

Great Yarmouth Third River Crossing Application for Development Consent Order

Document 7.3: Consents and Agreement Position Statement

Planning Act 2008

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

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Foreword

This document accompanies an application ("the Application") submitted by Norfolk County Council ('the Applicant') to the Secretary of State for a Development Consent Order ('DCO') under the Planning Act 2008.

If made by the Secretary of State, the DCO would grant development consent for construction, operation and maintenance of a new bascule bridge highway crossing of the River Yare in Great Yarmouth, and which is referred to in the Application as the Great Yarmouth Third River Crossing ("the Scheme").

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) require that an application for a DCO be accompanied by the documents specified at Regulation 5(2)(a) to (r). This is one of those documents and is specified at Regulation 5(2)(q).

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Glossary of Abbreviations and Defined Terms

The APFP Regulations	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
The Applicant	Norfolk County Council (in its capacity as Highway Authority and promoter of the Scheme)
The Consultation	Department for Communities and Local Government, <i>Technical consultation on planning</i> , July 2014
DCLG	The Department for Communities and Local Government, which changed its name to the Ministry of Housing, Communities & Local Government in January 2018
DCO	Development Consent Order, made under the Planning Act
Knuckles	<p>The areas of the River Yare into which the proposed development extends (from the existing quay walls). These areas consist of the following:</p> <ul style="list-style-type: none"> Physical protection systems (which are protective structures provided adjacent to the bascule abutments) to fully or partial absorb the design ship collision loads from an aberrant ship or vessel. These protection systems are located on both the south and north of each bascule abutment. They consist of sheet piles driven to dense sands infilled with stone or granular material and capped with a reinforced concrete slab. A bascule abutment which accommodates and allows the movement of the counterweight and houses the mechanical, electrical, instrumentation, control and automation systems. The bascule abutment consists of driven piles and reinforced concrete slabs and walls. Plant and control rooms on the western side and plant rooms on the eastern side. Vessel Impact Protection Systems located at the interface between the physical protection systems, the bascule abutments and the River Yare. <p>There are knuckles on both the east and west sides of the River Yare.</p>
The Planning Act	The Planning Act 2008
NSIP	Nationally Significant Infrastructure Project

Scheme

The Great Yarmouth Third River Crossing project for which the Applicant seeks development consent

1 Summary and Introduction

1.1 Introduction

- 1.1.1 This Consents and Agreements Position Statement relates to an application submitted by Norfolk County Council (“the Applicant”) to the Planning Inspectorate, on behalf of the Secretary of State for Transport, under Section 37 of the Planning Act 2008 (the “Application”).
- 1.1.2 If made by the Secretary of State, the DCO will grant development consent for the construction, operation and maintenance of the new crossing of the River Yare in Great Yarmouth, consisting of a new dual carriageway road across the river, linking the A47 at Harfrey’s Roundabout on the western side to the A1243 South Denes Road on the eastern side (referred to as “the Scheme”). This Consents and Agreements Position Statement has been prepared in accordance with the requirements of section 37(3)(d) of the Planning Act 2008 and regulation 5(2)(q) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“the APFP Regulations”), as a document which the Applicant considers necessary to support the Application.
- 1.1.3 This statement sets out the Applicant’s intended strategy for obtaining the consents and associated agreements needed to implement the Scheme.
- 1.1.4 The purpose and objective of this statement is to identify at a high level what consents are expected to be needed for the Scheme, together with how those consents will be obtained.

2 The Scheme

2.1 Introduction

- 2.1.1** Chapter 2 of Volume I of the Environmental Statement (ES) (DCO Document **6.1**) provides a full description of the Scheme, and is accompanied by the General Arrangement Plan (DCO Document **2.2**). Both documents should be read alongside the Consents and Agreements Position Statement, as a detailed project description is not provided in this document to prevent unnecessary duplication.
- 2.1.2** The Scheme involves the construction, operation and maintenance of a new crossing of the River Yare in Great Yarmouth. The Scheme consists of a new dual carriageway road, including a road bridge across the river, linking the A47 at Harfrey's Roundabout on the western side of the river to the A1243 South Denes Road on the eastern side. The Scheme would feature an opening span double leaf bascule (lifting) bridge across the river, involving the construction of two new 'knuckles' extending the quay wall into the river to support the bridge. The Scheme would include a bridge span over the existing Southtown Road on the western side of the river, and a bridge span on the eastern side of the river to provide an underpass for existing businesses, enabling the new dual carriageway road to rise westwards towards the crest of the new crossing.

3 Strategy

3.1 Strategy

3.1.1 The basis of the Applicant's consents strategy is that:

- in February 2018, the Secretary of State for Transport directed, pursuant to section 35 of the Planning Act, that the Scheme be treated as a Nationally Significant Infrastructure Project ("NSIP");
- the consequence of this direction is that a DCO must be sought as the principal consent for the works and to provide the necessary powers for land acquisition, temporary possession and for ancillary matters;
- where possible and practicable, additional consents should be included within the DCO; and
- the Scheme has been and will continue to be developed on the basis of strong collaboration between the key stakeholders, and agreements will be secured at key stages of project development as necessary.

3.1.2 The basis for this approach, particularly that set out in the third bullet above, is two-fold;

- the extent of the powers available under the Planning Act (as described in section 3.2 below); and
- the practicality of including a consent within the DCO in the light of the information available at the time of submitting the application for development consent.

3.2 Planning Act 2008

3.2.1 Section 33 of the Planning Act makes it clear that there is no requirement for certain principal conventional consents to be obtained where a DCO is required to authorise a project (as is the case for the Scheme).

3.2.2 In addition, Part 7 of the Planning Act sets out what can be included within a DCO. Effectively, the scope of this is broad and includes compulsory acquisition powers.

3.2.3 In particular, section 120 of the Planning Act makes it clear that the following can be included within a DCO:

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- ancillary matters (including those listed in Part 1 of Schedule 5 to the Act);
 - the application, modification or exclusion of statutory provisions for which the provision may be made in the DCO;
 - amendment, repeal or revocation of any local legislation, where thought necessary or expedient by the Secretary of State in consequence of or in connection with the DCO; and
 - incidental, consequential, supplementary, transitional or transitory provisions and savings.

3.2.4 Further, section 150 of the Act states that a requirement to obtain certain prescribed consents, or authorisations, under the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 can be removed by the DCO with the consenting body's agreement.

3.2.5 From the above, it is clear that the intention of the Act is to encourage as many consents to be 'wrapped up' in a DCO as possible creating a 'one-stop-shop' approach for construction related consents.

3.2.6 The Applicant believes that the approach to including all consents within a DCO should apply for both those that do, and those that do not, require the agreement of the relevant body under section 150 in order for them to be included in the DCO. The Applicant envisages this approach being as follows:

- the DCO contains an express provision disapplying the requirement for the consent in question.
- in exchange, the DCO includes 'protective provisions' for the benefit of the body concerned, typically providing for the body to approve detailed plans of relevant aspects of the project in question before they may be constructed and, in some cases, operated. Conditions and protections relating to ongoing operation can also be included.
- those provisions are specifically stated to have effect unless otherwise agreed between the Applicant (as the beneficiary of the DCO) and the body concerned.
- compliance with the provisions is a matter as between the parties and can be enforced accordingly.
- either way, the protective provisions provide a means for the body concerned to monitor, enforce compliance and to review the effectiveness of the approval regime enshrined in the protective provisions.
- the mechanism of approval being given under the protective provisions allows the body concerned to approach a project in two stages (i) the DCO application stage, when the principle of the project is accepted by

the body concerned and the detail of the protective provision is negotiated and (ii) the subsequent plan approval stages under the protective provisions when the approval of plans cannot be unreasonably refused but when detailed matters going to construction can be properly considered.

- 3.2.7** This is a tried and tested approach adopted in numerous local and public (hybrid) Acts, Harbours Act Orders, Transport and Works Act Orders and Scottish Provisional Orders for many decades and is now being adopted in the case of DCOs.

3.3 The approach of the Applicant

- 3.3.1** It is clear that the intent of the Act and Government policy is to include as many construction related consents as practicable within DCOs. The Applicant's approach to consents for the Scheme is therefore to fit within that legislative and policy intent and to include as many consents as practicable within the DCO. This means that the Scheme will benefit from the principal advantage that the intent of the Act and Government policy are designed to deliver, namely the certainty that the majority of consents required for the construction of the Scheme are in place at the point of the making of the DCO, minimising the need for any further approvals before the works covered by the DCO can commence.

4 Consents and Agreements

4.1 Consents

4.1.1 The principal consent for the Scheme will be a DCO. The DCO process enables land acquisition, along with many consents and powers, to be dealt with at the same time. The DCO application may, however, need to be supplemented by other applications because:

- a particular consent cannot be contained in the DCO;
- a consenting authority declines to allow a consent to be contained in the DCO or
- it is not desirable or it is inappropriate to include a consent within the DCO due to the stage of design development and the level of detail available at the time the DCO is made.

4.1.2 The majority of consents required are included, or addressed, within the draft DCO, as permitted by various provisions of the Planning Act 2008, although discussions in some of these respects are continuing with the principal stakeholders. These fall into the following categories:

- authorisation of all permanent and temporary works (equivalent to planning permission);
- compulsory acquisition of land (including airspace and subsoil) and of rights over land such as easements, restrictive covenants and mineral extraction rights, and the temporary possession of land;
- consent to carry out street works and to stop up highways permanently or temporarily;
- highway matters (such as classifying or re-classifying parts of the highway network (under the Highways Act 1980));
- traffic regulation matters (such as the imposition of waiting restrictions, one-way requirements and the revocation or variation of existing Traffic Regulation Orders (under the Road Traffic Regulation Act 1984);
- consent to stop up and divert or replace (where necessary) public and private rights of way and private means of access;
- extinguishment of public rights of navigation;
- consent to undertake 'flood risk' activities;
- consent to obstruct ordinary watercourses;
- consent to discharge into an available watercourse;

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- consent or approval for the carrying out of the works required under any relevant byelaws made under the Water Resources Act 1991;
 - Consent or approval for the carrying out of the works required under any relevant byelaws made under the Land Drainage Act 1991;
 - consent to carry out tree works, including works affecting trees subject to Tree Preservation Orders (under the Town and Country Planning Act 1990 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012);
 - deemed marine licence under the Marine and Coastal Access Act 2009;
 - consent to remove human remains;
 - disapplication of certain byelaws under the Great Yarmouth Port Authority Navigation (Haven) Byelaws; and
 - consent to carry out any required diversions of statutory undertakers' apparatus.

4.1.3 Some of these consents are prescribed in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. As a result, under section 150 of the Planning Act 2008 the relevant consenting body must agree to the inclusion of these consents within (i.e. disapplied by) the DCO. Discussions between the Applicant and these consenting bodies are ongoing, and the Applicant is confident that the necessary agreements will be obtained before or during the examination of its Application, in exchange for the Applicant including in the DCO appropriate protective provisions.

4.1.4 The following consents, if required, will be sought separately from the DCO, for instance:

- **Environmental Permits** under the Environmental Permitting (England and Wales) Regulations 2016 – in principle, the DCO could include a provision removing the requirement for such permits if the Environment Agency (EA) agrees and appropriate provision is made through the DCO (e.g. protective provisions). However, it is considered unlikely that the EA would agree, aside from 'flood risk' elements of the permitting regime, as there appears to be no precedent for the EA having done so in DCO applications to date. Further, it may be more appropriate to obtain these permits once detailed construction methods and programmes are identified. Therefore, at this stage it is assumed that these permits, apart from those relating to flood risk activities, will be sought separately.
- **Water Abstraction and Impounding Licences** – during construction of the Scheme it may be necessary to dewater excavations or to impound ordinary watercourses to carry out drainage works to ordinary watercourses. The Environment Agency has adopted a policy of not

granting its consent, under section 150 of the Planning Act, to disapply the requirement for an abstraction licence under section 24 Water Resources 1991. Exemptions from the requirement to obtain licences under sections 24 and 25 of the Water Resources Act 1991 are contained in the Water Abstraction and Impounding (Exemptions) Regulations 2017. If the works do not benefit from an applicable exemption, if for example the quantities of water to be dewatered exceed the exempt thresholds, then the Applicant or its contractor would apply to the Environment Agency for the necessary licence in the ordinary way.

- **Protected Species Licences** under the Wildlife and Countryside Act 1981, the Conservation of Habitats and Species Regulations 2017 and other legislation – the presence (or otherwise) of protected species has been determined by surveys undertaken as part of the Environmental Impact Assessment work and is reported in chapter 8 Nature Conservation of the Environmental Statement (Document reference 6.1). In principle, the DCO could include a provision removing the requirement for such licenses but it is unlikely that Natural England (NE) will agree as there appears to be no precedent for NE having done so in DCO applications to date. Further, it will be more appropriate to obtain these licenses once further details are available. Therefore, it is assumed that these licences (where required) will be sought separately;
- any further **Marine Licences** under the Marine and Coastal Access Act 2009 – for example for the deposition of material excavated from the River Yare during construction of the bridge piers and Knuckles. The Environmental Statement assumes that this material would be managed terrestrially but should it be desirable and appropriate to dispose of this material in the marine environment then a separate marine licence would be sought. Similarly, any material generated through maintenance dredging would be disposed of at an appropriately licensed site;
- any **section 61 consents under the Control of Pollution Act 1974** for works outside of hours specified or which exceed the permitted noise thresholds; and
- to the extent that they apply to the Scheme, the **Building Regulations 2010** would be complied with in the normal way.

4.2 Agreements

- 4.2.1 Agreements with third parties will be required as part of the DCO process and these are likely to take a variety of forms.
- 4.2.2 An important part of the DCO process is the preparation and agreement of Statements of Common Ground (SoCGs) with third parties to identify the matters on which parties are in agreement, in order to narrow the focus for

examining the application concerned and to make the examination process more efficient.

- 4.2.3 The Applicant is aiming to agree SoCGs with the consenting bodies responsible for the regimes that the DCO would disapply. Work on the SoCGs is underway, and the Applicant envisages that SoCGs will be progressed and developed throughout the examination of the Scheme.
- 4.2.4 Other forms of agreements are also likely to be required alongside SoCGs, e.g. legal agreements regulating land and works powers, undertakings, utilities agreements etc. A number of these are being progressed by the Applicant where appropriate.