

2 RELEVANT LEGISLATION, REGULATION AND POLICY

2.1 Introduction

2.1.1 The planning process for dealing with proposals for NSIPs was established by the Planning Act 2008. This process, as amended by the Localism Act 2011, involves an examination of major proposals relating to energy, transport, water, waste and waste water.

2.1.2 The Planning Act 2008 sets out the thresholds for NSIPs. For harbours, applications for development consent will be referred to PINS if the estimated incremental annual capacity exceeds:

- 0.5 million Twenty Foot Equivalent Units (TEU) for a container terminal;
- 250,000 movements for roll-on roll off (ro-ro);
- 5 million tonnes for other (bulk and general) traffic; or,
- a weighted sum equivalent to these figures taken together.

2.1.3 The harbour facilities, once fully developed and operational, would provide for an export weight of 13mtpa of bulk product. As a result, the export value exceeds the threshold stated within the Planning Act 2008 with regard to the export of bulk materials from harbour facilities. The harbour facilities therefore constitute an NSIP and 'associated development' covers the transport of the product by conveyor to the port from the MHF and other related infrastructure.

2.2 Environmental Impact Assessment Directive

2.2.1 This ES accompanies the DCO application and has been produced in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended by the Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012). These regulations have been produced in accordance with the European Council Directive 85/337/EEC which requires the assessment of the effects of certain public and private projects on the environment (the EIA Directive) and Directive 97/11/EEC (which amends Directive 85/337/EEC).

2.3 Habitats Directive

2.3.1 The Conservation of Species and Habitats Regulations 2010 (the 'Habitats Regulations') implement EC Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (the Habitats Directive). In accordance with Section 61 of the Habitats Regulations, Appropriate Assessment is required for any plan or project, not connected with the management of a European site, which is likely to have a significant effect on the site either alone or in-combination with other plans or projects. European sites comprise Special Protection Areas (SPA), as designated under Council Directive 79/409/EEC (the Wild Birds Directive), or Special Areas of Conservation (SAC), as designated under the Habitats Directive. Appropriate Assessment is also required as a matter of government policy for potential SPAs, candidate SACs and listed Ramsar sites for the purpose of considering development proposals affecting them (ODPM, 2005, Part 1, Section A, Paragraph 5).

2.3.2 The footprint of the proposed scheme does not lie within the boundary of a European site or Ramsar site. However, given the proximity of the proposed scheme to the Teesmouth and Cleveland Coast

SPA and Ramsar site, the potential exists for the proposed scheme to have an effect on these designated sites. This potential has been considered further through the production of a HRA Report which supports this ES.

- 2.3.3 Natural England stated, in its response to PINS consultation on the Environmental Scoping Report (see **Section 4.3**), that its view was that the proposed scheme would be likely to have a significant effect on internationally designated sites and, therefore, assessment under the Habitats Regulations will be required. Should PINS concur with this view, an Appropriate Assessment will be undertaken by PINS as the 'competent authority', with advice from Natural England.

2.4 **Wildlife and Countryside Act 1981**

- 2.4.1 Under the terms of Section 28(4)b of the Wildlife and Countryside Act 1981, as amended by Schedule 9 to the Countryside and Rights of Way Act 2000, any operations within or adjacent to a Site of Special Scientific Interest (SSSI) require consent from Natural England. There are a number of SSSIs within and adjacent to the study area; including the Tees and Hartlepool Foreshore and Wetlands, Seal Sands, Seaton Dunes and Common, South Gare and Coatham Sands, Redcar Rocks and Cowpen Marsh (these sites are discussed further in **Sections 8.4 and 9.4**). Hence this Act is of relevance to this application.

2.5 **Water Framework Directive**

- 2.5.1 The Water Framework Directive (2000/60/EC) (WFD) establishes a legal framework to protect and restore clean water across Europe to ensure long-term, sustainable use. It applies to waters out to one nautical mile from the baseline from which territorial waters are drawn.
- 2.5.2 One of the aims of the WFD is to ensure that all European waterbodies are of Good Ecological Status or Potential (for 'heavily modified' and 'artificial' waterbodies) by 2015 by the setting of Environmental Quality Objectives (EQOs) for water chemistry, ecological and hydromorphological quality parameters. The WFD is transposed into English and Welsh law through The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003.
- 2.5.3 The requirements of the WFD have been addressed by undertaking a WFD compliance assessment (**Appendix 4.3**).

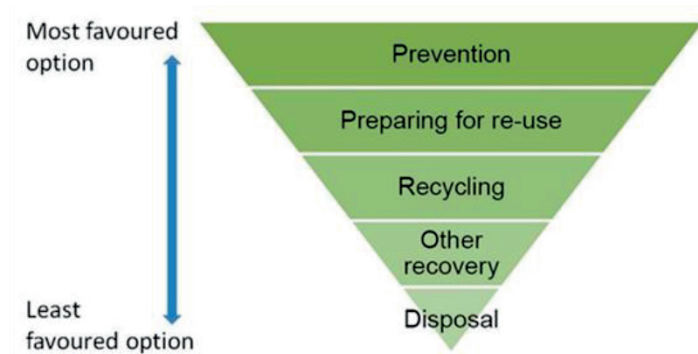
2.6 **Waste Framework Directive**

- 2.6.1 The Waste Framework Directive (2008/98/EC) consolidates earlier legislation regulating waste. The Directive sets out the general rules applying to all categories of waste. A key objective of which is to provide measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use.
- 2.6.2 Article 3(1) of the Directive defines waste as:

"....any substance or object....which the holder discards or intends or is required to discard".

2.6.3 More generally, the Directive provides a general duty to ensure that waste is dealt with in an environmentally friendly way. The key to this is the ‘waste hierarchy’, which emphasises prevention (in the first instance) and then re-use, recycling and recovery of waste (see **Figure 2-1**). EU Member States must have regard to the waste hierarchy when dealing with waste. Disposal to landfill or at sea is the least favourable option.

Figure 2-1 The waste hierarchy



2.6.4 Consideration of potential waste disposal options has been undertaken as part of the EIA process (see **Section 3.1**). **Appendix 3.1** describes the proposals for the management of wastes expected to be generated during the construction, operation and decommissioning phases of the proposed scheme.

2.7 National, regional and local planning policy

2.7.1 All proposed development must take account of existing planning policy and guidance, and there are a number of national, regional and local plans and policies relevant to the proposed scheme and to this EIA process.

National Policy Statement for Ports

2.7.2 The Planning Act 2008 required new policy to be developed to provide the context for decisions associated with NSIPs in England and Wales. Paragraph 3.3.1 of the National Policy Statement (NPS) for Ports (Department for Transport, 2012) seeks 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 judgements about when and where new developments 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.
- 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.

2.7.3 In order to help meet the requirements of Government policies on sustainable development, Paragraph 3.3.3 of the NPS for Ports 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.
- Enhance access to ports and the jobs, services and social networks they create, including for the most disadvantaged.

2.7.4 Despite the recent recession, the national Government believes that there is a compelling need for substantial additional port capacity in the UK over the next 20 to 30 years, to be met by a combination of development already consented and developments for which applications have yet to be received. It states that excluding the possibility of providing additional capacity for the movement of goods and commodities through new port development would be to accept limits on economic growth and on the price, choice and availability of goods imported to the UK and available to consumers. It would also limit the local and regional economic benefits that new developments might bring. Such an outcome would be strongly against the public interest (Department for Transport, 2012, Paragraph 3.4.16).

UK Marine Policy Statement

2.7.5 The Marine Policy Statement (MPS) is the framework for preparing Marine Plans and taking decisions affecting the marine environment. The MPS is intended to contribute to the achievement of sustainable development in the UK marine area, and was prepared and adopted under Section 44 of the Marine and Coastal Access Act 2009.

2.7.6 The MPS facilitates and supports the formulation of Marine Plans, aiming to ensure that marine resources are used in a sustainable way, in line with high level marine objectives and thereby (HM Government, 2011, Section 1):

- promotes sustainable economic development;
- aims to 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;
- aims to ensure a sustainable marine environment which promotes healthy, functioning marine ecosystems and protects marine habitats, species and our heritage assets; and,
- contributes to the societal benefits of the marine area, including the sustainable use of marine resources to address local social and economic issues.

2.7.7 A review of the policy contained within the MPS has been undertaken as part of the EIA, with relevant policy outlined within each of the topic sections of this ES.

Marine plans

- 2.7.8 The Marine and Coastal Access Act 2009 establishes the legal basis for marine planning. Marine plans put into practice the objectives for the marine environment that are identified in the MPS alongside the National Planning Policy Framework and the Localism Act 2011. There is no marine plan in place for the area in which the proposed Harbour construction footprint falls. Where there is no marine plan in place, the MPS sets the direction for decisions that affect marine areas.

Redcar and Cleveland Borough Council Local Plan

- 2.7.9 RCBC adopted its Core Strategy in July 2007 and this provides the development framework for the Borough over the plan period to 2021. At the same time the Council adopted its Development Policies Document which provides detailed development control policies that are intended to deliver the overarching policy objectives of the Core Strategy.
- 2.7.10 The relevant planning policies from each of these documents in the context of the EIA for the proposed scheme include the following:

a) Adopted Core Strategy Policies

- Policy CS1 explains that development proposals will be assessed against their contribution to delivering sustainability objectives, including a thriving economy; easy access to jobs; and, a healthy, safe, attractive and well-maintained environment.
- Policy CS2 explains that development will be concentrated in the Conurbation, with a small proportion of development in Guisborough, Skelton, Loftus, Brotton and Saltburn. Priority will be given to the reuse of previously developed land and existing buildings.
- Policy CS3 states that the development strategy for the Greater Eston area aims for regeneration, creation of sustainable communities, improved and enhanced access (to new district centres, schools, community facilities, etc.), an enhanced economy and an improved environment.
- Policy CS4 outlines the spatial strategy for the South Tees Employment Area. The strategy promotes the continued development of general industrial and business estates, whilst enhancing the environmental quality of employment areas and the quality of the River Tees.
- Policy CS8 states that major employment proposals will be supported within the Greater Eston, South Tees and Redcar areas, particularly those requiring good access for transporting freight and a suitable workforce nearby.
- Policy CS9 states that land and buildings within existing business parks and industrial estates will continue to be developed and safeguarded for business and general industry.
- Policy CS10 promotes the continued development and expansion of the port industry and port-related development along the River Tees.
- Policy CS20 encourages good quality and inclusive design in all new developments that respects and enhances the character of the local area, incorporating sustainable construction techniques and design concepts.
- Policy CS22 outlines the desire to protect and enhance the Borough's landscape, based on the character areas identified through the Landscape Character Assessment.
- Policy CS23 provides protection to green areas, and where appropriate, enhancement of such areas to improve their quality, value, multi-functionality and accessibility.

- Policy CS24 refers to the requirement to protect and enhance the Borough's biodiversity and geological resource, including protecting the integrity of European sites.
- Policy CS25 requires that developments proposals will contribute to the characters of the built and historic environment of the Borough.
- Policy CS26 requires development proposals to manage travel demand, including through the preparation and implementation of Travel Plans.

b) Adopted Development Plan Document Policies

- Policy DP1 states that within development limits, development will generally be acceptable where it accords with site allocations and designations in the Local Development Framework (LDF).
- Policy DP2 sets out the criteria for assessing the suitability of a site or location, including compliance with site allocations and designations and ensuring that development does not cause a significant impact on the amenities of occupiers of existing or proposed nearby properties.
- Policy DP3 requires all development to be designed to a high standard that respects or enhances the character and surroundings of the site, including biodiversity designations. It requires proposals to include a Travel Plan where these are likely to generate more than 30 employees.
- Policy DP4 states that the Council will seek to negotiate planning obligations to secure necessary community benefits required as a consequence of the development.
- Policy DP6 states that development that would give rise to increased levels of noise or vibration or which would add to air, land or water pollution would need to be acceptable in terms of human health and safety; the environment; and, general amenity.
- Policy DP7 requires effective measures to be agreed to deal with potential contamination or unstable land issues.
- Policy DP9 states that development within or otherwise affecting the setting of a conservation area will only be permitted where it preserves or enhances the character or appearance of the conservation area.
- Policy DP10 provides guidance with regard to development involving alteration, extension or change of use of a listed building or construction of any structure within its curtilage; development affecting the setting of a listed building and proposals involving the demolition of a listed building or structure.
- Policy DP11 refers to the need to ensure that development does not adversely affect important archaeological sites or monuments.

c) Adopted Minerals and Waste Core Strategy and Development Policies

- Policy MWC1 outlines how the sustainable use of minerals in the Tees Valley will be delivered. In taking forward minerals development in the plan area, and particularly along the river corridor and the Tees estuary, proposals will need to demonstrate that there will be no adverse impact on the integrity of the Teesmouth and Cleveland Coast SPA or Ramsar site and other European sites, either alone or in-combination with other plans and programmes.
- Policy MWC10 states that proposals for minerals and waste development should prioritise the use of non-road based transport for the movements of minerals and waste resources.

- Policy MWP1 states that a waste audit will be required for all major development proposals. The audit should identify the amount and type of waste which is expected to be produced by the development, both during the construction phase and once it is in use.

2.7.11 It is noted that RCBC is currently in the process of reviewing its LDF with the intention of reverting back to a single Local Plan. The draft Publication Version Local Plan was considered by the Council in July 2014 prior to its issue for consultation, but was not approved. The Council has now restarted the Local Plan review process, with the intention of issuing a draft for consultation in September 2015.

Stockton Borough Council Core Strategy Development Plan Document

2.7.12 SBC adopted its Core Strategy in March 2010 and this provides the development framework for the Borough over the plan period to 2026. SBC is in the process of producing its Core Strategy Review and Regeneration and Environment Local Development Document (LDD), which will contain further planning policies which will shape development until 2029. A draft of the document is due to be published for consultation in February 2015, with the intention to adopt the final version in December 2015.

2.7.13 Policy CS4 safeguards land along the north bank of the River Tees. The policy states that no port or river based development will be permitted on, or on land immediately adjacent to, the North Tees Mudflat component of the Tees and Hartlepool Foreshore and Wetlands SSSI.

2.7.14 Policy CS10 outlines SBC's policy with regard to environmental protection and enhancement. The policy states that proposals will need to demonstrate that there will be no adverse impacts on the integrity of the Teesmouth and Cleveland Coast SPA and Ramsar site, or other European sites, either alone or in-combination with other plans, programmes and projects. The policy also states that development throughout the Borough will be integrated with the protection and enhancement of biodiversity, geodiversity and landscape. Policy CS2 states that new development will be directed to areas of low flood risk; that is Flood Zone 1. In considering sites elsewhere, the sequential and exception tests will be applied and applicants will be expected to carry out a Flood Risk Assessment (FRA).

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