

TR010023

**Planning Act 2008 and the Infrastructure Planning (Examination  
Procedure) Rules 2010**

**Application by Suffolk County Council for an Order Granting  
Development Consent for the proposed Lake Lothing Third  
Crossing**

**Summary of  
Written Representations made by  
Associated British Ports  
8 January 2019**

**Planning Inspectorate Reference No: TR010023**

**Objector Reference: 20013261**

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## 1 OVERVIEW

1.1 The objective of ABP's Written Representations is twofold:-

- (a) First, to place the LLTC proposals in the context of the Port of Lowestoft ("Port"), a statutory port undertaking and its business – both existing and future.
- (b) Second, to explain why the LLTC proposals will cause “serious detriment” to the statutory port undertaking.

1.2 It should be noted at the outset that ABP does not object to the principal of a third crossing of Lake Lothing, but it does object to the LLTC as currently proposed.

## 2 ASSOCIATED BRITISH PORTS

2.1 ABP is the owner and operator of 21 Ports across England, Wales and Scotland.

2.2 ABP operates the Port in its capacity as both the owner and the statutory port undertaker, and is also the:

- (a) Statutory Harbour Authority ("SHA") for the Port harbour area; and
- (b) Competent Harbour Authority ("CHA") with respect to pilotage for the navigable waters within the Port and the seaward approaches.

2.3 As port operator and SHA, ABP is required to comply with a myriad of statutory duties and functions ranging from the safety of navigation to the protection of the environment and from issues of health and safety to regulation by bye-laws.

2.4 ABP is also vested with a range of powers relating to the construction, maintenance and operation of the Port, many of derive from the powers granted by the Harbours, Docks and Piers Clauses Act 1847, together with an array of historical local legislation

## 3 THE PORT OF LOWESTOFT

3.1 The Port covers an area of approximately 63 hectares (155 acres), across both the landside and the water and comprises an Inner and Outer Harbour.

- 3.2 As the Port is able to accommodate vessels up to 5,000 gross tonnes, it is ideally placed to capitalise on major new growth markets in both offshore energy support activities and construction aggregates, whilst at the same time building on its traditional strengths in bulks, fisheries and general cargo.

### ***The Outer Harbour***

- 3.1 Port operations in the Outer Harbour currently include:
- (a) *East Anglia One* – the construction management, operation and maintenance (“O&M”) base for this offshore wind farm;
  - (b) *Greater Gabbard* – The O&M base for this offshore wind farm;
  - (c) *Sembmarine SLP Ltd* - facilities for the construction of large top-side deck structures and jackets destined for oil and gas fields and wind farms primarily located in the North Sea;
  - (d) *The Lowestoft Fishing Fleet* – currently comprising some 13 inshore fishing vessels; and
  - (e) *Leisure* – a large number of recreational craft moored in the Outer Harbour yacht marina.

### ***The Inner Harbour***

- 3.2 Port operations in the Inner Harbour currently include:
- (a) *Offshore Energy Related Vessel Berths* – quay areas (Town Quay and former Shell Base Quay) accommodating offshore renewable CTVs, wind farm project and survey and survey vessels;
  - (b) *Cefas* - The quayside base for the Centre for Environment, Fisheries and Aquaculture Science (Cefas), with their research vessel operating from Cefas Quay;
  - (c) *Talismans* – Predominantly for vessel repair and preparation for dry docking;
  - (d) *Dudmans* – A 14,000-tonne capacity silo and storage facility at Silo Quay, which accommodates a range of materials, including grain and cement;
  - (e) *Common User Quay* – known as North Quay, the longest quay in the Inner Harbour at circa 650 metres together with 16,000 square metres of storage; and

(f) *Ship repairs* – dry dock facilities, located between Town Quay and Cefas Quay.

3.3 The LLTC would enter the Port at a location approximately 850 metres from the existing bascule bridge, effectively bisecting the operational quayside owned by ABP and situated on the north side of Lake Lothing.

#### ***Trading Importance of the Port***

3.4 The Port serves the busy sea routes between the UK, Europe, Scandinavia and the Baltic States and the importance of the Port in terms of the offshore wind sector was recognised in the Secretary of State's LLTC Section 35 Direction.

### **4 THE EXISTING BASCULE BRIDGE**

4.1 The channel linking the Outer and Inner Harbours of the Port is crossed by a bascule bridge

4.2 In a raised position, vessels with a beam of up to 22 metres can enter the Inner Harbour.

4.3 The Port Harbour Master has discretion as to when to open the bridge – albeit with a presumption that vehicular traffic and pedestrians will be able to pass over the bridge whenever possible.

### **5 THE PORT MASTER PLAN**

5.1 A Master Plan for the Port has been in the process of preparation over the past 15 months. The emerging Master Plan identifies:

- (a) a significant future expansion of the offshore wind industry;
- (b) opportunities in the existing oil and gas industry, agri-bulks, aggregates sectors;
- (c) continued growth in its existing and traditional trading commodities; and
- (d) emerging opportunities in the fisheries sectors.

## 6 NATIONAL PORTS POLICY (NPSfP)

- 6.1 The NPSfP makes clear that ports such as the Port play a vital role in the UK economy, and that they operate within an industry that is market led where competition is encouraged, resilience is required and location is important.
- 6.2 The NPSfP's reflects a long-standing principle that the ports industry is market led and that the market – rather than Government or any other external body – is best placed to decide where and when port capacity is to be provided.

## 7 LOCAL PLAN

- 7.1 The Waveney District Council Local Plan is currently being updated. The emerging Plan contains policies which support the growth of the Port, and supports the proposed LLTC, but only if the scheme does not cause serious detriment to the Port.

## 8 SERIOUS DETRIMENT

- 8.1 It is ABP's view that the LLTC proposal cannot be authorised nor indeed recommended for approval because the scheme would cause "serious detriment" to the carrying on of the statutory port undertaking (section 127 of the Planning Act 2008), unless that detriment is mitigated.
- 8.2 Latest indications are that the Applicant is not prepared to discuss a possible mitigation package.

## 9 THE STATUTORY TEST – Section 127

- 9.1 The Port comprises a statutory undertaking and by virtue of the section 127 test. The SoS has to determine whether that part of the port estate required for the bridge scheme:–

*"can be purchased and not replaced without serious detriment to the carrying on of the undertaking".*

- 9.2 The "serious detriment" test extends principally, therefore, to the ability of the statutory undertaker to carry on its undertaking in the light of the both the loss of

the land taken by compulsory acquisition and the consequences of that compulsory acquisition in terms of the undertaking going forward.

9.3 It is self-evident on the facts that serious detriment will arise as a result of the LLTC for a variety of reasons, including:

- (a) A significant area of the statutory port estate will be compulsorily acquired;
- (b) The use of ABP's land and berth space for Port operations will be disrupted during construction of the LLTC, which will impact on the current operational viability;
- (c) The LLTC at a height of only 12 metres (11 metres above HAT to accommodate required safety clearance) will disrupt business in perpetuity;
- (d) It will detrimentally impact the Port's future operational viability; so that-
- (e) As a result, ABP's ability to meet customer demand will be impaired by the perception of two bridges across the Port, leading to the risk that ABP:
  - (i) will be unable to retain its existing business; and/or
  - (ii) attract new business;
- (f) ABP's ability to accommodate customers will be impaired, resulting in loss of business and/or delays to vessels, with consequential long-term (or even permanent) damage to the Port's market reputation; with the consequence that-
- (g) ABP's ability to compete for business will therefore be materially constrained;
- (h) That loss of trade will adversely affect ABP's ability to maintain and invest in essential Port infrastructure; and
- (i) The Port's strategic significance for the UK will be seriously damaged and its economic contribution locally, regionally and nationally will be adversely affected.

9.4 This statutory test also requires the SoS to consider whether the land compulsorily purchased:

*“can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking”.*

9.5 In this respect:

- (a) ABP does not have at its disposal alternative land that would replace the land lost to the LLTC scheme; and
- (b) Neither can it purchase alternative land to replace the land to be compulsorily acquired because there is no land available.

## 10 **COMPULSORY ACQUISITION AND IMPACT ON PORT OPERATIONS**

10.1 The Applicant is seeking the compulsory acquisition of land both permanently and for temporary use.

### **Construction Phase**

10.2 During the construction phase of the LLTC, the temporary land take required is significantly greater than the footprint of the crossing itself, at 41,000 m<sup>2</sup>

10.3 Impacts during the construction phase will include:

- (a) Impact on access to 3 Shed;
- (b) Closure of Lake Lothing;
- (c) Temporary possession of land;
- (d) Temporary possession of Lake Lothing;
- (e) Road Access and closure of Commercial Road; and
- (f) Impairment of Berth Availability.

### **Operational Phase**

10.4 Impacts during the operational phase will include:

- (a) Permanent impairment of 3 Shed utility;
- (b) Permanent height restriction over Commercial Road; and
- (c) Serious loss of Berth Availability.

## 11 PROPOSED NEW BASCULE BRIDGE

- 11.1 The practical reality that differentiates the existing bridge from the proposed LLTC is that ABP has operational control of the existing bascule bridge. This means that ABP can genuinely assure users of the Port that their passage will not be impeded by the bridge.
- 11.2 The LLTC will act as an impediment to ABP's ability to attract new business which instead will look to alternative locations at other Ports, either on the east coast or indeed across the North Sea in mainland Europe.
- 11.3 In terms of impact on the Port:
- (a) The LLTC will have a maximum 12 metres Highest Astronomical Tide ("HAT") clearance under the bridge deck - likely to be reduced to 11m at HAT with a 1m 'safety clearance';
  - (b) the navigable channel between the bridge piers and fenders will be reduced to 32m; and
  - (c) the maximum clearance under the LLTC will be impacted by future global sea level rise.

### ***Scheme of Operation***

- 11.4 The Applicant intends to control the maintenance and operation of the LLTC, in accordance with a Scheme of Operation, prescribing extended windows of restriction for the existing bascule bridge for those vessels which need to transit Lake Lothing.

## 12 NAVIGATIONAL SAFETY

- 12.1 The LLTC Scheme cannot be approved by the SoS until the navigational risks have been properly assessed by the SHA and a final NRA is approved by ABP.
- 12.2 ABP has serious concerns regarding the Applicant's preliminary NRA - its content, evaluation and assessment – which together have led ABP to conclude that the assessment undertaken and the consequential judgments are incorrect and defective. As such, the pNRA is of very limited value only.

13 **VESSEL SIMULATION**

13.1 The Applicant has undertaken three discrete vessel simulation exercises in conjunction with ABP. ABP has a number of concerns with the vessel simulation exercise and the Vessel Simulation Report, which are stated in the Written Representations.

14 **OPERATIONAL IMPACTS OF THE LLTC ON THE PORT – OFFSHORE WIND SECTOR**

14.1 The Port is a renewable energy hub for offshore wind farm projects. It is ideally placed to accommodate the growth in the offshore wind energy market, which is expected to materially grow over the next 10 to 15 years.

14.2 The primary concern of potential operators, as communicated to ABP by those operators, is the potential financial impact of consolidated shipping delays caused by the proposed LLTC over the 25-30 year lifespans of an offshore energy project. Put simply, a five minute delay, caused by the existence of the proposed LLTC, to a vessel every day over the life of a scheme amounts to a financial risk the operators would not be prepared to consider when there are competitor ports that do not face such restrictions.

14.3 Accordingly, ABP is concerned that the LLTC will:

- (a) act as an impediment to future port development;
- (b) remove ABP's ability to control the opening of the bridge; and
- (c) cause economic damage both to the Port and broader regional economy.

14.4 The potential future demand of the offshore wind industry primarily relates to the following factors:

- (a) Turbine design – which is increasing;
- (b) Wind farm size, location and vessel strategy;
- (c) Market Growth – The sector will continue to grow;
- (d) Supply chain maturity.

14.5 The Outer Harbour is approaching capacity, whereas the Inner Harbour has considerable capacity to accommodate CTV berths in the future.

14.6 ABP is concerned, however, that future wind energy customers will be unwilling to utilise berths which require passage under a second bridge, particularly for CTVs that are typically involved in time-critical wind operations which will place the Port at a significant cost disadvantage compared to competitors.

### ***CTV Report***

14.7 In summary, this concludes that:

- (a) Any vessel with an air draught larger than 11m (with a 1m safety margin) will require a bridge lift, depending on the state of tide.
- (b) Current Port customers use CTVs that have air draughts in the 10 – 13m range.
- (c) The overall size of CTV's are increasing, due to the location of windfarms further offshore. It is anticipated that CTVs deployed in future offshore wind farms are likely to have air draughts of up to 15m, which means a larger proportion of CTVs at the Port will require the bridge to open in the future.

### ***BVG Report***

14.8 BVG Associates has undertaken an assessment of the potential future growth in the offshore wind sector at the Port.

14.9 In summary, the BVG Report concludes that:

- (a) The Port is well located to benefit from the significant offshore wind developments that are likely to take place in the 2020s and has the potential to create over 1,000 direct, indirect and induced jobs as a result.
- (b) The Port will continue to be a logical location to base some activities involved in the construction, operation and decommissioning of offshore wind farms, but both operational phase and servicing to wind farms at the Port would be affected by the proposed LLTC.
- (c) LLTC represents a potentially serious threat to the attractiveness of the Port for the off-shore wind sector.

### ***Nautilus Report***

14.10 Nautilus Associates (commissioned by Waveney District Council) has undertaken as assessment of land requirements to support the offshore energy and engineering industries in the Lowestoft area.

14.11 It concludes that:

- (a) There are significant planned capital investments in the offshore wind sector in the East of England over the next few decades - over £30 billion by 2040.
- (b) Offshore wind O&M, is one of the greatest potential opportunities for Lowestoft. O&M opportunities at Lowestoft are expected to be £1.3 billion per year by 2025-2030.
- (c) The Port is ideally located to serve the southern North Sea offshore energy sectors, and there is strong evidence of future potential O&M bases for offshore wind farms at Lowestoft.

### ***Edge Economic Report***

14.12 Edge Economics have undertaken an assessment of the economic impacts of the Port in both a 'With SCC Bridge' and 'No Bridge' scenario.

14.13 The Edge Economic Report concludes that:

- (a) If the LLTC was not constructed and the Port accommodated the projected future demand in the offshore wind sector, by 2036 the Port could support 1,581 jobs and contribute up to £177.1 million of GVA annually to the local economy.
- (b) If the Port is unable to accommodate all of the projected future demand in the offshore wind sector as a result of the LLTC being constructed, by 2036 the Port would support 876 jobs and contribute up to £79.9 million of GVA annually to the local economy.
- (c) Overall, the LLTC scheme could adversely impact the economic potential of the Port to deliver long-term economic benefits to Lowestoft.

### ***East of England Energy Park at Shell Quay***

14.14 ABP is current developing the East of England Energy Park ("EEEP"), at Shell Quay at the western end of the Inner Harbour. It is ideal for the offshore wind sector due to large developable areas and quayside frontage suitable for CTV berthing.

## 15 MITIGATION

15.1 ABP has identified a range of measures which will to an extent mitigate at least some of the serious detriment that will be caused to the Port.

15.2 These include, in summary:

- (a) **Emergency Berth** - The provision of an emergency berth on the eastern side of the proposed new bridge within the Inner Harbour, to offset the serious marine navigation risks that could arise as a result of a vessel becoming trapped between the two bridges, should one of them fail.
- (b) **Replacement Berthing** – Creation of new berthing space in the Outer Harbour, to compensate for the permanent loss of berthing (and hence utility) in the Inner Harbour. A scheme to create additional berthing space in Waveney Dock has been presented to, but not accepted by, the Applicant.
- (c) **Indemnity** - a full indemnity, backed by commercial insurance, bearing in mind that by constructing a low bridge through the middle of an operational Port.

## 16 MITIGATION – STATUTORY PORT SECURITY

16.1 ABP is subject to comprehensive statutory security regulations.

16.2 As a result of the LLTC, an area of 50m either side of the footprint of the LLTC where it crosses North Quay will have to be sterilised in Port statutory security terms, to prevent any incursions into the Port's secure areas. This equates to a loss of ISPS vessel quay space of 125.5m.

16.3 At Security Level 3, the entire length of the LLTC and approach roads may have to be closed to the public in order to secure Temporary Restricted Areas of the Port.

## 17 INDEMNITY

17.1 The Applicant proposes to introduce a hazard into the middle of an operational Port, which will present as a safety hazard both to users of the Port in terms of risk of vessel strike and injury to operators within the port estate and also to users of the bridge – both vehicular and non-motorised users.

17.2 ABP will require formal indemnification from the Applicant.

17.3 The Applicant is required to indemnify ABP for any losses or damage incurred or suffered directly or indirectly by ABP as a result of any occurrence relating to or associated with the existence of the LLTC.

17.4 The indemnity is intended to apply to incidents such as collisions between vessels, or between a vessel and the LLTC, vehicles crashing through the LLTC into the Port estate, accident or disruption to the LLTC due to dust, smoke or other emissions emanating from the Port, collapse of the LLTC, dropping objects from the LLTC into the Port estate, acts of terrorism, etc.

## 18 **INADEQUACIES OF THE ENVIRONMENTAL STATEMENT**

18.1 ABP considers that the Environmental Impact Assessment is inadequate in respect of its assessment of the effects of the LLTC on the Port, for a number of reasons.

18.2 Accordingly, the conclusions reached by the Applicant in this regard cannot be relied upon.

## 19 **DRAFT DEVELOPMENT CONSENT ORDER**

19.1 The dDCO confers powers which conflict with and override the statutory powers on which ABP relies to manage the safe and efficient operation of the Port. ABP considers that the dDCO should be amended to allow ABP to continue to discharge its statutory functions.

## 20 **FUNDING**

20.1 ABP considers that the Applicant's projected Scheme cost of £91.73 million is no longer accurate, as:

- (a) SCC have stated that the Scheme costs have increased by "up to £8 million", and there has been no provision for this amount in SCC's budget;
- (b) It appears SCC has failed to make any provision for additional sums required to address the serious detriment caused to the Port by the LLTC; and

- (c) It appears SCC has failed to make any provision for compensation for severance and injurious affection of the retained land.
- 20.2 The Applicant has not provided sufficient information in its Funding Statement to enable the Secretary of State be satisfied that the Scheme can actually be funded.

## 21 CONCLUSION

21.1 These Written Representations have been designed:

- (a) First to introduce the Port, its operations and the part the Port hopes to be able to continue to play as a major contributor to the local economy; and
- (b) Second, to confirm why the LLTC scheme as currently proposed by the Applicant, Suffolk County Council, will cause serious detriment to the carrying on of the statutory port undertaking.

21.2 It should be emphasised that ABP has made clear from the outset that it does not object to the principle of a third river crossing of Lake Lothing.

21.3 ABP has no choice, however, but to object to the LLTC proposal as now submitted by the Applicant in that:

- (a) The Scheme, as currently formulated, will act to the serious detriment of ABP's ability to carry on its port undertaking; and
- (b) The Applicant has failed to offer any measures of mitigation which may at least assist in reducing the serious detriment that will be caused by the Scheme – although it is accepted as a fact that the serious detriment cannot be eliminated altogether in that the detrimental impact caused by the construction of a bridge through the centre of an operational port, is of itself, neither a sensible nor practicable proposition.

21.4 ABP has made it clear, however, that should the Applicant be prepared to offer and legally commit to, a meaningful package of mitigation measures, then it would be prepared to reconsider its submitted objections.

21.5 **Serious Detriment** – as to the 'serious detriment' that will be caused, ABP has in these Written Representations summarised its concerns, commencing with the legal test in Section 127 of the Planning Act 2008 under the following headings:

- (a) Compulsory acquisition;
- (b) Impact on berthing space and mooring flexibility;
- (c) Impact during construction;
- (d) Impact during operation;
- (e) Impact on current operations;
- (f) Impact on future business;
- (g) Navigational safety; and
- (h) Inability to comply with statutory duties and obligations.

21.6 **Mitigation** – in terms of mitigation, ABP has formulated a package of measures which are designed to reduce the serious detriment whilst maintaining 'equivalence'. These measures include:

- (a) New quay space in the Outer Harbour;
- (b) An emergency berth;
- (c) Oil spill prevention and control;
- (d) Traffic Management Action Plan;
- (e) Port security; and
- (f) Aids to Navigation.

21.7 **Indemnity** – the final element, related to but not part of the required mitigation package is the provision of a formal indemnity to be given by Suffolk County Council to ABP.

21.8 Whilst the Applicant has included an indemnity for ABP in the draft DCO, the terms of that indemnity do not in fact meet the requirement of what is in fact a unique proposition.

21.9 The indemnity proposed in the dDCO is in standard terms and is designed to cover inconveniences and required changes in management brought about by the given scheme.

21.10 That indemnity does not encompass the very real risks that will arise in terms of potential loss of life, health and safety for berth users of the Port and users of the bridge.

- 21.11 Without an indemnity in terms sought by ABP, should injury or damage arise as a consequence of the introduction of the bridge into the middle of an operational port, ABP as the statutory operator of the Port, will be liable. This is patently not acceptable.
- 21.12 The Applicant wishes to introduce the hazard and the consequent risk into the Port. The Applicant must, therefore, be prepared to bear any losses that arise as a consequence of the introduction of that hazard and risk.
- 21.13 As noted above, ABP's position in this respect is not negotiable.

**Clyde & Co. LLP**

**on behalf of Associated British Ports**

**8 January 2019**