



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

REPORT ON THE IMPLICATIONS for EUROPEAN SITES

Proposed Lake Lothing Third Crossing

An Examining Authority report prepared with the
support of the Environmental Services Team

Planning Inspectorate Reference: TR010023

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1 INTRODUCTION

1.1 Background

- 1.1.1 Suffolk County Council (the Applicant) has applied to the Secretary of State for a development consent order (DCO) under Section 37 of the Planning Act 2008 (PA2008) for the proposed Lake Lothing Third Crossing (the application). The Secretary of State has appointed an Examining Authority (ExA) to conduct an examination of the application, to report its findings and conclusions, and to make a recommendation to the Secretary of State as to the decision to be made on the application.
- 1.1.2 The relevant Secretary of State is the competent authority for the purposes of the Habitats Directive¹ and the Habitats Regulations² for applications submitted under the PA2008 regime. The findings and conclusions on nature conservation issues reported by the ExA will assist the Secretary of State in performing their duties under the Habitats Regulations.
- 1.1.3 This report compiles, documents and signposts information provided within the DCO application, and submitted throughout the examination by both the Applicant and Interested Parties (IPs), up to Deadline 9 of the examination (26 April 2019) in relation to potential effects on European Sites³. It is not a standalone document and should be read in conjunction with the examination documents referred to. Where document references are presented in square brackets [] in the text of this report, that reference can be found in the Examination Library published on the National Infrastructure Planning website at the following link:
<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/lake-lothing-third-crossing/?ipcsection=docs>
- 1.1.4 This report is issued to ensure that IPs, including the statutory nature conservation bodies, ie Natural England (NE), are consulted formally on Habitats Regulations matters. This process may be relied on by the Secretary of State for the purposes of Regulation 63(3) of the Habitats Regulations. Following consultation, the responses will be considered by the ExA in making their recommendation to the Secretary of State and made available to the Secretary of State along with this report. The RIES will not be revised following consultation.
- 1.1.5 The Applicant has not identified any potential impacts on European sites in other EEA States⁴. Only UK European sites are addressed in this report.

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the 'Habitats Directive').

² The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).

³ The term European Sites in this context includes Sites of Community Importance (SCIs), Special Areas of Conservation (SACs) and candidate SACs, Special Protection Areas (SPAs), possible SACs, potential SPAs, Ramsar sites, proposed Ramsar sites, and any sites identified as compensatory measures for adverse effects on any of the above. For a full description of the designations to which the Habitats Regulations apply, and/ or are applied as a matter of Government policy, see PINS Advice Note 10.

⁴ European Economic Area (EEA) States.

1.2 Documents used to inform this RIES

- 1.2.1 The Applicant provided a Habitats Regulations Assessment report entitled 'Lake Lothing Third Crossing Habitats Regulations Assessment Report, June 2018' (application HRAR) [APP-206] with the DCO application, together with screening matrices. The HRAR included an assessment of the effects of the Proposed Development on the integrity of three of the European sites considered in the report but did not include integrity matrices.
- 1.2.1 In response to s51 advice [PD-004] issued by the Planning Inspectorate ('the Inspectorate') following acceptance of the application on 9 August 2018 and in order to address other points (noted below) the Applicant submitted an updated HRA report entitled 'Lake Lothing Third Crossing Updated Habitats Regulations Assessment Report, November 2018' (Updated HRAR) [AS-003] to the ExA on 20 November 2018, and prior to the start of the examination. The updated HRAR replaced and superseded the previous version submitted with the application [APP-206].
- 1.2.2 The Updated HRAR contained an update to the predicted effects on the Outer Thames Estuary Special Protection Area (SPA) to correctly reflect the inclusion of an extension to the SPA which was incorporated into it in 2017 (previously considered in the application HRAR separately as a potential SPA); the inclusion of integrity matrices for the designated sites that were taken forward for further assessment; and minor additional edits.
- 1.2.3 The application HRAR took into account the European Union Court of Justice (CJEU) People over Wind judgement (C-323/17). Mitigation has accordingly been considered at the integrity assessment stage, described in Section 8 of the HRAR, in respect of four of the eight European sites that were considered at screening stage.
- 1.2.4 It is stated in the Updated HRAR that the effect of the CJEU Holohan judgement (C-461/17), issued on 7 November 2018, regarding the potential need to consider impacts on other species than those for which a European site is designated and on protected species outside the protected area, was under consideration by the Applicant [AS-003]. The Applicant's response to Q2.64 of the ExA's Written Questions (ExQ1) [PD-007] indicated that it would be considered further with NE in the updated Statement of Common Ground (SoCG) to be submitted at Deadline 4 (D4). No explicit reference is made in the D4 SoCG [REP4-011] or the D5 SoCG [REP5-005] to the Holohan judgement, however all matters are stated to be agreed between NE and the Applicant.
- 1.2.5 The Applicant concluded within their DCO application that there would be no likely significant effects (NLSE) on four of the European sites that were screened, but that there was the potential for likely significant effects (LSE) on three of the European sites.

Examination

- 1.2.1 In response to ExQ1 [PD-007] the Applicant revised the Updated HRAR and a subsequent version was submitted at Deadline 3 (D3) entitled 'Lake

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Lothing Third Crossing Updated Habitats Regulations Assessment Report Revision 2' (HRAR R2) [REP3-038]. The HRAR R2 is the report which has been used to inform this RIES, and to which all subsequent references are made unless otherwise stated. It included an integrity matrix for the Broadland Ramsar site, which had not previously been taken forward to the integrity assessment stage.

1.2.2 The Applicant stated that discussions with NE were carried out during the examination to ascertain whether NE considered that the HRA R2 had appropriately addressed all ecological resources relevant to the conservation objectives and integrity of the European sites [para 3.4.2, REP3-038] concerned. NE did not submit any representations during the examination.

1.2.3 The documents used to inform this RIES are listed below:

Application Documents

- Lake Lothing Third Crossing Habitats Regulations Assessment Report (June 2018) [APP-206]

Other Documents

- Lake Lothing Third Crossing Updated Habitats Regulations Assessment Report (November 2018) [AS-003]

Examination Documents

- Examining Authority's Written Questions [PD-007]
- Marine Management Organisation (MMO) Deadline 3 Response to the Examining Authority's Written Questions [3-014]
- Environment Agency (EA) Response to the Examining Authority's Written Questions [REP3-015]
- Applicant's Response to the Examining Authority's First Written Questions [REP3-029]
- Lake Lothing Third Crossing Updated Habitats Regulations Assessment Report Revision 2 (January 2019) [REP3-038]
- Applicant's Response to Written Representations and Interested Parties' Responses to Written Questions [REP4-014]
- Marine Management Organisation Deadline 4 Response to the Examining Authority's Written Questions [4-028]

Statements of Common Ground

- Statement of Common Ground with Suffolk County Council and Waveney District Council [AS-007]

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- Statement of Common Ground with NE [AS-007, REP4-011 and REP5-005]
- Statement of Common Ground with the Marine Management Organisation [REP4-011]

1.3 Structure of this RIES

1.3.1 The remainder of this report is as follows:

- **Section 2** identifies the European sites that have been considered within the DCO application and during the examination period, up to 3 May 2019. It provides an overview of the issues that have emerged during the examination.
- **Section 3** identifies the European sites and qualifying features screened by the Applicant for potential LSE, either alone or in-combination with other projects and plans.
- **Section 4** identifies the European sites and qualifying features which have been considered in terms of adverse effects on site integrity, either alone or in-combination with other projects and plans.

2 OVERVIEW

2.1 European Sites Considered

2.1.1 The project is not connected with or necessary to the management for nature conservation of any of the European sites considered within the Applicant's assessment, as confirmed in Section 6.1 para 6.1.1 of the HRAR R2 [REP3-038].

2.1.2 The Applicant's HRAR R2 identified the following European sites (and features) for which the UK is responsible for inclusion within the assessment:

Table 2.1: Sites Screened into the HRA by Applicant

Name of European Site	Features
The Broads Special Area of Conservation (SAC)	Hard oligo-mesotrophic waters with benthic vegetation of Chara
	Natural eutrophic lakes with Magnopotamion or Hydrocharition – type vegetation
	Transition mires and quaking bogs
	Calcareous fens with Cladium mariscus and species of the Caricion davallianae
	Alkaline fens
	Alluvial forests with Alnus glutinosa and Fraxinus excelsior
	Molinia meadows on calcareous, peaty or clayey-silt-laden soils
	Desmoulin's whorl snail
	Fen orchid
	Ramshorn snail
	Otter
Broadland SPA	Bittern
	Bewick's swan
	Whooper swan
	Marsh Harrier
	Hen harrier
	Ruff
	Wigeon
	Gadwall

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	Shoveler
Broadland Ramsar	Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davalliana</i> - calcium-rich fen dominated by great fen sedge (saw sedge)
	Alkaline fens - Calcium-rich springwater-fed fens
	Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i>) - Alder woodland on floodplains
	Desmoulin`s whorl snail
	Otter
	Fen orchid
	Bewick's swan
	Wigeon
	Gadwall
	Shoveler
	Pink-footed goose (identified subsequent to designation for possible future consideration under Criterion 6)
	Greylag goose (identified subsequent to designation for possible future consideration under Criterion 6)
Southern North Sea Site of Community Importance (SCI)/candidate SAC (cSAC)	Harbour porpoise
Outer Thames Estuary SPA	Red-throated diver
	Little tern
	Common tern
Benacre to Easton Barents SPA	Bittern
	Little tern
	Marsh Harrier
Alde-Ore Estuary SPA	Avocet
	Little tern
	Marsh Harrier

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	Sandwich tern
	Lesser black-backed gull
	Redshank
	Ruff
	Seabird assemblage of international importance - regularly supports at least 20,000 seabirds
	Wetland of international importance - regular supports at least 20,000 waterfowl

- 2.1.3 The Applicant identified European sites within 30km of the DCO application site boundary. The Alde-Ore Estuary SPA is located over 30km away, but this site was included in the assessment at the request of NE (prior to the submission of the application), and the Secretary of State in its Environmental Impact Assessment Scoping Opinion [APP-165]. No other European sites or European site features were identified by NE or any other IP.
- 2.1.4 The assessment of potential effects in the HRAR R2 is presented in the form of screening and integrity matrices in accordance with the Planning Inspectorate’s Advice Note 10: Habitats Regulations Assessment.
- 2.1.5 Table 6-1 of the HRAR R2 summarises the effects considered within the screening matrices for each European site. Section 6.3 lists the European sites assessed and provides a key for the matrices. The screening matrices for each of the European sites are set out in Sections 6.4 to 6.10.
- 2.1.6 Section 8.3 of the HRAR R2 summarises the potential effects on integrity considered for The Broads SAC, the Broadland Ramsar site, the Southern North Sea SCI/SAC and the Outer Thames Estuary SPA. The integrity matrices are provided in Sections 8.5 to 8.8, for which a key is provided in para 8.4.

2.2 HRA Matters Considered During the Examination

- 2.2.1 NE agreed that the application HRAR [APP-206] adequately assessed the risk to European sites and agreed its conclusions. NE did not submit any representations during the examination; this agreement was reflected in the SoCG contained in Appendix 7 of the Applicant’s first SoCGs Report [AS-007], which indicated that all matters were agreed. The SoCG contained in Appendix 7 of the updated SoCGs Report submitted at D4 (REP4-011) repeated NE’s agreement to the approach and conclusions of the application HRAR [APP-206] but made no reference to the Updated HRAR (AS-003) submitted prior to D1. It indicated that the HRAR R2 [REP3-038] submitted for D3 was under discussion between the Applicant and NE. The SoCG contained in Appendix 7 of the updated SoCGs Report [REP5-006] submitted at D5 confirmed that all HRA matters were agreed between the Applicant and NE.

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- 2.2.2 The SoCG between Suffolk County Council/Waveney District Council and the Applicant contained in Appendix 3 of the first SoCG Report [AS-007] confirmed that it was agreed that the HRA has been appropriately undertaken and that the conclusions contained in the application HRAR [APP-206] were agreed. This statement remained in the two subsequent versions of the SoCG and no further statements were made in relation to the two subsequent versions of the HRAR.
- 2.2.3 In the EA's response to ExQ1 [REP3-015], they stated that they deferred to NE for HRA matters. HRA was not referenced in any of the versions of the EA's SoCG with the Applicant.
- 2.2.4 The first ExA Written Questions (ExQ1) [PD-007] contained a number of questions in relation to HRA matters (Q2.2.48 – Q2.76), to which the Applicant responded in their 'Response to the Examining Authority's First Written Questions' [REP3-029] and by providing the HRAR R2 [REP3-038].
- 2.2.5 In Appendix A of their D3 submission [REP3-014] the MMO responded to ExQ1 Q2.50 and Q2.76. In respect of Q2.50 they stated that they deferred to the opinion of NE in relation to impacts on European sites. In their response to Q2.76 they commented that no discussions had yet taken place with the Applicant about the Updated HRAR [AS-003] so no formal agreement had yet been reached.
- 2.2.6 In Appendix A of the MMO's D4 submission [REP4-028] they set out a further response to ExQ1 Q2.76. They stated that they were seeking engagement with NE about the scope and content of the updated HRAR [AS-003], and while they would expect the Applicant to identify all sensitive receptors associated with existing European sites and consider the likely impact pathways, they deferred to the opinion of NE in respect of the conclusions of the HRA. They commented that where mitigation measures were required to avoid or reduce any adverse effects on site integrity, the MMO would require such measures to be attached as DML conditions or included within an approved method statement.
- 2.2.1 In Section 11.1 of the 'Applicant's Responses to Written Representations and Interested Parties Responses to Written Questions' [REP4-014] the Applicant responded to the MMO's answer to ExQ1 Q2.76 and cross-referenced to the content of the SoCG agreed between the Applicant and the MMO [REP4-011]. It was agreed therein that the MMO would defer to NE's conclusions on the HRA, and that where mitigation was necessary to control the likely impact to interest features such measures should be captured as discrete conditions within the DML as necessary. Although no reference was made to it in the MMO SoCG in relation to HRA, Appendix A to the SoCG, 'Consideration Of Disposal At Sea In The Application', notes that disposal at sea was assessed in the HRAR R2 [REP3-038]. The MMO stated within the SoCG that they broadly agreed with its content, which indicated that the potential impacts associated with disposal at sea were likely to be within acceptable limits.

3 LIKELY SIGNIFICANT EFFECTS

- 3.0.1 The Applicant has described how they have determined what would constitute a 'significant effect' within Section 3.3 of their HRAR R2. This follows EC guidance on habitats assessment (EC Guidance document: 'Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (2000)' and EC Guidance document: 'Assessment of plans and projects significantly affecting Natura 2000 sites (2001)').
- 3.0.2 The Applicant has addressed potential in-combination effects within Section 6.11 of the HRAR R2. The following projects have been included in the in-combination assessment carried out by the Applicant:
- Former Sanyo Site, School Road, Lowestoft (DC/15/2004/RG3);
 - Brooke Peninsula and Jeld Wen mixed use development (DC/13/3482/OUT);
 - Lowestoft Tidal Barrier;
 - East Anglia Array Windfarm (East Anglia ONE and East Anglia THREE);
 - Great Yarmouth Third River Crossing; and
 - Sizewell C nuclear power station.
- 3.0.3 The scope of the in-combination assessment was not disputed by NE. The Applicant considered the categories of development set out in Planning Inspectorate Advice Note 10 and the conclusions of Chapter 20 of the ES (Cumulative Effects) in addition to the results of engagement with NE.
- 3.0.4 The Applicant's screening assessment [Sections 6 and 7, REP3-038] concluded that the project would have **no likely significant effect**, either alone or in-combination with other projects or plans, on the qualifying features of the three European sites listed below:
- Broadland SPA
 - Benacre to Easton Bavents SPA
 - Alde-Ore Estuary SPA
- 3.0.5 The Applicant's conclusions in relation to these sites and their features **were not disputed** by any IPs during the examination.
- 3.0.6 As a result of the screening assessment the Applicant concluded that, in the absence of control measures during construction, operation and decommissioning, the project is **likely to give rise to significant effects**, either alone or in-combination with other projects or plans, on the qualifying features of four European sites listed below, and as described in Section 7 of the HRAR R2:
- The Broads SAC: Otters
 - Broadland Ramsar site: Otters
 - Southern North Sea SCI/cSAC: Harbour porpoise

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- Outer Thames Estuary SPA: wintering Red-throated Diver
- 3.0.7 It was considered that significant effects could arise from impacts to water quality, which included consequential displacement of individual otters when in passage outside The Broads SAC and the Broadland Ramsar.
- 3.0.8 The Applicant's conclusion of potential LSE on the European sites and their qualifying features identified above **were not disputed** by any IPs during the examination.

3.1 Summary of HRA Screening outcomes during the examination

- 3.1.1 A total of 7 European sites were screened by the Applicant prior to examination (see Table 2.1 above). Of these sites, the Applicant concluded that there would be no likely significant effect on three European sites and their qualifying features (see above). The IPs did not dispute the Applicant's conclusion of NLSE on these European sites and their qualifying features during the examination.
- 3.1.2 The Applicant concluded that in the absence of the implementation of mitigation there was potential for a LSE on four European sites (see above) arising from impacts to water quality.
- 3.1.3 The IPs did not dispute the Applicant's conclusion for these European sites and qualifying features. These sites are discussed further in Section 4 of this report.

4 ADVERSE EFFECTS ON INTEGRITY

4.1 Conservation Objectives

4.1.1 The conservation objectives for all of the European sites taken forward for consideration of effects on their integrity and discussed in this section of the report were provided by the Applicant in the HRAR R2.

4.2 The Integrity Test

No Adverse Effects on Site Integrity

4.2.1 The Applicant concluded in the HRAR R2 that with the implementation of the proposed mitigation the project will not adversely affect the integrity of the European sites and features listed below alone or in combination with any other plan or project:

- The Broads SAC: Otter
- Broadland Ramsar: Otter
- Southern North Sea SCI/cSAC: Harbour porpoise
- Outer Thames Estuary SPA: over-wintering Red-throated diver

4.2.2 The Applicant described the principal aim of the proposed mitigation during construction as to avoid the contamination of Lake Lothing. It would comprise measures in line with best practice Pollution Prevention Guidance, which would be agreed with the EA prior to commencement of construction activities. These would include the surface water drainage strategy and the storage of all fuels, oils and chemicals on an impermeable bunded and secured base. The measures are contained in the Interim Code of Construction Practice (CoCP) (ES Appendix 5A Revision 2) [REP4-017], which forms the framework for the full CoCP that would be prepared by the Contractor, as secured by DCO Requirement 4 [REP5-003].

4.2.3 The operational mitigation measures comprise the pollution control measures incorporated into the design of the Proposed Development as part of the Drainage Strategy (ES Appendix 18B Revision 2) [REP5-014], secured by DCO Requirement 6 [REP5-003].

4.2.4 In the event that the Proposed Development was decommissioned, the mitigation would be broadly the same as that proposed for the construction period.

4.2.5 The evidence notes to the integrity matrices in the HRAR R2 describe the proposed mitigation and cross-reference to information contained in the Environmental Statement and other application documents as appropriate.

4.2.6 The Applicant's conclusions in relation to the sites and features listed above were not disputed by any IPs.