will be prepared as part of the ES in accordance with the format specified in the latest Environment Agency ‘Clearing the Waters for All’ guidance (Environment Agency, 2016). This WFD Compliance Assessment will be provided as an appendix to the submitted ES.

Waste Hierarchy Assessment

- 5.8.21 Waste policy and, consequently, the Waste Hierarchy Assessment (WHA) are strongly governed by the waste hierarchy set out in Article 4 of the Waste Framework Directive (2008/98/EC). The waste hierarchy ranks waste management options according to what is best for the environment and comprises the following in order of most to least favoured (top to bottom):
- Prevention;
 - Re-use;
 - Recycle;
 - Other recovery; and
 - Disposal.
- 5.8.22 The waste hierarchy places emphasis on waste prevention or minimisation of waste, followed where possible by re-use of the material.
- 5.8.23 A WHA will be prepared as part of the ES to determine the Best Practical Environmental Option (BPEO) for dealing with the dredge arisings. This assessment will involve an evaluation of the dredge and disposal methods

likely to be available and will include a discussion based on the Waste Hierarchy Framework to provide evidence of the practical, cost effective methods of dealing with the dredged material. This WHA will be provided as an appendix to the submitted ES.

- 5.8.24 The management of waste generated by the landside works is considered further in the Details of Project Construction and Operation (Chapter 3).

Navigational Risk Assessment

- 5.8.25 A Navigational Risk Assessment (NRA) will be undertaken to support the DCO application for the Project. Navigational risk requires consideration by the Harbour Authority in its role as the Statutory Harbour Authority (SHA). A hazard observation workshop was held on 29 October 2021 to bring together relevant navigational stakeholders for the area to discuss the potential impacts on navigational safety associated with the proposed development.
- 5.8.26 A draft NRA has been prepared which addresses how the phases of the project should be managed to a point where risk is reduced and considered to be 'as low as reasonably practicable' (ALARP). This is a requirement of the Port Marine Safety Code (PMSC), which is the UK standard for port marine safety. The draft NRA is provided in Appendix 10.1 (Volume 3) of this PEIR and has informed the Commercial and Recreational Navigation chapter (Chapter 10). A final NRA will be included in the submitted ES.

Flood Risk Assessment

- 5.8.27 A site and development specific FRA will be prepared to accompany the consent applications for the proposed development. This assessment will consider the flood risk to the development being proposed as well as the implications of the development on flooding elsewhere. The FRA will be provided as an appendix to the ES.

5.9 Policy context

National Policy Statement for Ports (January 2012)

- 5.9.1 In setting out the Government's policy and the need for new infrastructure, the NPSfP begins by making it clear that ports play an essential role in the UK economy and that for an island economy, there are limited alternatives available to the use of sea transport for the movement of freight and bulk commodities (section 3.1 and 3.2).
- 5.9.2 The NPSfP recognises that shipping will continue to provide the only effective way to move the vast majority of freight in and out of the UK, and the provision of sufficient sea port capacity will remain an essential element in ensuring sustainable growth in the UK economy.

- 5.9.3 Section 3.3 of the statement sets out “Government Policy for Ports”. This policy – which is described as fundamental – is summarised in the statement as being to:
- *“encourage sustainable port development to cater for long term forecast growth in volumes of imports and exports by sea with a competitive and efficient port industry capable of meeting the needs of importers and exporters cost effectively and in a timely manner, thus contributing to long term economic growth and prosperity;*
 - *Allow judgments about when and where new development might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment; and*
 - *Ensure all proposed developments satisfy the relevant legal, environmental and social constraints and objectives, including those in the relevant European Directives and corresponding national regulations.”* (paragraph 3.3.1)
- 5.9.4 In addition, in order to help meet the requirements of the Government policies on sustainable development, the Policy states that new port infrastructure should also:
- *“contribute to local employment, regeneration and development;*
 - *ensure competition and security of supply;*
 - *preserve, protect and where possible improve marine and terrestrial biodiversity;*
 - *minimise emissions of greenhouse gases from port related development;*
 - *be well designed, functionally and environmentally;*
 - *be adapted to the impacts of climate change;*
 - *minimise use of greenfield land;*
 - *provide high standards of protection for the natural environment;*
 - *ensure that access to and condition of heritage assets are maintained and improved where necessary; and*
 - *enhance access to ports and the jobs, services and social networks they create, including for the most disadvantaged.”* (paragraph 3.3.3)
- 5.9.5 It is made clear that the Government wishes to see port development wherever possible, supporting sustainable transport by offering more efficient transport links with lower external costs (paragraph 3.4.1).
- 5.9.6 The Policy also sets out the Government’s assessment of the need for new port infrastructure (in section 3.4). It is explained that the total need for new port infrastructure does not only depend on overall demand for port capacity but also upon the need to retain flexibility that ensures port capacity is located where it is required, along with the need to ensure effective competition and resilience in port operations (paragraph 3.4.1).
- 5.9.7 In respect of demand matters paragraph 3.4.3 refers to DfT forecasts of demand for port capacity in the period up to 2030. These forecasts have been superseded by forecasts produced in 2019. These forecasts indicate

- that by 2050 there will be 130.5% increase in both roll-on/roll-off (ro-ro) tonnage and units in comparison to the position in 2016.
- 5.9.8 In respect of locational matters, the NPSfP highlights that capacity must be in the right place if it is to serve effectively and efficiently the needs of import and export markets (paragraph 3.4.11). It is made clear that Government does not wish to dictate where port development should occur. Rather port development must be responsive to changing commercial demands. The Government considers that the market is the best mechanism for getting this right, with developers bringing forward applications for port developments where they consider them to be commercially viable (paragraph 3.4.12).
- 5.9.9 In respect of competition and resilience matters, it is highlighted that UK ports compete with each other as well as neighbours in continental Europe. The Government welcomes and encourages such competition because it drives efficiency and lower costs, thereby contributing to the competitiveness of the UK economy. Effective competition is recognised as requiring sufficient spare capacity to ensure real choices for port users. It is also recognised that in requiring ports to operate at efficient levels is not the same as operating at full physical capacity. It is acknowledged that total capacity in any sector may need to exceed forecast overall demand if the ports sector is to remain competitive (paragraph 3.4.13).
- 5.9.10 Spare capacity is also identified as helping to ensure the resilience of the national infrastructure, with the Government believing that resilience is provided most effectively as a by-product of a competitive ports sector (paragraph 3.4.15).
- 5.9.11 In considering need matters, the policy also highlights the importance of coastal shipping and identifies that ports can make a valuable contribution to decongestion and the environment in this regard (paragraph 3.4.14).
- 5.9.12 In its conclusions on the need for new infrastructure, the NPSfP makes clear that the Government believes that there is a compelling case for substantial additional port capacity over the next 20 – 30 years. It is further explained that excluding the possibility of providing additional capacity would be to accept limits on economic growth and on the price, choice and availability of goods imported into the UK and available to customers. It is also highlighted that this would limit the local and regional economic benefits that new development might bring. Such an outcome is identified as being strongly against the public interest (paragraph 3.4.16).
- 5.9.13 Section 3.5 of the NPSfP sets out guidance to the decision maker on assessing the need for additional capacity. Decision makers are instructed to accept the need for future capacity to:
- *cater for long-term forecast growth in volumes of imports and exports by sea for all commodities indicated by the demand forecast figures set out in the MDST forecasting report accepted by Government, taking into account capacity already consented. The Government expects that ultimately all of the demand forecast in the 2006 ports policy review is*

likely to arise, though, in the light of the recession that began in 2008, not necessarily by 2030;

- *support the development of offshore sources of renewable energy;*
- *offer a sufficiently wide range of facilities at a variety of locations to match existing and expected trade, ship call and inland distribution patterns and to facilitate and encourage coastal shipping;*
- *ensure effective competition among ports and provide resilience in the national infrastructure; and*
- *take full account of both the potential contribution port developments might make to regional and local economies.*

5.9.14 The statement goes on to make it clear that given the level and urgency of need for infrastructure of the types covered as set out above, the decision maker should start with a presumption in favour of granting consent to applications for port development (paragraph 3.5.2).

5.9.15 Section 4 of the NPSfP sets out a series of “Assessment principles” which decision makers should take into account in considering port developments. Section 5 of the NPSfP sets out a series of “generic impacts” to assist applicants and decision makers in assessing and determining port developments. Regard has been had to these sections of the NPSfP in the preliminary assessment work of the proposed development and this is explained in the topic chapters 7 to 19.

UK Marine Policy Statement (March 2011)

5.9.16 This policy statement provides the framework for preparing marine plans and is also key in respect of decisions affecting the marine environment. The Marine Policy Statement (MPS) together with Marine Plans underpin the current planning system for England’s seas. Marine planning provides a forward-looking holistic approach to the management of human activities and the use of marine resources, enabling the Marine Management Organisation and others to move away from case-by-case decision-making.

5.9.17 The UK vision for the marine environment is set out within the MPS as being “*clean, healthy, safe, productive and biologically diverse oceans and seas*” (paragraph 2.1.1). A series of high level marine objectives are given which set out the broad outcomes for the marine area in achieving this vision. It is also made clear in the MPS that these objectives reflect the principles for sustainable development of the UK marine area and deliver the UK vision.

5.9.18 In respect of decision making the MPS highlights that the decision maker should weigh the potential benefits and adverse effects of each proposal, drawing on different, identifiable lines of evidence (paragraph 2.3.2.1). The EIA process is identified as an appropriate way in which such evidence is made available in respect of specific projects.

5.9.19 Chapter 3 of the MPS sets out policy objectives for the key activities that take place in the marine environment, emphasising that these will be

delivered through marine planning and decision making which is summarised above.

- 5.9.20 The key activity of Ports and Shipping is dealt with in Section 3.4 of the MPS. This highlights that ports and shipping are an essential part of the UK economy, providing the major conduit for the country's imports and exports. It is further recognised that ports provide key transport infrastructure between land and sea, and that ports and shipping are critical to the effective movement of cargo and people, both within the UK and in the context of the global economy
- 5.9.21 In respect of port development specifically, the MPS highlights in a general sense potential positive and negative impacts associated with port development (paragraph 3.4.9). Potential positive impacts are identified as job creation as well as wider benefits to national, regional and local economies, whereas potential adverse impacts are identified as including those arising from the construction phase and those arising from an increase in shipping (paragraph 3.4.10). In setting out "*issues for consideration*", the MPS indicates that decision makers should take into account the contribution that the development will make to the national, regional or local need for infrastructure, against expected adverse effects including cumulative effects (paragraph 3.4.11).

East Inshore and East Offshore Marine Plans

- 5.9.22 The East Marine Plan provides a clear approach to managing the East Inshore and East Offshore areas, their resources, and the activities and interactions that take place within them. The plan seeks to provide more certainty about where activities could best take place. Where a relevant National Policy Statement has been designated, nationally significant infrastructure project applications must be determined in accordance with the National Policy Statement, subject to certain exceptions, and have regard to the Marine Policy Statement and relevant marine plans. Marine plans can also add valuable context when 'imperative reasons of overriding public interest' are being considered for specific projects, such as the need for nationally significant infrastructure.
- 5.9.23 The marine elements of the IERRT are located within the East Inshore Marine Plan Area. The East Inshore Marine Plan (adopted in April 2014) sets out the approach to managing the East Inshore area, its resources and the activities and interactions that occur within the area.
- 5.9.24 The first objective of the East Marine Plan is to promote the sustainable development of economically productive activities, taking account of spatial requirements of other activities of importance to the East marine plan areas. Paragraph 110 recognises that planning has a role in trying to ensure that economic opportunities are able to be realised. It is anticipated that this would be through considering proposals in terms of their potential to contribute to increases in employment and productivity of an area.

- 5.9.25 Paragraph 342 of the plan recognises Immingham as forming part of the United Kingdom's busiest port cluster. It is recognised that the ports within the East Inshore area rely heavily on trade with Europe, servicing vessels that ply 'short-sea' routes (paragraph 343). The Plan further reiterates the position set out in the Marine Policy Statement that marine plan authorities and decision makers should take into account and seek to minimise any negative impact on shipping activity (paragraph 353), and in this regard the level of shipping levels within the East marine plan areas is identified as being nationally significant (paragraph 358). 4.6.16
- 5.9.26 To reflect this, Policy PS3 of the Plan makes clear that there should no interference with current activities and future opportunity for the expansion of ports and harbours, and if interference is unavoidable, appropriate mitigation should be put in place to minimise such interference.

National Planning Policy Framework

- 5.9.27 The National Planning Policy Framework (NPPF) (Ministry of Housing, Communities and Local Government, 2021) makes clear at the outset that it does not contain specific policies for nationally significant infrastructure projects. It emphasises that NSIPs are to be determined in accordance with the decision making framework in the Planning Act 2008 (as amended) and other relevant national policy statements for major infrastructure as well as any other matters that are relevant (paragraph 5). Matters of relevance can include the policies within the NPPF and for this reason, relevant aspects of the NPPF are considered below and also in the separate policy sections of the different topic assessment chapters that follow within this PEIR.
- 5.9.28 The NPPF makes it clear that the purpose of the planning system is to contribute to the achievement of sustainable development (paragraph 7). Achieving sustainable development means that the planning system has three overarching objectives which are interdependent and need to be pursued in mutually supportive ways. Those objectives (paragraph 8) are:
- 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;
 - a social objective – to support strong, vibrant and healthy 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; and
 - 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.

- 5.9.29 The NPPF states that these roles should not be undertaken in isolation, because they are mutually dependent, and that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously (paragraph 8).
- 5.9.30 A presumption in favour of sustainable development is at the heart of the NPPF and runs through both plan making and decision taking policies within the document to ensure development is pursued in a positive way (paragraph 10).
- 5.9.31 The importance of building a strong and competitive economy is a matter specifically highlighted within the NPPF. It is made clear that planning policies and decisions should help create conditions in which businesses can invest, expand and adapt. Significant weight should be placed upon the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
- 5.9.32 Details of other policies within the NPPF and of relevance to the IERRT are considered in each of the preliminary topic assessment chapters of this PEIR as appropriate.

Maritime 2050 (January 2019)

- 5.9.33 Published in January 2019, Maritime 2050 sets out the long term strategy and high level vision of the UK Maritime Sector through to 2050. The strategy sets out a series of values and strategic ambitions before setting out the vision for the sector across seven different themes.
- 5.9.34 The strategy recognises the economic importance of ports and the maritime sector. It highlights the increasing significance of far eastern markets and the general move towards the movement of goods and commodities in larger vessels because of the economic advantages that result.
- 5.9.35 In respect of maritime infrastructure, the strategy concludes by making it clear that such infrastructure will remain a key focus for the operations of the wider maritime sector, and developments in the period up to 2050 will significantly enhance productivity and efficiency, to deliver a positive impact in national infrastructure growth and business performance.
- 5.9.36 One of the core Maritime 2050 ambitions (stated within paragraph 49), is the pursuit of a liberalised global trading regime will have a direct impact on the maritime sector which stands to benefit from increases in trade and frictionless trade flows. Government is committed to working with UK businesses to make trade easier, to remove barriers – whether regulatory, legislative or financial – and to unlock the potential of international exports. Following on from this, paragraph 50 recognises that the principle of supply and demand underpins global trade, and that imported and exported goods are constantly changing. The UK will need to match the demand in the global maritime sector or risk losses in tax, revenue, employment and Gross Domestic Product (GDP). In order to achieve these aspirations, paragraph 60 states that continued investment and planning ahead to future proof or

retrofit infrastructure will ensure ports and harbours are ready to adapt to future changes.

Local Policy

- 5.9.37 The majority of the Immingham port estate falls within the administrative area of North East Lincolnshire Council, although the western part of the Port falls within the administrative area of North Lincolnshire Council.
- 5.9.38 The proposed development site itself, however, falls largely within the administrative boundary of North East Lincolnshire. That part of the site which extends seaward and falls beyond the local authority's boundary over the bed of the Humber is owned by the Crown Estate and over which, ABP in its capacity as the Humber Conservancy Commissioner, has the benefit of a long lease. There are currently no designated Neighbourhood Forums or Neighbourhood Plans in preparation or adopted in North East Lincolnshire.

North East Lincolnshire Local Plan 2013 – 2032

- 5.9.39 North East Lincolnshire Council adopted its current Local Plan in 2018. From the outset, the plan highlights the importance of the ports and logistics sector within the district, with the introductory text within page 1 stating that the district is *“entering a period of economic growth that has not been seen in a generation”* and that *“between 2013 and 2032 we plan to help deliver 8,800 new jobs”*.
- 5.9.40 The plan indicates that this growth *“will be focused around our five key economic sectors”*, the first of which is ports and logistics. This aspiration is carried through into Policy 1 (Employment land supply) which states that between 2013 and 2032, the Council will support the development of a portfolio of sites which will support the generation of 8,800 jobs. This policy states that *“The provision of a portfolio of sites will enable the development of B-class uses to accommodate growth primarily within the Renewables and Energy, Chemicals and Process Industries, Food Processing, and Ports and Logistics sectors”*.
- 5.9.41 Section 6.6 of the Local Plan states that the Ports of Immingham and Grimsby combine to form the largest port complex in the UK by tonnage handled and the fourth largest in Europe, and that they are of international trading significance, providing a regional and national economic gateway and linking to European and other trading markets. Goods can be delivered to 75% of the UK population within a four-hour drive time, making the ports central to the UK's trade and communication links. As the movement of goods by sea remains the most economically efficient means of transportation, the Borough's logistics operations are set to remain strong for the foreseeable future. Table 7.1 on page 53 states an intention to build upon international significance of the ports in the Humber (alongside renewable energy development).

- 5.9.42 Section 12.13 states that Associated British Ports (ABP) *“have developed a strong development management approach which limits development to dock related employment uses”*. The proposed development falls within the operational port policy allocation on the Local Plan proposals map.
- 5.9.43 Policy 7 (Employment Allocations) seeks to ensure development proposals within operational port areas would be for port related uses and would be in accordance with the development plan as a whole (including in respect of the requirements of the Habitats Regulations). Policy 8 (existing employment areas) similarly seeks to safeguard employment uses and also encourages the development of vacant sites for employment uses.

Greater Lincolnshire Strategic Economic Plan 2014 – 2030

- 5.9.44 The Port of Immingham falls within the area covered by The Greater Lincolnshire Local Enterprise Partnership (LEP), which is a business led partnership made up of private and public sector leaders. The partnership works with Government and stakeholders enable the delivery of strategic projects and programmes that are intended to drive local prosperity and economic growth. The LEP’s Strategic Economic Development Plan was developed in 2014 and updated in 2016 to reflect ongoing priorities for continued growth and investment. The second priority for growth within the plan is *“to grow specific opportunities identified as future defining features of the area”* with specific reference to ports and logistics (alongside the health and care sector).
- 5.9.45 On page 38 the Port of Immingham is described as *“the largest UK port by tonnage”* and as *“a key gateway to Europe....”*. The plan also identifies *“scope to increase added value through the expansion of container freight services and facilities at the Port, with a particular focus on ro-ro activity”*. Page 40 states that the South Humber Gateway area is *“the largest developable port site in the UK with over 4 square miles of land”* and sets out an intention to invest in key infrastructure in order to facilitate increased capacity and competitiveness within the ports and logistics sector.
- 5.9.46 More specifically page 41 states an intention to *“develop opportunities for ro-ro and port-centric logistics by attracting a higher proportion of containerised freight with an origin or destination in Greater Lincolnshire and the adjoining area”*. This sub-regional plan therefore firmly establishes the important role of the Port of Immingham in the national economy along with the significant opportunities presented by the expansion of ro-ro logistics in terms of driving regional prosperity and growth.

5.10 References

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5.11 Abbreviations/Acronyms

Acronym	Definition
AA	Appropriate Assessment
ABP	Associated British Ports
AEOI	Adverse effect on site integrity
ALARP	As low as reasonably practicable
BNG	Biodiversity Net Gain
BPEO	Best Practical Environmental Option
COMAH	Control of Major Accident Hazards Regulations
DCO	Development Consent Order
EC	European Commission
EEC	European Economic Community
EIA	Environmental Impact Assessment
EMS	European Marine Site
ES	Environmental Statement
EU	European Union
FRA	Flood Risk Assessment
GDP	Gross Domestic Product
HRA	Habitats Regulations Assessment
IERRT	Immingham Eastern Ro-Ro Terminal
INNS	Invasive non-native species
IROPI	Imperative reasons of overriding public interest
LEP	Local Enterprise Partnership
LSE	Likely significant effect
MCAA	Marine and Coastal Access Act
MDST	MDS Transmodal
MHWS	Mean high water springs
MMO	Marine Management Organisation
MPS	Marine Policy Statement
NPPF	National Planning Policy Framework
NPSfP	National Policy Statement for Ports
NRA	Navigational Risk Assessment
NSIP	Nationally Significant Infrastructure Project
PA	Planning Act
PEA	Preliminary Ecological Appraisal
PEIR	Preliminary Environmental Information Report

PINS	Planning Inspectorate
PMSC	Port Marine Safety Code
Ramsar	Wetlands of international importance, designated under The Convention on Wetlands (Ramsar, Iran, 1971)
ro-ro	roll-on/roll-off
SAC	Special Area of Conservation
SHA	Statutory Harbour Authority
SPA	Special Protection Area
UK	United Kingdom
WFD	Water Framework Directive
WHA	Waste Hierarchy Assessment

Cardinal points/directions are used unless otherwise stated.

SI units are used unless otherwise stated.

5.12 Glossary

Term	Definition
Appropriate Assessment	An assessment conducted by a competent authority of the implications of a plan or project on a European designated site, where the potential for likely significant effects cannot be excluded
As low as reasonably practicable	The Control of Major Accident Hazards Regulations 2015 (COMAH) requires operators of sites storing bulk hazardous liquids to reduce the risk of a major accident to as low as is reasonably practicable (Regulation 4)
Best Practical Environmental Option	Procedures adopted with the goal of managing waste and other environmental concerns which emphasise the protection and conservation of the environment across land, air and water
Cumulative effects	Combined effects of multiple developments or the combined effect of individual impacts (e.g. where different project elements in different locations have a cumulative impact on a particular feature)
European Marine Site	Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) that are covered by tidal waters and protect some of our most important marine and coastal habitats and species of European importance.
Greenhouse gas emissions	Total mass of greenhouse gases, which absorb and emit radiant energy causing warming, released to the atmosphere over a specific period of time.
Hydromorphology	The physical habitat and/or natural functioning of a water body
Intertidal	The area between high and low tide also known as the foreshore or seashore
Ramsar	Wetlands of international importance designated under the Ramsar Convention
Risk	The likelihood of a specified level of harm occurring within a specified period of time
Special Area of Conservation	A designated area protecting one or more habitats or species listed in the Habitats Directive
Special Area of Conservation	A designated area protecting habitats and species identified in Annexes I and II of the Habitats Directive
Special Protection Area	A designated area protecting one or more rare, threatened or vulnerable bird species listed in Annex I of the Birds Directive
Statutory Harbour Authority	Statutory Bodies responsible for the management and running of a harbour

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