

The Lake Lothing (Lowestoft) Third Crossing Order 201[*]



Lake Lothing
**THIRD
CROSSING**

Document 7.7: Consents and Agreements Position Statement

Planning Act 2008

Infrastructure Planning

**The Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009**

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1 Purpose and Objective

- 1.1 This Consents and Agreements Position Statement relates to an application (“**the Application**”) submitted by Suffolk County Council (“**the Applicant**”) to the Secretary of State (through the Planning Inspectorate) for a Development Consent Order (“**the DCO**”) made under the Planning Act 2008.
- 1.2 If made by the Secretary of State, the DCO would grant development consent for the Applicant to construct, operate and maintain a new bascule bridge highway crossing, which would link the areas north and south of Lake Lothing in Lowestoft, and which is referred to in the Application as the Lake Lothing Third Crossing (or “**the Scheme**”).
- 1.3 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**”), and in compliance with relevant guidance as a document which the Applicant considers necessary to support the Application.
- 1.4 This statement sets out the Applicant’s intended strategy for obtaining the consents and associated agreements needed to implement the Scheme.
- 1.5 The purpose and objective of this position 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 The Scheme involves the construction, operation and maintenance of a new bascule bridge highway crossing linking the areas north and south of Lake Lothing in Lowestoft, hereafter referred to as the Lake Lothing Third Crossing ("**the Scheme**").
- 2.2 The Scheme would provide a new single-carriageway road crossing of Lake Lothing, consisting of a multi-span bridge with associated approach roads, and would comprise:
- an opening bascule bridge over the Port of Lowestoft, in Lake Lothing;
 - on the north side of Lake Lothing, a bridge over Network Rail's East Suffolk Line, and a reinforced earth embankment joining that bridge, via a new roundabout junction, to the C970 Peto Way, between Rotterdam Road and Barnards Way; and
 - on the south side of Lake Lothing, a bridge over the northern end of Riverside Road including the existing access to commercial property (Nexen Lift Trucks) and a reinforced earth embankment (following the alignment of Riverside Road) joining this bridge to a new roundabout junction with the B1531 Waveney Drive.
- 2.3 The Scheme would be approximately 1 kilometre long and would be able to accommodate all types of vehicular traffic as well as non-motorised users, such as cyclists and pedestrians.
- 2.4 The opening bascule bridge design would allow large vessels to continue to use the Port of Lowestoft.
- 2.5 A new control tower building would be located immediately to the south of Lake Lothing, on the west side of the new highway crossing, to facilitate the operation of the opening section of the new bascule bridge.
- 2.6 The Scheme would also entail:
- the following changes to the existing highway network:
 - the closure of Durban Road to vehicular traffic at its junction with Waveney Drive;
 - the closure of Canning Road at its junction with Riverside Road, and the construction of a replacement road between Riverside Road and Canning Road to the west of the Registry Office;
 - a new access road from Waveney Drive west of Riverside Road, to provide access to property at Riverside Business Park;

- improvements to Kimberley Road at its junction with Kirkley Run; and
- part-signalisation of the junction of the B1531 Victoria Road / B1531 Waveney Drive with Kirkley Run;
- the provision of a pontoon for use by recreational vessels, located to the east of the new highway crossing, within the Inner Harbour of Lake Lothing; and
- works to facilitate the construction, operation and maintenance of the Scheme, including the installation of road drainage systems; landscaping and lighting; accommodation works for accesses to premises; the diversion and installation of utility services; and temporary construction sites and access routes.

2.7 The works required for the delivery of the Scheme are set out in Schedule 1 to the draft DCO (application document reference 3.1), where they are referred to as "the authorised development", with their key component parts being allocated reference numbers which correspond to the layout of the numbered works as shown on the Works Plans (application document reference 2.4). The General Arrangement Plans (application document reference 2.2) illustrate the key features of the Scheme.

2.8 The figure below provides a diagrammatic representation of the Scheme:



Figure 1: Location of the Scheme in Lowestoft

3 Strategy

- 3.1 The basis of the consents strategy is that:
- 3.1.1 in March 2016, the Secretary of State for Transport directed, pursuant to section 35 of the Planning Act 2008 (“**the Act**”), that the Scheme be treated as a Nationally Significant Infrastructure Project (“**NSIP**”);
 - 3.1.2 the consequence of this direction is that a Development Consent Order (“**DCO**”) must be sought as the principal consent for the works (under the Act) and to provide the necessary land acquisition and temporary possession powers;
 - 3.1.3 where possible and practicable, additional consents should be included within the DCO; and
 - 3.1.4 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.
- 3.2 The basis for this approach, particularly that set out in paragraph 3.1.3 above, is two-fold:
- 3.2.1 the extent of the powers available under the Act (as described in paragraphs 3.3 to 3.7 below); and
 - 3.2.2 a government consultation in 2014 in respect of the DCO process (as described in paragraphs 3.8 to 3.12).

Planning Act 2008

- 3.3 Section 33 of the 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).
- 3.4 In addition, Part 7 of the Act sets out what can be included within a DCO. Effectively, the scope of this is broad and includes compulsory acquisition powers.
- 3.5 In particular, section 120 of the Act makes it clear that the following can be included within a DCO:
- 3.5.1 ancillary matters (including those listed in Part 1 of Schedule 5 to the Act);

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- 3.5.2 the application, modification or exclusion of statutory provisions for which provision may be made in the DCO;
- 3.5.3 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
- 3.5.4 incidental, consequential, supplementary, transitional or transitory provisions and savings.
- 3.6 Further, section 150 of the Act states that a requirement to obtain certain prescribed consents (under the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015) (section 150 consents) can be removed by the DCO as long as the relevant consenting body agrees to this.
- 3.7 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.

Government consultation

- 3.8 On 31 July 2014 the Department for Communities and Local Government (“**CLG**”) published a ‘*Technical consultation on planning*’ document (“**the Consultation**”). The Consultation, which closed on 26 September 2014, set out a number of proposed reforms to the planning system, including the Nationally Significant Infrastructure Project (NSIP) regime under the Act (as referred to in paragraph 3.1.1 above). One aspect of the NSIP regime on which CLG consulted was a proposal to reduce the number of section 150 consents required.
- 3.9 In the Consultation, CLG proposed that 10 consents were removed from the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 and thus would no longer be section 150 consents. This would result in a developer being able to choose freely whether to include these consents in a DCO without the need for the agreement of the relevant consenting body. CLG stated that this would give developers more certainty and, indeed, it strongly supported the overarching policy aim of DCOs being a ‘one-stop-shop’ for consents required for the construction of major infrastructure developments.
- 3.10 On 5 March 2015¹, the Government responded to the comments received on the Consultation. As part of setting out its next steps, it was confirmed that the three consents required in respect of discharge for works purposes and trade effluent would be removed from the section 150 consents list. This was reflected in the revised section 150 consents list in the Infrastructure

¹ *Streamlining the consenting process for nationally significant infrastructure planning: The Government’s response to the Summer 2014 Technical Consultation* (CLG, March 2015).

Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 which came into force on 6 April 2015 and revoked the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010.

- 3.11 In its response to the Consultation, the Government also confirmed that: "... [removal from the section 150 list of] *European Protected Species Licences* [will] *follow early in the next Parliament when a suitable legislative vehicle is identified. The remaining six consents will be streamlined between 2015 and 2017 when taking forward work to consolidate consents within the Environmental Permitting Regulations*".
- 3.12 Work to bring forward these reforms is underway: with effect from 6 April 2016, the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 repealed section 109 of the Water Resources Act 1991 (*Structures in, over or under a main river*) (one of the six consents mentioned above) and brought 'flood risk' consents within the scope of the Environmental Permitting (England and Wales) Regulations 2010 ("the 2010 Regulations"). The 2010 Regulations have subsequently been replaced by the consolidated Environmental Permitting (England and Wales) Regulations 2016; however, the 'flood risk' consent regime is unchanged
- 3.13 The above makes clear that Government policy now supports much more clearly the 'one-stop-shop' approach for construction-related consents. The Applicant will keep under review any further Government comment made in relation to this topic.
- 3.14 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:
- 3.14.1 The DCO contains an express provision disapplying the requirement for the consent in question.
- 3.14.2 In exchange, the DCO includes 'protective provisions'² 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.

² It should be noted that in the case of the Marine Management Organisation, a 'deemed marine licence' will be included within the DCO, as permitted under s.149A of the Act. This is subtly different from the proposed solution in respect of disapplying consent requirements and including protective provisions, as this licence doesn't 'disapply' the marine licensing requirements that apply under the Marine and Coastal Access Act 2009. Instead, it deems the marine licence to have been granted by the DCO.

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- 3.14.3 Those provisions are specifically stated to have effect unless otherwise agreed between the Applicant (as the beneficiary of the DCO) and the body concerned.
- 3.14.4 Compliance with the provisions is a matter as between the parties and can be enforced accordingly.
- 3.14.5 It is possible for the provisions to say that any approval given by the body concerned under the plan approval, etc., provisions, shall be deemed to be an approval given under the legislation/regime disapplied.
- 3.14.6 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.
- 3.14.7 The mechanism of approval being given under the protective provisions allows the body concerned to approach a project in two stages:
- (a) the DCO application stage, when the principle of the project is accepted by the body concerned and the detail of the protective provisions is negotiated. Sufficient details of the project will be produced by the applicant at this stage, particularly in the Environmental Statement, the other application documents and during the Examination process, to secure this acceptance; and
 - (b) the subsequent plan approval stage(s) under the protective provisions, when the approval of plans cannot be unreasonably refused (so preserving the in-principle approval of the project signified by the DCO) but when detailed matters going to construction can properly be considered.
- 3.15 This is a tried and tested approach adopted in numerous local and public (hybrid) Acts, Harbours Act Orders, TWA Orders and Scottish Provisional Orders for many decades and is now being adopted in the case of DCOs. It is also consistent with the approach proposed by expert respondents to the Consultation, including the National Infrastructure Planning Association.

The approach of the Applicant

- 3.16 It is clear, then, 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

Consents

- 4.1 The principal consent for the Scheme will be a DCO. The DCO process enables land acquisition, along with many other 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) a particular consent cannot be contained in the DCO; (b) a consenting authority declines to allow a consent to be contained in the DCO; or (c) 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.
- 4.2 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:
- 4.2.1 authorisation of all permanent and temporary works (equivalent of planning permission);
 - 4.2.2 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;
 - 4.2.3 consent to carry out street works and to stop up highways permanently or temporarily;
 - 4.2.4 highway matters (such as classifying or re-classifying parts of the highway network (under the Highways Act 1980));
 - 4.2.5 traffic regulation matters (such as the imposition of speed limits, restrictions on use and the revocation or variation of existing Traffic Regulation Orders (under the Road Traffic Regulation Act 1984));
 - 4.2.6 consent to stop up and divert or replace (where necessary) public and private rights of way and private means of access, and public rights of navigation;
 - 4.2.7 consent to undertake 'flood risk' activities;
 - 4.2.8 consent to abstract water;
 - 4.2.9 consent to obstruct ordinary watercourses;
 - 4.2.10 consent to discharge into an available watercourse;

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- 4.2.11 consent or approval for the carrying out of the works required under any relevant byelaws made under the Water Resources Act 1991;
 - 4.2.12 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);
 - 4.2.13 deemed marine licence under the Marine and Coastal Access Act 2009;
 - 4.2.14 disapplication of any relevant local legislation or byelaws; and
 - 4.2.15 consent to carry out any required diversions of statutory undertakers' apparatus.
- 4.3 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. disappplied 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.
- 4.4 The following consents, if required, will be sought separately from the DCO, for instance:-
- 4.4.1 **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 alternative 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 regime³, as there appears to be no precedent for the EA having done so in DCO applications to date. Further, it will 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;
 - 4.4.2 **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

³ Due to this being the successor to 'flood defence consents' under the Water Resources Act 1991.

11 (Nature Conservation) of the Environmental Statement. In principle, the DCO could include a provision removing the requirement for such licences 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 licences once further details are available. Therefore, it is assumed that these licences (where required) will be sought separately;

- 4.4.3 any **consents required under the Highways Act 1980** in respect of construction works (e.g. crane oversailing licences, hoarding licences, etc) (to be sought by appointed contractor); and
- 4.4.4 any **section 61 consents under the Control of Pollution Act 1974** for works outside of hours specified or which exceed permitted noise thresholds (although the Development Consent Order proposes to amend the appeals process in respect of these licences by providing that an appeal should be heard by the Secretary of State rather than by a Magistrates' Court) (to be sought by the appointed contractor).

Agreements

- 4.5 Agreements with third parties will be required as part of the DCO process and these are likely to take a variety of forms.
- 4.6 A fundamental 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.
- 4.7 SoCGs are currently being progressed with a number of interested persons and it is intended these will be submitted into the examination in due course. The Applicant aims to submit at the preliminary meeting a first draft of Statements of Common Ground with:
 - 4.7.1 Natural England
 - 4.7.2 Historic England
 - 4.7.3 Environment Agency
 - 4.7.4 MMO
 - 4.7.5 SCC
 - 4.7.6 WDC
 - 4.7.7 Broads Authority

4.7.8 ABP

4.7.9 Highways England.

4.8 Other forms of agreement are also likely to be required alongside SoCGs, e.g. legal agreements regulating land and works powers, undertakings, memoranda of understanding, letters of comfort, etc. A number of these are being progressed by the Applicant where appropriate.