

# **Great Yarmouth Third River Crossing**

## **Application for Development Consent Order**

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### **Document 6.2: Environmental Statement Volume II: Technical Appendix 8A: Legislation, Policy and Guidance**

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#### **Planning Act 2008**

#### **The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) (“APFP”)**

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# 1 Legislation, Policy and Guidance

**1.1.1** Tables 1.1 to 1.3 summarise the applicable legislation, policy and guidance to Chapter 8: Nature Conservation.

*Table 1.1: Summary of Legislation*

Legislation	Summary	Chapter Reference
<b>The Conservation of Habitats and Species Regulations (Habitats Regulations) (2017) (as amended)</b>	<p>The EC Habitats Directive and EC Birds Directive are transposed into UK law via the Conservation of Habitats and Species Regulations 2017 (as amended), referred to as the Habitats Regulations. All species listed under Annex IV of the Habitats Directive require strict protection and are known as European Protected Species (EPS). Certain EPS are also listed under Annex II of the Habitats Directive and are afforded protection by the establishment of core areas of habitat known as Special Areas of Conservation (SAC).</p> <p>The Birds Directive seeks to maintain populations of all wild bird species across their natural range (Article 2). All bird species listed under Annex I of the Birds Directive are rare or vulnerable and afforded protection by the classification of Special Protection Areas (SPAs). These are also designated under all regularly occurring migratory species, with regard to the protection of wetlands of international importance (Article 4).</p>	Natura 2000 sites (the collective term for the network of sites in the European Union including SACs and SPAs) identified for consideration in this chapter are detailed in Section 8.5 of the Chapter and further assessed in the Habitat Regulations Report (document reference 6.11) for the Scheme.
<b>The Wildlife and Countryside Act (WCA) (1981) (as amended)</b>	<p>Under the WCA (England and Wales) all birds, their nests and eggs (with exception of species listed under Schedule 2) are protected by the WCA. It is an offence to intentionally kill, injure, or take any wild bird, their eggs or to damage or destroy the nest of any wild bird (whilst being built, or in use).</p> <p>Species listed on Schedule 5 of the WCA, which includes species of reptile native to the UK, gives either full or partial protection against the killing, injuring or taking, the possession or control of</p>	Species listed on the schedules of the WCA relevant to the Application Site are detailed in Section 5 and assessed through the framework in Section 8.6 of the Chapter. In

Legislation	Summary	Chapter Reference
	<p>individuals (live or dead) and the damage, destruction, disturbance or obstruction of places of shelter or protection.</p> <p>Schedule 9 of the WCA also makes provision for the control of invasive species and makes it illegal to cause such plants to grow in the wild.</p> <p>In addition, the WCA makes it an offence (subject to exceptions) to pick, uproot, trade in, or possess (for the purposes of trade) any wild plant listed in Schedule 8, and prohibits the unauthorised intentional uprooting of such plants.</p>	<p>addition, Appendix 8D details the surveys undertaken for breeding birds, Appendix 8B and 8C detail the potential for reptiles and invasive species to be present within the Principal Application Site.</p>
<b>Countryside Rights of Way (CRoW) Act (2000)</b>	<p>The CRoW Act has amended the WCA in England and Wales strengthening the protection afforded to Sites of Special Scientific Interest (SSSI) and the legal protection for threatened species. It adds the word 'reckless' to the wording of the offences listed under section 9(4) of the WCA. This alteration makes it an offence to recklessly commit an offence, where previously an offence had to be intentional to result in a breach of legislation.</p>	<p>SSSIs identified for consideration in this chapter are detailed in Section 8.5.</p>
<b>Natural Environment and Rural Communities Act (2006)</b>	<p>Species and Habitats of Principal Importance in England and Wales are listed under section 41 and section 42 respectively of the NERC Act. The section 41 and 42 lists detail species that are of principal importance for the conservation of biodiversity in England and Wales, and should be used to guide decision-makers when implementing their duty to have regard for the conservation of biodiversity in the exercise of their functions.</p>	<p>Species listed on the schedules of the NERC Act (2006) relevant to the Application Site are detailed in Section 8.5 and assessed through the framework in Section 8.6. The potential presence of such species within the Principal Application Site is also outlined in Appendices 8B and 8C.</p>

Table 1.2: Summary of Policy

Policy	Summary	Chapter Reference
<b>National Policy Statement (NPS) for National Networks (2014)</b>	<p>Applicants assessment - Paragraphs 5.22 – 5.23</p> <p><i>“Where the project is subject to EIA the applicant should ensure that the environmental statement clearly sets out any likely significant effects on internationally, nationally and locally designated sites of ecological or geological conservation importance (including those outside England) on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity and that the statement considers the full range of potential impacts on ecosystems.</i></p> <p><i>The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.”</i></p>	<p>Species and sites as detailed in the NPS NN to the Application Site are described in Section 8.5 and assessed through the framework in Section 8.6 of the Chapter. Measures taken to conserve and /or, enhance mitigate biodiversity features are described in Section 8.7. Additional mitigation measures deemed to be required are outlined in Section 8.8.</p>
<b>National Policy Statement (NPS) for National Networks (2014)</b>	<p>Decision making - Paragraph 5.25</p> <p><i>“As a general principle, and subject to the specific policies below, development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. The applicant may also wish to make use of biodiversity offsetting in devising compensation proposals to counteract any impacts on biodiversity which cannot be avoided or mitigated. Where significant harm cannot be avoided or mitigated, as a last resort, appropriate compensation measures should be sought.”</i></p>	<p>Species and sites relevant to the assessment of the Scheme are described in Section 8.5 and assessed through the framework in Section 8.6 of the Chapter. Measures taken to conserve and / or, enhance biodiversity features are described in Section 8.7. These measures have focused on key species relevant to the</p>

Policy	Summary	Chapter Reference
		Scheme and are designed to produce gains for biodiversity. Additional mitigation measures deemed to be required are outlined in Section 8.8.
<b>National Policy Statement (NPS) for National Networks (2014)</b>	<p>International sites - Paragraph 5.27</p> <p><i>“The most important sites for biodiversity are those identified through international conventions and European Directives. The Habitats Regulations provide statutory protection for European Directives. The National Planning Policy Framework states that the following wildlife sites should have the same protection as European sites:</i></p> <ul style="list-style-type: none"> <li><i>• potential Special Protection Areas and candidate Special Areas of Conservation;</i></li> <li><i>• listed or proposed Ramsar sites; and</i></li> <li><i>• sites identified, or required, as compensatory measures for adverse effects on European sites, potential Special Protection Areas, possible Special Areas of Conservation and listed or proposed Ramsar sites.”</i></li> </ul>	Natura 2000 sites (the collective term for the network of sites in the European Union including SACs and SPAs) identified for consideration in this chapter are detailed in Section 8.5 of the Chapter and further assessed in the Habitat Regulations Report (document reference 6.11) for the Scheme.
<b>National Policy Statement (NPS) for National Networks (2014)</b>	<p>Sites of Special Scientific Interest - Paragraph 5.29</p> <p><i>“Where a proposed development on land within or outside a SSSI is likely to have an adverse effect on a SSSI (either individually or in combination with other developments), development consent should not normally be granted. Where an adverse effect on the site’s notified special interest features is likely, an exception should be made only where the benefits of the development at this site clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest, and any broader impacts on the national</i></p>	SSSIs identified for consideration for the nature conservation assessment of the Scheme are detailed in Section 8.5 and assessed in Section 8.6 of the Chapter.



Policy	Summary	Chapter Reference
	<i>network of SSSIs. The Secretary of State should ensure that the applicant's proposals to mitigate the harmful aspects of the development and, where possible, to ensure the conservation and enhancement of the site's biodiversity or geological interest, are acceptable. Where necessary, requirements and/or planning obligations should be used to ensure these proposals are delivered."</i>	
<b>National Policy Statement (NPS) for National Networks (2014)</b>	<p>Regional and local sites - Paragraph 5.31</p> <p><i>"Sites of regional and local biodiversity and geological interest (which include Local Geological Sites, Local Nature Reserves and Local Wildlife Sites and Nature Improvement Areas) have a fundamental role to play in meeting overall national biodiversity targets, in contributing to the quality of life and the well-being of the community, and in supporting research and education. The Secretary of State should give due consideration to such regional or local designations. However, given the need for new infrastructure, these designations should not be used in themselves to refuse development consent."</i></p>	Regional and local sites identified for consideration for the nature conservation assessment of the Scheme are detailed in Section 8.5 and assessed in Section 8.6 of the Chapter.
<b>National Policy Statement (NPS) for National Networks (2014)</b>	<p>Biodiversity within and around developments - Paragraph 5.33</p> <p><i>"Development proposals potentially provide many opportunities for building in beneficial biodiversity or geological features as part of good design. When considering proposals, the Secretary of State should consider whether the applicant has maximised such opportunities in and around developments. The Secretary of State may use requirements or planning obligations where appropriate in order to ensure that such beneficial features are delivered."</i></p>	Measures taken to conserve and /or, enhance biodiversity features are described in Section 8.7 (and included in the Outline CoCP (document reference 6.16). These measures have focused on key species relevant to the Scheme and are designed to produce gains for biodiversity. Additional mitigation



Policy	Summary	Chapter Reference
		measures deemed to be required are outlined in Section 8.8.
<b>National Policy Statement (NPS) for National Networks (2014)</b>	<p>Protection of other habitats and species - Paragraphs 5.34 - 5.35</p> <p><i>“Many individual wildlife species receive statutory protection under a range of legislative provisions.</i></p> <p><i>Other species and habitats have been identified as being of principal importance for the conservation of biodiversity in England and Wales and therefore requiring conservation action. The Secretary of State should ensure that applicants have taken measures to ensure these species and habitats are protected from the adverse effects of development. Where appropriate, requirements or planning obligations may be used in order to deliver this protection. The Secretary of State should refuse consent where harm to the habitats or species and their habitats would result, unless the benefits of the development (including need) clearly outweigh that harm”</i></p>	<p>Species and habitats relevant to the assessment of the Scheme are described in Section 8.5 and assessed through the framework in Section 8.6. Mitigation measures deemed required for the Scheme are described in Section 8.7 of the Chapter.</p>
<b>National Policy Statement (NPS) for National Networks (2014)</b>	<p>Mitigation - Paragraph 5.36</p> <p><i>“Applicants should include appropriate mitigation measures as an integral part of their proposed development, including identifying where and how these will be secured. In particular, the applicant should demonstrate that:</i></p> <ul style="list-style-type: none"> <li><i>• during construction, they will seek to ensure that activities will be confined to the minimum areas required for the works;</i></li> <li><i>• during construction and operation, best practice will be followed to ensure that risk of disturbance or damage to species or habitats is minimised</i></li> </ul>	<p>Mitigation measures deemed required for the Scheme are described in Section 8.8. Embedded mitigation and enhancement measures are also described in Section 8.7 and included in the Outline CoCP (document reference 6.16).</p>

Policy	Summary	Chapter Reference
	<p>(including as a consequence of transport access arrangements);</p> <ul style="list-style-type: none"> <li>• habitats will, where practicable, be restored after construction works have finished;</li> <li>• developments will be designed and landscaped to provide green corridors and minimise habitat fragmentation where reasonable;</li> <li>• opportunities will be taken to enhance existing habitats and, where practicable, to create new habitats of value within the site landscaping proposals, for example through techniques such as the 'greening' of existing network crossing points, the use of green bridges and the habitat improvement of the network verge." </li></ul>	
<b>National Planning Policy Framework (2019)</b>	Section 15, paragraph 170 states that the planning system should contribute to and enhance the natural and local environment by " <i>minimising impacts on biodiversity and providing net gains in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures</i> ".	Mitigation measures deemed required for the Scheme are described in Section 8.8 of the Chapter and included in the Outline CoCP (document reference 6.16). Additional mitigation measures deemed to be required are outlined in Section 8.8.
<b>National Planning Policy Framework (2019)</b>	Section 15, paragraph 174 states that planning applications should " <i>promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity</i> ".	Embedded mitigation and enhancement measures are described in Section 8.7 of the Chapter and included in the Outline CoCP (document reference 6.16). These measures have focused on key species relevant to the Scheme and are designed to produce gains for biodiversity.
<b>East</b>	Plan Policy BIO1 states that " <i>Appropriate</i>	Habitats and species

Policy	Summary	Chapter Reference
<b>Inshore and East Offshore Marine Plans (2014)</b>	<i>weight should be attached to biodiversity, reflecting the need to protect biodiversity as a whole, taking account of the best available evidence including on habitats and species that are protected or of conservation concern in the East marine plans and adjacent areas (marine, terrestrial)."</i>	recorded during baseline surveys of benthic, terrestrial and marine ecology are outlined in Appendix 8I and summarised in Section 8.5 of the ES. These features are then assessed through the framework in Section 8.6 of the Chapter.
<b>East Inshore and East Offshore Marine Plans (2014)</b>	Plan Policy BIO2 States that <i>"Where appropriate, proposals for development should incorporate features that enhance biodiversity and geological interests."</i>	Embedded mitigation and enhancement measures are also described in Section 8.7 of the Chapter and included in the Outline CoCP (document reference 6.16). These measures have focused on key species relevant to the Scheme and are designed to produce gains for biodiversity.
<b>The Norfolk Biodiversity Action Plan</b>	The Norfolk Biodiversity Action Plan identifies objectives and targets to promote and protect biodiversity within the county during the development planning process.	Habitats and species relevant to this Plan are identified in Section 8.5 and assessed through the framework in Section 8.6 of the Chapter.

Table 1.3: Summary of Guidance

Guidance	Summary	Chapter Reference
<b>The UK Post-2010 Biodiversity Framework (2011-2020) Biodiversity Action Plan (JNCC and DEFRA, 2012) (Ref. 8A.1)</b>	This Framework lists the UK's most threatened species and habitats and sets out targets and objectives for their management and recovery. The UK Biodiversity Action Plan (BAP) process is delivered nationally, regionally and	Notable species and habitats set out in this Framework are described in Section 8.5 and assessed through the framework in Section 8.6 of the Chapter. Mitigation measures deemed required for the Scheme are described in Section

Guidance	Summary	Chapter Reference
	locally and should be used as a guide for decision-makers to have regard for the targets set by the framework and the goals they aim to achieve. The UK BAP has now been replaced by the UK Post-2010 Biodiversity Framework. However, it contains useful information on how to characterise important species assemblages and habitats which is still relevant (UK Post-2010 Biodiversity Framework, 2012).	8.8.
<b>Biodiversity 2020: A strategy for England's wildlife and ecosystem services (DEFRA, 2011) (Ref. 8A.2)</b>	This document provides a strategy for England on the implementation of international legislation and provides a strategic plan for biodiversity policy for terrestrial, aquatic and marine habitats.	Species and habitats relevant to the assessment of the Scheme are described in Section 8.5 and assessed through the framework in Section 8.6 of the Chapter. Mitigation measures deemed required for the Scheme are described in Section 8.8.
<b>IAN 130/10 Ecology and Nature Conservation: Criteria for Impact Assessment (Highways Agency, 2010) (Ref. 8A.3)</b>	DMRB Volume 11 SECTION 2, Part 5 presents a framework for the development of significance criteria based around consideration of resource value, the magnitude of impacts and the significance of effects for ecology and nature conservation. This Interim Advice Note (IAN) provides supplementary guidance, on the application of such significance criteria for use in the assessment of the	Chapter 8 follows the broad guidance presented in this document. Section 8.5 presents the methodology followed for the impact assessment of nature conservation which accords with IAN 130/10.

Guidance	Summary	Chapter Reference
	potential impacts of road projects on nature conservation resources.	
<b>Guidelines for Ecological Impact Assessment in the United Kingdom and Ireland published by the Chartered Institute of Ecology and Environmental Management (CIEEM, 2018) (Ref. 8A.4)</b>	Guidance on Ecological Impact Assessment (EcIA) for terrestrial, coastal and marine environments.	Section 8.5 presents the methodology followed for the impact assessment of nature conservation which refers to the framework in CIEEM (2018) in conjunction with that given in IAN 130/10.

## 2 References

- Ref. 8A.1: JNCC and DEFRA (2012). *The UK Post-2010 Biodiversity Framework (2011-2020) Biodiversity Action Plan*. Published by JNCC and Defra on behalf of the Four Countries' Biodiversity Group.
- Ref. 8A.2: DEFRA (2011). *Biodiversity 2020: A Strategy for England's wildlife and ecosystem services*. Department for Environment, Food and Rural Affairs.
- Ref. 8A.3: Highways Agency (2010). *Interim Advice Note 130/10: Ecology and Nature Conservation: Criteria for Impact Assessment*.
- Ref. 8A.4: CIEEM (2018). *Guidelines for Ecological Impact Assessment in the United Kingdom and Ireland*. Chartered Institute of Ecology and Environmental Management.