

East Anglia THREE

# Chapter 3

## Policy and Legislative Context

**Environmental Statement**

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## 3 POLICY AND LEGISLATIVE CONTEXT

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### 3.1 Introduction

1. This chapter presents the local, national and international planning policy context with regard to the development of offshore windfarms and their associated offshore and onshore infrastructure. The chapter starts by introducing the European Union (EU) directives and globally agreed protocols which have shaped the policy framework within which the proposed East Anglia THREE project is being developed. This chapter then describes the key legislation and relevant policy at national, regional and local level. Throughout all these policy levels, three main themes are covered:
  - Reducing emissions;
  - Renewable energy; and
  - Managing the environment.

### 3.2 International Context

#### 3.2.1 Reducing emissions

2. The Kyoto Protocol is an international agreement linked to the United Nations Framework Convention on Climate Change (UNFCCC), which commits its parties to setting internationally binding emission reduction targets. The protocol was agreed in 1997 and was ratified by the United Kingdom (UK) in 2002.
3. Initially, obligatory targets required committed parties to take measures aimed at reducing global emissions of greenhouse gas, such as carbon dioxide (CO<sub>2</sub>), by an average of 5% against 1990 levels over the five-year period 2008 to 2012.
4. A regular series of international meetings of the UNFCCC have taken place since 1997 resulting in the Copenhagen Accord (2009) and the Doha Amendment (2012). The Doha Amendment included a new commitment by parties to reduce greenhouse gas emissions by at least 18% below 1990 levels in the eight-year period from 2013 to 2020.
5. Under this second commitment period of the Kyoto protocol the EU has committed to reduce emissions by 20% on 1990 levels by 2020, but has the option to step up this reduction to 30% if the conditions are right. The UK Climate Change Act 2008 which is discussed further in section 3.3.1.2 has an interim 34% reduction target for 2020 which if achieved will allow the UK to meet and exceed its Kyoto agreement target.

### 3.2.2 Renewable energy

#### 3.2.2.1 Renewables Directive

6. In September 2001, the EU adopted its first Renewables Directive 2001/77/EC on the 'Promotion of Electricity Produced from Renewable Energy Sources in the Internal Electricity Market'. Article 3 of the Renewables Directive required that Member States set national targets for consumption of energy from renewable sources in terms of a proportion of total electricity consumption, and that they publish and implement a report for the subsequent 10 years and review the target every five years.
7. The Renewables Directive set an indicative target for the EU of 12% renewable electricity consumption by 2010 and an indicative target for the UK for the total consumption of electricity from renewable sources of 10% by 2010. In the UK this requirement was satisfied by the 2007 Energy White Paper, which is discussed in section 3.3.1.1 below.
8. In April 2009 Directive 2001/77/EC was replaced with Directive 2009/28/EC which is known as the Renewables Directive or the Renewable Energy Directive. The two key targets this document proposed to achieve were:
  - A reduction of 20% in greenhouse gases by 2020, explicitly acknowledged within Appendix 1 to the Copenhagen Accord; and
  - 20% of the total EU energy consumption to come from renewable sources by 2020.
9. The new Directive was introduced to implement the EU's '2020 by 2020 policy'. The UK commitments under these Directives are discussed below in section 3.3.2.

#### 3.2.2.2 2030 Energy Strategy

10. The 2030 framework proposed by the European Commission (EC) in October 2014 builds on the experience of, and lessons learnt from, the 2020 climate and energy framework. The EC has proposed new climate and energy targets up to 2030 (EC 2015):
  - A 40% cut in greenhouse gas emissions compared to 1990 levels;
  - At least 27% of energy used in EC countries to be from renewable sources; and

- A 27%<sup>1</sup> improvement in energy efficiency (compared to projections).
11. To meet these targets, the EC has proposed:
- A reformed EU emissions trading scheme (ETS);
  - New indicators for the competitiveness and security of the energy system, such as price differences with major trading partners, diversification of supply, and interconnection capacity between EU countries; and
  - First ideas on a new governance system based on national plans for competitive, secure, and sustainable energy. These plans will follow a common EU approach. They will ensure stronger investor certainty, greater transparency, enhanced policy coherence and improved coordination across the EU.

### 3.2.3 Managing and Improving the Environment

#### 3.2.3.1 Marine Strategy Framework Directive (MSFD)

12. The MSFD (European Council Directive 2008/56/EC) aims to establish a framework within which Member States will take measures to maintain or achieve 'good environmental status' (GES) in the marine environment by 2020.
13. Each Member State is committed to producing a Marine Strategy for their waters, in collaboration with other Member States sharing the same marine region. Key requirements include:
- An assessment of the current state of UK seas by July 2012 (Defra 2012);
  - A detailed description of what Good Environmental Status (GES) means for UK waters, and associated targets and indicators by October 2012 (Defra 2012);
  - Establishment of a monitoring programme to measure progress toward GES by July 2014 (Defra 2014); and
  - Establishment of a programme of measures for achieving GES by 2015.
14. The UK has met these requirements to date by completing an assessment of the current state of UK seas and detailing what GES means for UK waters in their Marine Strategy Part one (Defra 2012). A co-ordinated monitoring programme has been established for the 11 descriptors in Marine Strategy Part Two (Defra 2014) for the

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<sup>1</sup> To be reviewed by 2020, having in mind an EU level of 30%.

ongoing assessment of GES. The Programme of Measures is in development and a public consultation on the proposals closed in April 2014 (Defra 2014). These programmes have to be developed by December 2015 and implemented by December 2016.

### 3.2.3.2 Water Framework Directive (WFD)

15. The WFD (2000/60/EEC) addresses the quality of inland, estuarine and groundwater bodies including coastal surface waters up to an offshore limit of one nautical mile. Monitoring of the aquatic environment in relation to physical, chemical and biological parameters started in 2006 with a view to ensuring a 'good ecological status' of all surface water bodies by 2015. Chemical and biological Environmental Quality Indicators (EQI) will be used in the move towards this objective, and a programme of measures will be implemented in order to improve surface waters that do not meet the required status.

### 3.2.3.3 Habitats and Birds Directives

16. EC Directive 92/43/EEC (known as the Habitats Directive) implements the Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention) and the Convention on the Conservation of Migratory Species of Wild Animals (the Bonn Convention). The Directive aims to conserve natural habitats of wild fauna and flora and is intended to protect biodiversity by requiring Member States to take measures to maintain or restore natural habitats and wild species listed in the Annexes to the Directive at a favourable conservation status. It provides for robust protection for those habitats and species of European importance. A key element of this protection is the establishment under Article 3 of the Directive of a European wide network of protected sites - Special Areas of Conservation (SAC).
17. EC Directive 2009/147/EC on the conservation of wild birds (known as the Birds Directive) provides a framework for the conservation and management of, and human interactions with, wild birds in Europe. It sets broad objectives for a wide range of activities. The Directive also resulted in the establishment, under Article 4, of a network of sites - each identified as a Special Protection Area (SPA). Section 3.3.3.5 describes how these European Directives are implemented in England and Wales.
18. SACs and SPAs combine to form the Natura 2000 network of important high-quality conservation sites that are intended to significantly contribute to the conservation of habitats and species listed in the EU Birds and Habitats Directives.

#### 3.2.3.4 European Protected Species (EPS)

19. EPS are those listed in Annexes II and IV of the Habitats Directive; these include species of both animal and plant in the marine and terrestrial environments. The UK regulations which transpose this Directive into UK law are described in section 3.3.3.7.

#### 3.2.3.5 Ramsar Sites

20. Ramsar Sites are designated under the Convention on Wetlands of International Importance, agreed in Ramsar, Iran in 1971 and ratified by the UK in 1976. The criteria for assessing a site for designation as a Ramsar site include whether or not the wetland supports 20,000 water birds and / or supports 1% of the individuals in a population of one species or subspecies of water bird. UK Government policy affords the same protection to Ramsar sites as European designations such as SPAs and SACs. The UK has generally chosen to underpin the designation of its Ramsar sites through prior notification of these areas as Sites of Special Scientific Interest (SSSI).

#### 3.2.3.6 OSPAR Convention

21. International cooperation to protect the marine environment (including biodiversity) of the north-east Atlantic is achieved through the OSPAR Convention<sup>2</sup>. With the adoption in 2008 of the EC Directive 2008/56/EC MSFD (see section 3.2.3.1), the Convention is expected to play a key role as one of the Regional Sea Conventions with specific responsibilities for delivery of some aspects of the Directive.
22. A key part of OSPAR's biodiversity strategy is to establish a network of Marine Protected Areas (MPAs). The UK has currently identified 244 OSPAR MPAs, many of which are Natura 2000 sites that also meet the relevant OSPAR selection criteria.

#### 3.2.3.7 The Convention on Biological Diversity

23. The Convention on Biological Diversity is a legally binding treaty which came into force in December 1993 with 168 signatories of which the UK is one. It has three main objectives:
  - The conservation of biological diversity;
  - The sustainable use of the components of biological diversity; and

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<sup>2</sup> The convention had its origins in the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (the Oslo Convention) (adopted in 1972) and the Convention for the Prevention of Marine Pollution from Land-Based Sources (the Paris Convention) (adopted in 1974) which were brought together in 1992 as the OSPAR Convention.



- The fair and equitable sharing of the benefits arising out of the utilization of genetic resources.

24. The Convention recognised for the first time in international law that the conservation of biological diversity is "a common concern of humankind" and is an integral part of the development process. The Convention covers all ecosystems, species, and genetic resources.

### 3.2.3.8 Transboundary Considerations

25. The Convention on Environmental Impact Assessment in a Transboundary context is a United Nations Economic Commission for Europe (UNECE) Convention (the 'Espoo Convention'). This Convention sets out the obligations of States to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental effect across international boundaries (transboundary effects). The Espoo Convention has been implemented by the Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (known as the EIA Directive; see section 3.3.3.3) as amended by Directives 97/11/EC and 2003/35/EC. This is transposed into UK law by regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 which requires that, where the application is for EIA development, and where the Planning Inspectorate is of a view that it will have significant effects on the environment of another Member State or receives a request for involvement from another European Economic Area (EEA) Member State, it must undertake a prescribed process of consultation and notification.
26. The Planning Inspectorate has published advice note twelve 'Development with significant transboundary impacts consultation' (the Planning Inspectorate, 2012a). This note outlines the procedures for consultation in association with an application for a DCO to the Planning Inspectorate, where such development may have significant transboundary impacts. The advice note sets out the roles of the Planning Inspectorate, UK Government departments and developers. Developers are advised to *inter alia* identify the possible significant transboundary effects or why they consider that there would not be any significant effects on another EEA State.
27. In March 2015, the Department of Energy and Climate Change (DECC) published guidelines to clarify how and whether Natura 2000 sites outside of the UK in other EU Member States (transboundary impacts) will be considered in consent, for developers and other interested parties by the Secretary of State. Developers are expected to collect sufficient data to enable the Secretary of State to consider the impacts. These guidelines aim to reduce the risk of successful legal challenge to

consent an offshore windfarm on the basis that impacts to these sites have not been addressed, or not in a satisfactory way (DECC 2015).

### 3.3 National Planning Context

28. This section describes the UK legislation and policy which affects the development of the proposed East Anglia THREE project.

#### 3.3.1 Reducing Emissions

29. The main objectives of the UK's renewable energy policies are in accordance with the overall Kyoto Protocol and the European policy objectives (see section 3.2.1), and are focused on a number of key aspects:

- The reduction of CO<sub>2</sub> and other greenhouse gas emissions to tackle climate change;
- The promotion of competitive energy markets in the UK and abroad to encourage sustainable economic growth and improve productivity; and
- Securing national energy supply as part of a long-term sustainable energy policy.

##### 3.3.1.1 Climate Change Programme

30. The first UK 'Climate Change Programme' was launched in November 2000 in response to its commitment agreed under the 1997 Kyoto Protocol.

31. A new UK Climate Change Programme ('Tomorrow's Climate - Today's Challenge') was issued in March 2006, taking forward the agendas previously identified in the previous programme with additional emphasis upon emissions reduction reporting and climate change adaptation, as well as continuing the support for low-carbon sources of energy generation within a package of emissions reduction measures.

32. The long-term UK Government strategy for carbon reduction is outlined in both the 2003 Energy White Paper (DTI 2003) and the 2007 Energy White Paper 'Meeting the Energy Challenge' (DTI 2007). The 2007 White Paper includes targets for a reduction of CO<sub>2</sub> emissions by 60% by 2050.

##### 3.3.1.2 The Climate Change Act 2008

33. In 2008 the UK passed legislation that introduced the world's first long-term legally binding framework to tackle climate change. The Climate Change Act became law in the UK on 26 November 2008. It created a new approach to managing and responding to climate change in the UK by:

- Setting ambitious, legally binding emissions reduction targets;
  - Taking powers to help meet those targets;
  - Strengthening the institutional framework;
  - Enhancing the UK's ability to adapt to the impact of climate change; and
  - Establishing clear and regular accountability to the UK Parliament and to the devolved legislatures.
34. The Climate Change Act was more ambitious than previous commitments. It requires the UK to reduce greenhouse gas emissions by at least 80% by 2050, compared to 1990 levels. The 2050 target was raised to 80% from 60% following recommendations set out by the Committee on Climate Change (CCC). The CCC is an independent body established through the Climate Change Act 2008, which advises the Government on emissions targets, and reports to Parliament on progress made in reducing greenhouse gas emissions.
35. The CCC has prepared a series of four five-yearly carbon budgets for the UK, covering the period 2008 to 2027. These carbon budgets represent a progressively tightening 'carbon cap' on the total quantity of greenhouse gas emissions to be emitted over that five-year period. Each of the four proposed carbon budgets has been accepted by Government, with the fourth budget (running from 2023 to 2027) requiring the UK to reduce its emissions by around 50% relative to 1990 levels. The emissions reduction trajectories set out within the fourth carbon budget place great emphasis on strong and early de-carbonisation of the UK's electricity supply.

### **3.3.2 Renewable Energy**

36. Both the 2003 and the 2007 Energy White Papers outlined above included revised renewables targets to those set under the Climate Change Programme. These resulted in an increase in the target set for renewables sources of energy to 15% by 2015, with an aspiration of 20% of renewable energy supply by 2020.

#### **3.3.2.1 The Energy Act 2004**

37. The Energy Act 2004 implemented the 2003 Energy White Paper and enabled The Crown Estate to award the licences for windfarm sites in the Renewable Energy Zone. The Offshore Production of Energy part of the 2004 Act put in place the legal framework for offshore renewable energy projects (wind, wave and tidal) beyond the UK's territorial waters.

38. The Energy Act 2008 implemented the legislative aspects of the 2007 Energy White Paper and updated the Energy Act 2004.
39. The most recent Energy Act received Royal Assent in 2013 and a key part of this Act is the Government's Electricity Market Reform (EMR) programme. The EMR is intended to put in place measures to attract the £110 billion investment which is needed to replace current generating capacity and upgrade the grid by 2020 to cope with a rising demand for electricity. The Act includes provisions for Contracts for Difference which are long-term contracts intended to provide stable and predictable incentives for companies to invest in low-carbon generation. It also provides transition arrangements for investments under the Renewables Obligation scheme which was introduced in 2000 and was the main financial incentive for renewable electricity developments in the UK prior to the Contracts for Difference.

#### 3.3.2.2 Meeting Requirements of EU Directives

40. In response to the requirements of The Renewable Energy Directive 2009/28/EC (discussed in section 3.2.2), DECC published the National Renewable Energy Action Plan for the UK in July 2010 (DECC 2010). This plan sets out a 'lead scenario' to achieve the 15% renewable energy target for 2020. The lead scenario suggests that the UK could see around 30% of electricity, 12% heat and 10% transport energy come from renewable sources by 2020.
41. Specific measures for renewables were set out in the UK Renewable Energy Strategy (RES) which was published alongside and in parallel with the UK Low Carbon Transition Plan in July 2009 (DECC 2009a and 2009b). The RES sets out the path by which the UK can meet the legally-binding target of 15% energy consumption from renewable sources by 2020.
42. The Renewable Energy Roadmap (DECC 2011a, amended in DECC 2012 and DECC 2013) updates some of the aims within the RES and identifies eight technologies capable of providing 90% of the renewable energy required to meet the UK's 2020 target of 15% of energy consumption derived from renewable sources. It suggests that offshore wind has the potential to be generating up to 16GW by 2020. Beyond 2020, there is a very high potential for deployment with over 39GW possible by 2030 (DECC 2013).

### 3.3.3 Managing and Improving the Environment

#### 3.3.3.1 The Planning Act 2008

43. The Planning Act 2008 (as amended by the Marine and Coastal Access Act (MCAA) 2009 and the Localism Act 2011, the Growth and Infrastructure Act 2013 and

Infrastructure Act 2015) is the primary legislation which establishes the legal framework for applying for, examining and determining development consent applications for Nationally Significant Infrastructure Projects (NSIPs).

44. NSIPs are usually large scale developments such as new harbours or power generating stations, which require a type of consent known as a Development Consent Order (DCO) under procedures governed by the Planning Act 2008. The 2008 Act sets out thresholds above which certain types of infrastructure development are considered to be nationally significant and require a DCO to be applied for (for offshore energy developments for example, this threshold is projects with a generating capacity of over 100MW). The proposed East Anglia THREE project would have a generating capacity of up to 1,200MW and therefore would require a DCO.
45. The Planning Inspectorate is the agency responsible for administering the planning process for NSIPs. Any developer wishing to construct an NSIP must apply for a DCO. For such projects, the Planning Inspectorate examines the DCO application and will make a recommendation to the relevant Secretary of State, who will make the decision on whether to grant or to refuse development consent.
46. For NSIPs, an application is made for development consent using a draft DCO. The final approved DCO combines a number of other consents that, under the previous consenting mechanism, had to be applied for separately. Accordingly, the draft DCO for the proposed East Anglia THREE project will incorporate:
  - Planning permission, normally granted under Part III of the Town and Country Planning Act (TCPA) 1990;
  - Consent under Section 36 of the Electricity Act 1989; and
  - A deemed Marine Licence (dML) under the MCAA 2009.
47. Powers to compulsorily acquire land or rights, either permanently or temporarily may also be sought as part of the DCO, as may other consents or powers necessary to construct or operate the proposed project. Although not an exhaustive list, these may include the following:
  - Rights to carry out works in streets;
  - Rights to fell or lop trees and shrubs (whether subject to a Tree Preservation Order (TPO) or otherwise); and
  - Powers to divert or stop public rights of way (PRoW).

48. Relevant secondary legislation and guidance have also been taken into account within this document. A full list of these can be found on the Planning Inspectorate website (the Planning Inspectorate 2012b):

### 3.3.3.2 National Policy Statements (NPS)

49. NPSs are produced by Government and set out national policy against which proposals for NSIPs will be assessed and decided on by the Planning Inspectorate and the relevant Secretary of State. Consent decisions will be taken within the clear policy framework set out in the NPSs, making these decisions as transparent as possible. The Planning Inspectorate will use NPSs in its examination of applications for development consent, and Ministers will use them when making decisions. NPSs include the Government's objectives for the development of nationally significant infrastructure in a particular sector. This includes:

- How these objectives will contribute to sustainable development;
- How these objectives have been integrated with other government policies;
- How actual and projected capacity and demand have been taken into account;
- Relevant issues in relation to safety or technology;
- Circumstances where it would be particularly important to address the adverse impacts of development; and
- A clear framework for investment and planning decisions.

50. The DECC has produced 12 NPSs, six of which are relevant to energy. The three NPSs of relevance to the proposed East Anglia THREE project are:

- EN-1 Overarching Energy;
- EN-3 Renewable Energy Infrastructure (which along with EN-1 identifies the construction of offshore generating stations in excess of 100MW as NSIPs); and
- EN-5 Electricity Networks (which covers the electrical infrastructure in conjunction with EN-1).

### 3.3.3.3 The Environmental Impact Assessment (EIA) Process

51. EIA is a tool for systematically examining and assessing the potential impacts of a development on the environment. EIA is a procedure required under the terms of European Union EIA Directive 85/337/EEC (as amended by Directive 2009/31/EC), on

assessment of the effects of certain public and private projects on the environment. It has been transposed into English law for NSIPs by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the EIA Regulations). The resultant Environmental Statement (ES) is the product or report of the EIA process and is required by the EIA Regulations to contain the following information:

- A description of the development comprising information on the site, design and size of the development;
- A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
- The data required to identify and assess the main effects which the development is likely to have on the environment;
- An outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental effects; and
- A Non-Technical Summary (NTS).

52. The EIA process will also take account of developing guidance provided by the Planning Inspectorate in the form of the non-statutory advice notes. These provide advice and information on a range of matters in relation to the Planning Act 2008 process. Of particular interest for the current process are the following advice notes:

- Advice note three: EIA consultation and notification;
- Advice note seven: EIA, screening and scoping;
- Advice note nine: Rochdale Envelope;
- Advice note ten: Habitat Regulations Assessment (HRA) relevant to NSIPs; and
- Advice note twelve: Development with significant transboundary impacts consultation.

#### 3.3.3.4 The Marine and Coastal Access Act

53. The MCAA 2009 provides the legal mechanism to help ensure clean, healthy, safe, productive and biologically diverse oceans and seas by putting in place a new system for improved management and protection of the marine and coastal environment. The MCAA also established the Marine Management Organisation (MMO), the

authority tasked with ensuring the delivery of sustainable development in the marine area.

54. The MCAA provides for marine licences to be obtained in respect of all works and deposits above, on or under the sea bed that occur below mean high water springs (MHWS).
55. The MCAA also adds a new section to the 2008 Act (Part 4 - 149A “Deemed Consent under a marine licence”) enabling a DCO applicant to apply for a deemed marine licence as part of the DCO process.

#### 3.3.3.4.1 Marine Spatial Planning

56. Through the MCAA, the UK Government introduced measures including provision for the introduction of a marine planning system. The Secretary of State for Environment, Food and Rural Affairs is the marine planning authority for England’s marine area but has delegated a number of functions in respect of marine planning in England to the MMO. The Marine Policy Statement (MPS) adopted by all UK administrations in March 2011 provides the policy framework for the preparation of marine plans, establishing how decisions affecting the marine area should be made in order to enable sustainable development.
57. The MPS also provides an overview and summary of national policy relevant to marine planning and decision-making in the marine area. Marine plans are intended to guide developments and activities to ensure maximisation of the economic worth of the marine area in a sustainable way.
58. The first Marine Plans include the East Inshore and East Offshore Marine Plans which were formally adopted on 2<sup>nd</sup> April 2014. The East Inshore Marine Plan area covers 6,000km<sup>2</sup> of sea, from mean high water springs out to the 12 nautical mile limit from Flamborough Head in the north to Felixstowe in the south. The East Offshore Marine Plan covers 49,000km<sup>2</sup> from the 12 nautical mile limit to the border with the Netherlands, Belgium and France. The proposed East Anglia THREE project is within an area defined by policy WIND 1 as an “Area under agreement for lease”.
59. Public authorities, including the MMO, must consider the adopted marine plan for all authorisations – *“any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general”* (MCAA 2009, section 58 (6)) – or enforcement decisions that may affect the plan area, unless relevant considerations indicate otherwise. A relevant consideration includes whether or not an application relates to a NSIP as set out in the Planning Act 2008. Decision-making



in relation to NSIP projects in English waters should have regard to the appropriate marine policy document, be it the MPS or an adopted marine plan.

### 3.3.3.5 National and Internationally Designated Sites

60. In England and Wales, the Habitats Directive (as discussed previously in section 3.2.3.3) is implemented under the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations). For UK offshore waters (i.e. 12 nautical miles (nm) from the coast out to 200nm or to the limit of the UK Continental Shelf Designated Area), the Habitats Directive is transposed into UK law by the Offshore Marine Conservation (Natural Habitats & c.) Regulations 2007 (as amended). The provisions of the Birds Directive are implemented through the Wildlife and Countryside Act (WCA) 1981 (as amended), the Habitats Regulations (2010) as well as other legislation related to the use of land and sea (Joint Nature Conservation Committee (JNCC) 2014).
61. Natural England is responsible for identifying sites suitable for SPA or SAC designation and for conducting public consultation on those sites in English inshore waters (0-12nm). The JNCC leads on the selection of SPAs and SACs within the UK offshore area (i.e. those beyond 12nm). Sites that span inshore and offshore waters are progressed jointly by Natural England and JNCC. Once a site has been identified and consulted upon within the UK, it is submitted for approval to the EC. Once approved, it becomes a potential SPA (pSPA) or a candidate SAC (cSAC) and receives protection that is equivalent to that received by an SPA/SAC. A site can then be formally designated as an SPA or SAC by the UK Government.
62. SSSIs are intended to provide statutory protection to the best examples of flora, fauna, geological and physio-geological features in England and Wales. First established after the National Parks Act 1949, their present legal framework is underpinned by the WCA 1981. Improved provisions for the protection and management of SSSIs were also introduced by the Countryside and Rights of Way (CRoW) Act 2000. Natural England has overall responsibility for the management of the SSSI network in England.
63. National Nature Reserves (NNRs) are designations intended to provide additional statutory protection to the finest SSSIs in England and Wales. Natural England is the body responsible for the designation of NNRs under the legislation discussed above. Natural England manages the majority of English NNRs, with the remaining sites managed by other approved organisations such as the National Trust, the Forestry Commission, the Royal Society for the Protection of Birds (RSPB), local Wildlife Trusts, and local planning authorities.

64. Marine Conservation Zones (MCZs) represent a network of new marine protection areas provided for under the MCAA 2009. The first tranche of 27 MCZs was designated in November 2013 and a second tranche of 23 potential sites was put forward for public consultation in January 2015. The consultation closed in April 2015 and decisions are expected in January 2016. The primary aim of MCZs is to deliver the Government's vision for an 'ecologically coherent network of MPAs across the UK and to ensure the health of the wider UK marine environment'. These sites are intended to protect habitats and species not necessarily covered by existing mechanisms and complement the existing MPA network of SACs and SPAs. Once designated, the protection and maintenance of MCZs will be enforced by the MMO.

#### 3.3.3.6 Habitats Regulations Assessment – Assessment of Plans or Projects

65. Under the Habitats and Species Regulations (2010) the Secretary of State must consider whether a plan or project has the potential to have an adverse effect on the integrity and features of a Natura 2000 site (see section 3.2.3.3 for information on the EU directive which dictates the designation Natura 2000 sites). This process is known as Habitats Regulations Assessment (HRA). Under Regulation 61 of the Habitats and Species Regulations, Appropriate Assessment (AA) is required for a plan or project, which either alone or in combination with other plans or projects, is likely to have a significant effect on a Natura 2000 site and is not directly connected with or necessary for the management of the site.

66. HRA generally follows a four stage process (Defra 2010):

- Stage 1: Screening is the process used to identify the likely project and cumulative impacts on a Natura 2000 site, and establish the need for an AA.
- Stage 2: AA considers the impact on the integrity of the Natura 2000 site and determines whether adverse effects may be excluded, and what mitigation measures may be applied.
- Stage 3: Assessment of alternative solutions examines alternative ways of achieving the objectives of the project that would avoid adverse impacts on the integrity of the Natura 2000 site.
- Stage 4: Assessment where no alternative solutions exist and adverse impacts remain, where an assessment is made as to whether or not the development is necessary for imperative reasons of overriding public interest (IROPI) and, if so, of the compensatory measures needed to maintain the overall coherence of the Natura 2000 network.

67. Where priority habitats or species are present, the imperative reasons need to be “...reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or other reasons which in the opinion of the EC are imperative reasons of overriding public interest”, whereas for non-priority habitats and species, imperative reasons of a social or economic nature may be acceptable, as long as they are “considered to be sufficient to override the harm to the site.”
68. The requirement for an AA will be determined by the competent authority following consideration of the information presented in the ES and the information to support an AA report. The information to support an AA report will also contain sufficient information to enable the competent authority to carry out an AA should it determine that one is required.

#### 3.3.3.7 European Protected Species (EPS)

69. The Habitats Regulations (2010) and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended), make it an offence to kill, injure, capture or disturb marine EPS (e.g. cetaceans). Potentially relevant European Protected Species are those listed in Annex IV of the Habitats Directive.
70. In circumstances where best practice guidance either cannot be followed or is not applicable, licences can be obtained to allow persons to carry out activities that would otherwise be prohibited, without committing an offence. Licences for actions which may affect marine EPS are issued by the MMO beyond 12nm and for actions up to 12nm can be obtained from Natural England. Licences required for terrestrial species would be obtained from Natural England.

#### 3.3.3.8 National Planning Policy Framework (NPPF)

71. The NPPF was implemented with the intention of making the planning system less complex and more accessible. The NPPF replaces the suite of Planning Policy Guidance Notes (PPGs) and Planning Policy Statements (PPSs) which formerly provided national planning guidance to local planning authorities.
72. The NPPF does not contain specific policies for NSIPs (for which particular considerations apply, determined in accordance with the decision-making framework set out in the Planning Act 2008 and relevant NPSs) but may be considered as a relevant matter.
73. The NPPF sets out a series of core principles that cover protection and conservation of the natural and built environment, and the promotion of sustainable growth and development.

74. The key principles of relevance to the proposed East Anglia THREE project are listed below.
- Promoting Sustainable Transport – The NPPF advises that Transport Statements and/or Transport Assessments should be used to support proposals for developments that will generate significant vehicle movements.
  - Requiring Good Design – The NPPF states that planning decisions should aim to ensure that developments: optimise the potential of the site to accommodate development; respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation; and are visually attractive through good architecture and appropriate landscaping.
  - Meeting the Challenge of Climate Change, Flooding and Coastal Change – The NPPF advises that local authorities should plan for new development in locations and ways which reduce greenhouse gas emissions, and should adopt strategies to mitigate and adapt to climate change, flood risk, and coastal change. It further states that authorities should adopt a positive strategy to promote energy from renewable and low carbon sources, and should direct development away from areas at highest risk of flooding (but where development is necessary, making it safe without increasing flood risk elsewhere). Inappropriate development in vulnerable areas and Coastal Change Management Areas should also be avoided.
  - Conserving and Enhancing the Natural Environment – The NPPF makes clear that the planning system should contribute to and enhance the natural and local environment by: protecting and enhancing valued landscapes, geological conservation interests and soils; and preventing new and existing development from contributing to or being at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability. In relation to the development of agricultural land, consideration should be given in planning terms to the economic and other benefits of best and most versatile agricultural land, and where significant development is necessary, this should be directed to areas of poorer quality land. Further guidance is provided in respect of: protecting and enhancing areas of landscape, ecological and geological importance; and avoiding / mitigating noise impacts associated with new developments.
  - Conserving and Enhancing the Built Environment – The NPPF states that applicants should describe the significance of any designated and non-

designated heritage assets affected by their development proposals, including any contribution made by their setting.

### 3.4 Regional and Local context

75. Local authorities are required to prepare and maintain up to date Local Development Plans which set out their objectives for the use and land development within their jurisdiction, and general policies for implementation.
76. Prior to the Planning and Compulsory Purchase Act 2004, local planning policy was set out in a single document, the Local Plan. These are now being replaced by Local Development Frameworks (LDFs), which comprise a suite of Development Plan Documents (DPD) including a Core Strategy DPD, Site Allocations DPD, Area Action Plans and a Proposals Map. Taken together, the LDF can be thought of as the 'new' Local Plan. For the majority of local planning authorities these documents are still in development but where drafts are available, these have been considered.
77. The onshore cable route falls under the jurisdiction of Suffolk County Council and the following local planning authorities:
  - Mid Suffolk District Council (MSDC); and
  - Suffolk Coastal District Council (SCDC).

#### 3.4.1 Mid Suffolk District Council

##### 3.4.1.1 Core strategy DPD and Core Strategy Focused Review (CSFR)

78. The CSFR was adopted by the Council on the 20<sup>th</sup> of December 2012 (Mid Suffolk District Council, no date) and now forms part of the Mid Suffolk Core Strategy and the Mid Suffolk Development Plan.
79. *Table 3.1* presents the relevant policies from the Mid Suffolk Core Strategy and states where there have been changes as part as the CSFR.

**Table 3.1. Relevant Policies from the Mid Suffolk Core Strategy including CSFR Updates**

Policy	Summary
CS2 Development in the Countryside	States that development will be restricted to defined categories including renewable energy projects.
CS3 Reduce Contributions to Climate Change	Aims to reduce contributions to climate change by promoting and encouraging the appropriate development of standalone renewable energy schemes.
CS4 Adapting to Climate Change	States that all development proposals will contribute to the delivery of sustainable development and reflects the need to plan for climate change, through addressing its causes and potential impacts on the following: <ul style="list-style-type: none"> <li>• Flood Risk: The council will support development proposals that avoid areas of current and future flood risk, and which do not increase flooding elsewhere, adopting the precautionary principle to development proposals.</li> <li>• Pollution: To protect people and the environment from unsafe or unhealthy pollutants. Development that harms the quality of soil or air and / or causes noise, dust, odour or light pollution will be avoided wherever possible. Development proposals will have no adverse effect on water quality.</li> <li>• Biodiversity: Development must also seek to adapt for the anticipated negative impacts from climate change upon biodiversity by protecting the district's natural capital and applying an ecological network approach.</li> </ul>
CS5 Mid Suffolk's Environment	Affords protection to the environment and states that all development will maintain and enhance the environment, including the historic environment, and retain the local distinctiveness of the area. <p>To protect, manage and enhance Mid Suffolk's biodiversity and geodiversity based on a network of:</p> <ul style="list-style-type: none"> <li>• Designated Sites (international, national, regional and local);</li> <li>• Biodiversity Action Plan Species and Habitats, geodiversity interests within the wider environment; and</li> <li>• Wildlife Corridors and Ecological Networks.</li> </ul> <p>Where appropriate, increase opportunities for access and appreciation of biodiversity and geodiversity conservation for all sections of the community.</p>
FC3 (replaces previous Core Strategy Policy CS11) Supply of Employment Land	Relates to the employment land, stating that a range of good quality sites will be made available for employment land in all towns and at least some of the key service centres through support for upgrading existing sites where this is practicable. Policy FC3 also states that major new allocations of employment land should be situated primarily in or close to towns and key service centres with good access to the District's major transport routes and good access by public transport.

### 3.4.1.2 Mid Suffolk Local Plan

80. Until such time as all DPDs within the LDF are completed and adopted, 'saved' policies from the Mid Suffolk Local Plan will continue to form part of the policy context for planning decisions.
81. *Table 3.2* presents the relevant saved policies from the Mid Suffolk District Local Plan.

**Table 3.2.Relevant Saved Policies from the Mid Suffolk District Local Plan**

Policy	Key points
GP1 Design and Layout of Development	<p>The district planning authority will normally grant permission for proposals which meet the following design criteria:</p> <ul style="list-style-type: none"> <li>Proposals should maintain or enhance the character and appearance of their surroundings, and respect the scale and density of surrounding development;</li> <li>Materials and finishes should be traditional, or compatible with traditional materials and finishes and should respect local architectural styles where appropriate;</li> <li>The siting of buildings and the creation of open spaces between existing and proposed buildings should maintain or enhance the character of the site, with attention to the treatment of boundaries particularly on the edge of settlements;</li> <li>Layouts should incorporate and protect important natural landscape features, including existing trees, shrubs and hedgerows;</li> <li>Proposals should make proper provision for the garaging, parking and turning of motor vehicles and for footways and access in a manner that does not dominate the appearance and design of the layout;</li> <li>Landscaping should be regarded as an integral part of design proposals; and</li> <li>The interrelationship between buildings and open spaces in any layout should act to minimise opportunities for criminal activity, consistent with good layout and architectural design.</li> </ul>
H16 Protecting Existing Residential Amenity	<p>To protect the existing amenity and character of primarily residential areas, the district planning authority will refuse:</p> <ul style="list-style-type: none"> <li>Change to non-residential use where such a change would materially and detrimentally affect the character and amenity of the area by means of appearance, traffic generation, nuisance or safety;</li> <li>The loss of open spaces which contribute to the character or appearance of an area and which are important for recreation or amenity purposes; and</li> <li>Development that materially reduces the amenity and privacy of adjacent dwellings or erodes the character of the surrounding area. The cumulative effect of a series of proposals will be taken into account.</li> </ul>
CL3 Major Utility Installations and Power Lines in the Countryside	<p>New major installations for utilities and power lines exceeding 33kv should be carefully sited to ensure minimal intrusion in the landscape. The feasibility of undergrounding electricity lines will be regarded as a material consideration.</p>

Policy	Key points
CL5 Protecting Existing Woodland	Development which would result in the loss of or damage to woodland, particularly ancient woodland, or disruption to commercial forestry will be refused. The felling of commercial conifer woodland will be supported where it does not adversely affect the character and appearance of the landscape.
CL6 Tree Preservation Order	Tree preservation orders will be used where the removal of trees and woodlands would be detrimental to the visual amenity of the surrounding area.
CL8 Protecting Wildlife Habitats	The district planning authority will refuse development likely to bring about the loss or significant alteration of important habitats, or cause a threat to any rare, vulnerable or protected species.
CL11 Retaining High Quality Agricultural Land	The district planning authority will encourage the conservation of agricultural land. Particular protection will be afforded to the best and most versatile agricultural land (namely grades 1, 2 and 3a of the Agricultural Land Classification (ALC)).
CL12 The Effects Of Severance Upon Existing Farms	In determining planning applications involving the development of existing agricultural land, the district planning authority will have regard to the effect of severance and fragmentation upon the farm and its operational structure
T10 Highway considerations in Development	When considering planning applications for development, the district planning authority will have regard to the following highway matters: <ul style="list-style-type: none"> <li>• The provision of safe access to and egress from the site;</li> <li>• The suitability of existing roads giving access to the development, in terms of the safe and free flow of traffic and pedestrian safety;</li> <li>• Whether the amount and type of traffic generated by the proposal will be acceptable in relation to the capacity of the road network in the locality of the site;</li> <li>• The provision of adequate space for the parking and turning of cars and service vehicles within the curtilage of the site; and</li> <li>• Whether the needs of pedestrians and cyclists have been met, particularly in the design and layout of new housing and industrial areas. Cycle routes and cycle priority measures will be encouraged in new development.</li> </ul>
SC4 Protection of Groundwater Supplies	In considering proposals for new development or changes of use, the district planning authority will resist significant damage to water aquifers and seek to minimise the risk of contamination of underground water resources.
SC5 Areas at Risk from Flooding	States that development which is likely to impede the flow of flood water or increase the risk of flooding elsewhere will not be permitted unless suitable flood mitigation is put in place.

### 3.4.2 Suffolk Coastal District Council

82. The Core Strategy and Development Management Policies document was formally adopted by the Council on 5 July 2013 and re-titled the Suffolk Coastal District Local



Plan - Core Strategy and Development Management Policies (Suffolk Coastal District Council 2013).

83. This means that the Core Strategy now forms part of the formal Development Plan for the district and will be used in the determination of planning applications.
84. In addition to the Core Strategy, the Council will continue to have regard to the remaining 'saved' policies from the previously adopted Suffolk Coastal Local Plan until replacement by policies in other development plan documents. Those remaining 'saved' policies from the previously adopted Local Plan are listed in *Table 3.4*.
85. *Table 3.3* presents the relevant policies from the Suffolk Coastal District Local Plan - Core Strategy and Development Management Policies.

**Table 3.3. Relevant Key Policies from the Suffolk Coastal District Council Core Strategy**

Policy	Key points
SP 12 Climate Change	<p>The District Council will contribute towards the mitigation of the effects of new development on climate change by:</p> <ul style="list-style-type: none"> <li>• Encouraging and promoting schemes which create renewable energy where consistent with the need to safeguard residential amenity, the environment and the landscape.</li> <li>• Minimising the risk of flooding and ensuring appropriate management of land within flood plains.</li> <li>• Improving the process of estuary and coastal management, incorporating and integrating social, recreational, economic, physical and environmental issues and actions.</li> </ul>
SP14 Biodiversity and Geodiversity	<p>Biodiversity and geodiversity will be protected and enhanced using a framework based on a network of:</p> <ul style="list-style-type: none"> <li>• Designated sites;</li> <li>• Wildlife corridors and links;</li> <li>• The rivers, estuaries and coast;</li> <li>• Identified habitats and geodiversity features;</li> <li>• Landscape character areas; and</li> <li>• Protected species.</li> </ul>
SP15 Landscape and Townscape	<p>The policy of the Council will be to protect and enhance the various landscape character areas within the district either through opportunities linked to development or through other strategies.</p> <p>The policy of the Council will be to protect and enhance the various landscape character areas within the district either through opportunities linked to development or through other strategies.</p>

Policy	Key points
DM27 Biodiversity and Geodiversity	<p>Development will not be permitted where there is an unacceptable impact on biodiversity and geodiversity having regard to the following:</p> <p>(a) The status and designation of sites, habitats and species;                      (b) the need to avoid the loss and fragmentation of important sites and habitats; and                      (c) The impact and effectiveness of any mitigation measures proposed to minimize and/or protect sites, habitats and species. Mitigation measures that encourage biodiversity will be looked upon favourably.</p>

### 3.4.2.1 Saved Policies from previous Suffolk Coastal Local Plan

86. In addition to the Core Strategy the Suffolk Coastal District Council will continue to have regard to remaining 'saved' policies from previously adopted Suffolk Coastal Local Plan (incorporating the First & Second Alterations) until replacement by policies in other development plan documents. Those remaining 'saved' policies from the previously adopted Local Plan are listed in *Table 3.4*.

**Table 3.4 Relevant Remaining Saved Policies from the Suffolk Coastal Local Plan**

Policy	Key points
AP1 Conservation Area	<p>To protect the character of the Conservation Areas and to ensure that new buildings, alterations or other development preserve or enhance them, the District Council will, in the control of development within, or affecting, each Conservation Area, pay special attention to the following matters:</p> <p>(i) the building materials used, to ensure that they are consistent with the general character of the respective area;</p> <p>(ii) the form, scale, design and detailing of new buildings, alterations to existing buildings, and the space around buildings (including landscape schemes, roads and fencing), which should be in harmony with, and relate satisfactorily to, their surroundings;</p> <p>(iii) Other development, including street furniture, road, footpath and other surfaces, lighting and advertisement displays, should be in keeping with the respective Conservation Area; wherever practicable, electricity, telephone and other cable systems should be placed underground, or in suitably concealed locations;</p> <p>(iv) Natural features, including trees, should be preserved wherever possible; schemes of landscaping and tree planting will normally be required;</p> <p>(v) Supplementary Planning Guidance;</p> <p>(vi) The traffic implications arising from the proposed development.</p>

Policy	Key points
AP4 Parks and Gardens of Historic or Landscape interest	The District Council will encourage the preservation and /or enhancement of parks and gardens of historic and landscape interest and their surroundings. Planning permission for any proposed development will not be granted if it would have a materially adverse impact on their character, features or immediate setting.
AP13 Special Landscape Areas	The valleys and tributaries of the Rivers Alde, Blyth, Deben, Fynn, Hundred, Mill, Minsmere, Ore and Yox, and the Parks and Gardens of Historic or Landscape Interest are designated as Special Landscape Areas. The District Council will ensure that no development will take place which would be to the material detriment of, or materially detract from, the special landscape quality.

### 3.5 The Project Design Envelope

87. It is recognised by the Planning Inspectorate that, at the time of submitting an application, offshore wind developers may not know the precise nature and arrangement of infrastructure and associated infrastructure that make up the proposed development. This is due to a number of factors such as the evolution of technology and the need for further detailed surveys (especially geotechnical surveys) which are required before a final design and layout can be made. This flexibility is important as it prevents consent being granted for specific infrastructure or a particular layout which is not possible or optimal by the time of construction, which may be several years after the DCO application, was made.
88. In accordance with the accepted industry approach, East Anglia THREE Limited (EATL) is therefore undertaking the impact assessment based on a worst case scenario of predicted impacts, which are set out within each topic chapter. The term ‘Rochdale Envelope’ is used throughout the Planning Inspectorate advice notes, and is detailed further in Chapter 5 Description of the Development.
89. Advice note nine (the Planning Inspectorate 2012c) addresses the use of the Rochdale Envelope approach under the Planning Act 2008 (page 6):

*“In the course of preparing the ES, a developer should seek to identify those aspects that are likely to give rise to significant adverse impacts, such that the maximum potential adverse impacts of a project have been properly assessed and can be taken into account as part of the decision making process. The Overarching NPS for Energy (EN-1) and the NPS for Renewable Energy Infrastructure (EN-3) both identify the need to address the maximum potential adverse impacts to ensure that the likely impacts of a project as it may be constructed have been properly assessed.”*

90. Advice note nine also states (page 13):

*“One practical way forward would be for the DCO application to set out specified maximum and minimum.....Developers should be in a position to be able to identify the most likely variations of options and so provide a more focused description. However, any flexibility should not permit such a wide range of materially different options such that each option in itself might constitute a different project for which development consent should be sought and an ES provided, nor allow a scheme to be implemented which is materially different from that assessed in the EIA.”*

91. Therefore, in order for the EIA to be comprehensive and adequate a ‘worst case’ has been developed for each topic area of the assessment. It should be noted that only realistic buildable scenarios are assessed. If a combination of design parameters leads to a scenario that cannot realistically occur then the worst case scenario has been reconsidered and a realistic set of worst case parameters has been assessed. Where this is the case, this is made clear in the individual chapters.

### 3.6 Summary

92. This chapter sets out the policy and legislation relevant to the proposed East Anglia THREE project at the international, national, regional and local level.

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### Chapter 3 Ends Here