

5 Legislative and Policy Context

Introduction

- 5.1 This chapter presents an analysis of current key legislation and policy that is relevant to the principle of the OMSSD project. In addition to this overarching policy analysis, specific legislation and policy of relevance to different topic areas are provided in each preliminary topic assessment chapter within this PEIR (Chapters 7 to 21).

The Planning Act 2008²¹

- 5.2 The Planning Act 2008 (as amended) sets out the legal framework for applying for, examining and determining applications for Nationally Significant Infrastructure Projects (NSIPs).
- 5.3 Section 104 of the Planning Act 2008 makes it clear that in deciding an application for an NSIP, the relevant Secretary of State must have regard to, amongst other things, any relevant national policy statement (NPS) (section 104(2)(a)) and decide the application in accordance with any such national statement (section 104(3) except to the extent that one or more matters specified in sections 104(4) to (8) applies.
- 5.4 As the OMSSD project constitutes a Harbour Facility NSIP, the primary national policy statement of relevance is the National Policy Statement for Ports (DfT, January 2012) (NPSfP). In addition, there are other relevant aspects of national policy contained within the overarching National Policy Statement for Energy EN-1 (July 2011). The key relevant elements of these policy statements, along with other relevant policy, are analysed in the paragraphs that follow.

The Marine and Coastal Access Act 2009²²

- 5.5 The Marine and Coastal Access Act 2009 (as amended) is of relevance to the proposed OMSSD project as it will require licensable activities to be undertaken within the marine environment.
- 5.6 Section 58(1) of the Marine and Coastal Access Act makes clear that, “*A public authority must take any authorisation or enforcement decision in accordance with the appropriate marine policy documents, unless relevant considerations indicate otherwise.*”

²¹ Planning Act 2008

²² Marine and Coastal Access Act 2009

- 5.7 An outline of relevant aspects of appropriate current marine policy documents are contained within the following paragraphs, and the guidance and requirements of such policy documents will be considered and addressed as necessary in the OMSSD project ES.

National Policy Statement for Ports (NPSfP) (January 2012)²³

- 5.8 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 Ports are specifically identified as having a vital role in the import and export of energy supplies, including oil. Ensuring security of energy supplies through our ports is identified as being an important consideration (section 3.3).
- 5.10 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 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; 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)
- 5.11 In addition, in order to help meet the requirements of the Government policies on sustainable development, 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;*

²³ Department for Transport (2012) National Policy Statement for Ports

- *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)*
- 5.12 The policy also makes it clear that the Government wishes to see port development wherever possible, amongst other things, supporting sustainable transport by offering more efficient transport links with lower external costs (paragraph 3.3.5).
- 5.13 The statement 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 on the need to retain the flexibility that ensures port capacity is located where it is required, and on the need to ensure effective competition and resilience in port operations (paragraph 3.4.1).
- 5.14 In respect of demand matters, the policy makes reference to demand forecasts produced at the national – which are currently the Department for Transport (2019) *UK Port Freight Traffic 2019 Forecasts* discussed further in Chapter 4 – before explaining that their purpose is to help set the context of overall national capacity needs. The policy makes clear that it is for each port to take its own commercial view and its own risks on its particular traffic forecasts (paragraph 3.4.7).
- 5.15 In respect of locational matters, the policy highlights that capacity must be in the right place if it is to effectively and efficiently serve 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, and 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).
- 5.16 In respect of competition and resilience matters, it is highlighted that UK ports compete with each other as well as neighbours in continental Europe and that the Government welcomes and encourages such competition because it drives efficiency and lowers 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 as requiring ports to operate at efficient levels, which is specifically identified as 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).
- 5.17 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).

- 5.18 In considering need matters, the policy also highlights the importance of coastal shipping and identified that ports can make a valuable contribution to decongestion and the environment in this regard (paragraph 3.4.14).
- 5.19 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).
- 5.20 Section 3.5 of the statement 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..., taking into account capacity already consented.....;”*
 - *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”* (paragraph 3.5.1).
- 5.21 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).
- 5.22 Section 4 of the NPSfP sets out a series of ‘Assessment principles’ which decision makers should take account of 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 OMSSD project and this is explained in the assessment topic chapters 7 to 21.

Overarching National Policy Statement for Energy (EN-1) (July 2011)²⁴

- 5.23 At the time of writing, it is understood that the suite of National Policy Statements for Energy will shortly be reviewed, although timings of the review are not publicly available. The following paragraphs are based on the adopted version of the Overarching NPS for Energy (EN-1) (July 2011) and any changes to that policy position will be reflected as necessary in the ES that will be submitted as part of the OMSSD application for development consent.
- 5.24 The NPS for Energy (EN-1) recognises the important role oil products play within the UK economy, providing around a third of total energy use, and acknowledges the need to reduce this level. Notwithstanding this aspiration, the NPS acknowledges that demand for oil supply is expected to increase in the short and medium term predominantly due to the rise in aviation fuel demand (paragraph 3.9.1).
- 5.25 Within the policy statement it is made clear that, *“energy is vital to economic prosperity and social well-being and so it is important to ensure that the UK has secure and affordable energy”*. It is further recognised that, *“Producing the energy the UK requires and getting it to where it is needed necessitates a significant amount of infrastructure, both large scale and small scale”* (paragraph 2.1.2).
- 5.26 Paragraph 3.9.3 of the policy statement emphasises the need for the UK to ensure it has a safe and secure supply of oil. The policy statement advises that sufficient capacity is required to ensure unacceptable levels of interruption to the supply of oil are avoided. The policy statement draws specific reference to the need for import terminals to demonstrate reliability and flexibility to accommodate the risk of supply outages.
- 5.27 In considering the need for new oil infrastructure projects, the NPS EN-1 highlights the significance of oil products to the UK economy (paragraph 3.9.3) before making clear that, *“The UK needs to ensure it has the safe and secure supplies of the oil products it requires. Sufficient fuel and infrastructure capacity are necessary to avoid socially unacceptable levels of interruption to physical supply and excessive costs to the economy from unexpectedly high or volatile prices. These requirements can be met by sufficient, diverse and reliable supplies of fuel, with adequate capacity to import, produce, store and distribute these supplies to customers. This in turn highlights the need for reliable infrastructure including refineries, pipelines and import terminals and the need for flexibility in the supply chain to accommodate the inevitable risk of physical outages.”*

²⁴ Department of Energy and Climate Change (2011) Overarching National Policy Statement for Energy (EN-1)

UK Marine Policy Statement (MPS) (March 2011)²⁵

- 5.28 This policy statement provides the framework for preparing marine plans and is also key in respect of decisions affecting the marine environment. The River Thames adjacent to the Oikos Facility is located within the South East Inshore Marine Plan area. A draft South East Inshore Marine Plan prepared by the Marine Management Organisation for this area was issued for consultation in January 2020.
- 5.29 The UK vision for the marine environment is set out in the UK Marine Policy Statement (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 and that the achievement of them will ensure the sustainable development of the UK marine area and deliver the UK vision.
- 5.30 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.
- 5.31 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.
- 5.32 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 (paragraph 3.4.1).
- 5.33 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 including job creation as well as wider benefits to national, regional or 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 the infrastructure, against expected adverse effects including cumulative effects (paragraph 3.4.11).
- 5.34 The key activity of ‘Energy production and Infrastructure development’ is dealt with in section 3.3 of the MPS. Although dealing mainly with the various ways in which the marine

²⁵ HM Government (2011) UK Marine Policy Statement

environment is used to create energy or as the location of energy sources, it is recognised in the context of the need for a secure, sustainable and affordable supply of energy that the marine environment will make an increasingly major contribution to the provision of the UK's energy supply and distribution.

National Planning Policy Framework (NPPF) (2019)²⁶

5.35 The National Planning Policy Framework (NPPF) makes clear at the outset that it does not contain specific policies for nationally significant infrastructure projects. It emphasises that these 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.

5.36 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:

“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 a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

c) an environmental objective – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.”

5.37 The NPPF makes clear 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).

²⁶ Ministry of Housing, Communities & Local Government (2019) National Planning Policy Framework

- 5.38 A presumption in favour of sustainable development is at the heart of the NPPF that runs through both plan making and decision taking so that sustainable development is pursued in a positive way (paragraph 10).
- 5.39 The importance of building a strong and competitive economy is a matter specifically highlighted in the NPPF. It is made clear that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
- 5.40 Details of other policies within the NPPF and of relevance to the OMSSD project are considered in each of the preliminary topic assessment chapters of this PEIR.

Maritime 2050 (January 2019)²⁷

- 5.41 Published in January 2019, Maritime 2050 sets out the long term strategy and high level vision for the future 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.
- 5.42 The strategy reiterates a number of the general points raised in Chapter 4 of this PEIR. These include a recognition of the economic importance of ports and the maritime sector, 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.
- 5.43 In respect of the theme 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 to 2050 will significantly enhance productivity and efficiency, to deliver an enhanced positive impact in national infrastructure growth and business performance.

Energy White Paper – Powering Our Net Zero Future (December 2020)²⁸

- 5.44 The White Paper follows on from the Prime Minister’s Ten Point Plan and the National Infrastructure Strategy and provides further clarity and puts in place a strategy for the wider energy system that seeks to transform energy, supports a green recovery and creates a fair deal for customers (Introduction).
- 5.45 In respect of transport matters, the strategy confirms the phasing out the sale of new diesel and petrol cars by 2030 and the requirement for new cars and vans to be zero emissions at

²⁷ Department for Transport (2019) Maritime 2050: Navigating the Future

²⁸ HM Government (2020) Energy White Paper: Powering Our Net Zero Future

the tailpipe from 2035. The strategy recognises the difficulty in identifying zero emissions solutions for HGVs, mentioning the work ongoing in the downstream oil and gas sector on low carbon fuels. Reference is also made to supporting the production of sustainable aviation fuels within the UK (Transport section).

- 5.46 The White Paper considers the downstream oil sector. Recognising its current importance in providing the energy used in the transport sector – 96% of the energy used in 2019 – the sector is identified as continuing to play a vital role in the transition to a net zero economy, delivering fuel to consumers. It is highlighted that the sector is already actively exploring the potential for low-carbon liquid fuels, particularly for aviation, shipping and heavy goods vehicles (p. 146).
- 5.47 The White Paper further highlights the need to make sure that as we make the transition away from fossil fuels, secure supplies of fuel to the people and businesses whose livelihoods depend on it must be maintained (p. 146).
- 5.48 The White Paper also confirms that a review of existing energy National Policy Statements will be completed by the end of 2021. It is made clear, however, that the need for the energy infrastructure currently set out in the energy national policy statement remains, except in the case of coal-fired generation (p. 55).

Local Policy

- 5.49 The site of the proposed OMSSD project is located within the borough of Castle Point within the County of Essex. Set out in the following paragraphs is an outline of the key elements of local policy relevant to the principle of development on the site of the OMSSD project.

The Adopted and Emerging Castle Point Borough Council Local Plan

- 5.50 The adopted Local Plan for Castle Point Borough²⁹ is over 20 years old, having been adopted in November 1998. Castle Point Borough Council (CPBC) submitted their replacement local plan to Government on 2nd October 2020 and an examination on the plan is scheduled to commence shortly.
- 5.51 Due to the length of time since the Local Plan was adopted CPBC undertook a NPPF consistency check in 2013, which assessed how the ‘Saved Policies’ within the Local Plan conform with the then recently published National Planning Policy Framework (NPPF). If inconsistencies were identified CPBC indicated that additional consideration will be given to particular policies within the NPPF to ensure that decisions reflect the Government’s planning objectives and presumption in favour of sustainable development.
- 5.52 The adopted local plan proposals map from 1998 identifies the site of the Oikos Facility simply by the words ‘Oil Storage’. Within the plan the facility is the subject of policy ED9

²⁹ Castle Point Borough Council (1998) Adopted Local Plan

which indicates that expansion of the installation when it is in the national interest will be permitted. The relevant section of the NPPF consistency check table, however, notes that the policy is negatively worded and, therefore, inconsistent with the presumption in favour of sustainable development that is set out in the NPPF. Reference is made to relevant sections of the NPPF that should also be considered in this regard.

- 5.53 Although an emerging local plan does not form part of the Development Plan it is, potentially, a material consideration. It is therefore appropriate to discuss the key policy associated with the Oikos Facility, draft policy EC4 – Canvey Port Facilities. The supporting text to draft policy EC4 highlights, amongst other things, that the Oikos Facility is nationally significant and has a role to play in ensuring the security of energy supplies in the UK.
- 5.54 The draft policy makes clear that applications for development within the facility will be permitted subject to certain criteria – relating to the significance of the proposal, safety, landscape, public rights of way, water quality and ecological matters – being met. The draft policy also includes a reference to proposals being considered as nationally significant infrastructure projects and that the Council will consider its response to such projects in accordance with the requirements of the policy. The final wording of the policy will emerge from the independent examination of the draft plan, to which Oikos will input as necessary.
- 5.55 Both the adopted local plan and the emerging draft local plan also include other topic policies of relevance to the Oikos Facility and the proposed development proposals. These policies are considered, where relevant, within the detailed topic assessment chapters of this PEIR.

Sub-regional policy and guidance

South East LEP – Growth Deal and Strategic Economic Plan (March 2014)³⁰

- 5.56 The Oikos Facility is located within the area covered by the South East Local Enterprise Partnership (LEP). This LEP, along with all other LEPs, was formed to create an economy which is driven by private sector growth and which is evenly balanced across the country and between sectors.
- 5.57 The LEP's 2014 Strategic Economic Plan begins by highlighting that the areas seaports – along with other key transport networks – will continue to be vital national economic assets that are key to the nation's future economic prosperity (section 2.1). Elsewhere the plan indicates that these various port facilities collectively provide the UK's most important gateway to the rest of the world (paragraph 2.6).
- 5.58 Using available evidence, the LEP identify priority sectors which have high growth potential. One of these priority sectors is the 'Transport and Logistics' sector with port facilities within the area being specifically identified as having further growth potential (paragraph 2.19).

³⁰ South East Local Enterprise Partnership (2014) South East LEP – Growth Deal and Strategic Economic Plan

Association of South Essex Local Authorities (ASELA)

- 5.59 Castle Point Borough Council is one of seven local authorities which form the Association of South Essex Local Authorities (ASELA). ASELA will, in due course, prepare the South Essex Plan which will set out a strategic framework for development in the area up to 2038. An Issues Paper is under preparation and the indication given is that this will be consulted on at some point during 2021. The OMSSD ES will, therefore, consider any emerging information of relevance to the project.

Draft South East Inshore Marine Plan (January 2020)³¹

- 5.60 The draft South East Inshore Marine Plan - the area of relevance to the OMSSD project - was published by the Marine Management Organisation (MMO) for consultation in January 2020 and sets out a vision and high level marine objectives for the area in 2041.
- 5.61 In terms of infrastructure, the draft marine plan includes draft Policy SE-INF-1 which indicates that, "*Appropriate land-based infrastructure which facilitates marine activity (and vice versa) should be supported*". This policy aims to support infrastructure development in order to provide economic and social benefits and facilitate marine business, including those that are land-based. It is indicated that "*SE-INF-1 supports integration between marine and terrestrial systems by encouraging proposals and other measures that maintain existing or provide new infrastructure in the intertidal area that facilitates marine activity*".
- 5.62 Other draft policies of relevance to the OMSSD project include draft Policy SE-PS-1, which considers ports and shipping and which reflects the high level policies in the Marine Policy Statement in that only proposals demonstrating compatibility with current activity and future opportunity for sustainable expansion of port and harbour activities will be supported. This draft policy also supports the NPSfP in setting provisions for port growth in the context of the management and development of other activities; highlights a need to be commercially viable through adaptation, change, and diversification; and recognises the need to ensure safe navigation both within and in the approaches to ports, both at the present time and into the future. This policy supports continued port maintenance and repairs, diversification and other sustainable port development which contribute to long-term economic growth and prosperity.
- 5.63 Draft Policy SE-PS-4 supports proposals which promote or facilitate sustainable coastal and/or short sea shipping as an alternative to road, rail or air transport. It is indicated that such proposal will be supported where appropriate.

³¹ Marine Management Organisation (2020) South East Inshore Marine Plan – Draft for consultation