

## Proposed Lake Lothing Third Crossing (TRO10023)

### Associated British Ports (20013261)

#### Responses to ExA's Written Questions – 8 January 2019

To assist the ExA and to avoid unnecessary duplication, ABP has for Deadline 3 submitted comprehensive Written Representations which are designed both to describe the Port of Lowestoft, its functions and business and also place ABP's objection to the LLTC proposal in context. Inevitably, a number of the ExA's questions are already dealt with in ABP's Written Representations and where appropriate, therefore, rather than provide similar comprehensive responses in both documents, the full answers to the ExA, where duplicated, are cross-referenced in this document to ABP's Written Representations.

EX REF	QUESTION DIRECTED TO ABP	ABP RESPONSE
<b>Road Drainage and the water environment (Chapter 17)</b>		
2.12	<b><i>Could you please explain how the proposed bridge will impact on your ability to comply with your statutory duties as a statutory harbour authority (SHA), complying with the International Ship and Port Facility Security Code and the obligations under the Port Marine Safety Code for the safety of navigation [RR-022]?</i></b>	<ul style="list-style-type: none"><li>• The statutory duties and obligations that fall to ABP as owner and operator of the Port and as Statutory Harbour Authority are various and range from statutory obligations in terms of safety of navigation and health and safety generally, to advisory under the Port Marine Safety Code, in particular, the statutory obligations relating to the "Open Port Duty".</li><li>• The construction of a low bridge through the middle of the Port's Inner Harbour creates a number of practical problems for ABP in terms of safety of operation (section 9 of the Transport Act 1981), health and safety both in terms of users of the Port as well as users of the bridge, port security and general management of the Port in terms of vessel passage, dredging, etc.</li><li>• A detailed explanation as to the duties and obligations that fall to ABP and how compliance with those duties and obligations will be impeded/constrained by the construction of the bridge is</li></ul>

		<p>provided in <b>ABP's WR at Part 2.6 – 2.59 (inclusive)</b>.</p> <ul style="list-style-type: none"> <li>An explanation as to the impact of the LLTC in terms of Port security is provided in <b>ABP's WR at Parts 17.14 – 17.18 (inclusive) and 19</b>.</li> </ul>
2.13	<b>How will the bisection of the inner harbour damage your ability to secure further business from the offshore wind sector [RR-022]?</b>	<ul style="list-style-type: none"> <li>The Port's Outer Harbour is operationally full. The construction of a second bridge through the middle of the operational Inner Harbour, at a low height, the opening of which will be fully in the control of the Applicant, will act as a practical operational impediment to ABP's current port operations and will act as an impediment and constraint on that part of the port estate located to the west of the new bridge.</li> <li>In addition, the perception of movement within the Port being impeded by a new bridge not controlled by ABP will deter potential new customers (including the offshore energy sector) from taking space in the Inner Harbour – to the serious detriment of the both the Port and the local economy.</li> <li>A more detailed explanation of the issues that will face ABP should the LLTC scheme be authorised is provided in <b>ABP's WR's at Parts 8, 9.19 and 14</b>.</li> </ul>
2.14	<b>Are you satisfied that safety of navigation in the inner harbour can be maintained with two bridges in place operated by different bodies in two different places?</b>	<ul style="list-style-type: none"> <li>No, not at present.</li> <li>The LLTC, before it can be approved, must be subjected to a formal and properly undertaken Navigational Risk Assessment (NRA). This is not an exercise that has been undertaken by the Applicant to date.</li> <li>Once the NRA has been completed, it will be necessary for ABP as the SHA to conduct a thorough evaluation and review of the Applicant's NRA. The final version, once approved by ABP, will be incorporated with the Port's existing operational NRA, in order to provide a holistic NRA for the future operation</li> </ul>

		<p>of the Port with two bridges.</p> <ul style="list-style-type: none"> <li>• Without going through this process, ABP's preliminary assessment is that navigational control for the whole SHA area would have to remain with the existing Port Control station at the existing bascule bridge. Control of navigation at the LLTC would be limited to those vessels moving in the immediate vicinity of the scheme bridge, to allow vessels to transit the scheme area.</li> <li>• The methodology and any mitigation measures required to ensure that safety of navigation will be maintained can only be finalised at the point when the “new” whole port NRA has been undertaken, approved by ABP and implemented.</li> <li>• The ExA’s attention is drawn in this respect to <b>ABP’s WRs at Part 12</b> which deals with navigational safety.</li> </ul>
2.15	<p><i>i. Do you intend the emergency berth to be immediately to the east, on the north side, of the proposed bridge?</i></p> <p><i>ii. What length of quay will be required for this berth [RR-022]?</i></p>	<ul style="list-style-type: none"> <li>• The emergency berth, to be effective, has to be located between the two bridges. ABP considers that the most appropriate location would be to the east of the LLTC, on the south side of Lake Lothing.</li> <li>• The length of the emergency berth must be capable of mooring a 100m LOA vessel, and the depth alongside (and in the adjacent channel) must be at least -4.7m ACD and capable of being taken to -5.0m ACD.</li> <li>• The issue of the mitigation measures required to reduce the serious detriment that will be caused to the Port by the LLTC scheme, including a full explanation as to the need for an Emergency Berth, is provided in <b>ABP’s WR’s at Parts 15 – 19 (inclusive)</b>.</li> </ul>
2.16	<p><i>Is a dedicated emergency berth provided in the outer harbour in respect of the A12/ A47 road bridge?</i></p>	<ul style="list-style-type: none"> <li>• No emergency berth is required in the Outer Harbour because large commercial vessels do not enter the approach channel of</li> </ul>

		<p>the existing Bascule Bridge until opening has commenced.</p> <ul style="list-style-type: none"> <li>• With the existing Bascule Bridge, ABP has contingency berths at Hamilton Quay No 1 berth and at Sembmarine SLP.</li> <li>• If there is a failure of the existing Bascule Bridge after a vessel has entered the approach channel, there is also the option to moor in the bridge approach channel or return the vessel to sea until the bridge is repaired.</li> </ul>
2.17	<p><b><i>If the proposed bridge is constructed will you still be able to use the berth immediately to the west on the north side where your transit shed is located?</i></b></p>	<ul style="list-style-type: none"> <li>• No. The remaining length of useable quay (at around 19m) will be too short for commercial port operations.</li> <li>• The impact of the proposed LLTC is, however, significantly greater than just this and differs between the construction and operation of the proposed new bridge.</li> <li>• <b>Construction:</b> During construction, the Applicant has indicated a need to acquire temporary possession rights over approximately 420m of Lake Lothing, all of which is bounded to the north by the Port's berths. Thus, the potential exists to deprive the Port of access to/utility of some or all of: <ul style="list-style-type: none"> <li>- The 420m of quays immediately to the north of Lake Lothing, as well as;</li> <li>- A further approx. 500m of quays (comprising North Quay 6 (part), 7E and 7W and the entirety of Shell Quay) upstream of the westernmost limit of the temporary possession rights sought.</li> </ul> </li> <li>• The promotor has also indicated that it will need to block the entire width of Lake Lothing whilst the LLTC is being put in place and commissioned. ABP notes that no formal temporal restrictions to limit this closure to the minimum are included in the dDCO, apart from a requirement that the Applicant use its best endeavours to minimise obstruction, delay or interference to vessels, and to only close as much of Lake Lothing as is</li> </ul>

		<p>reasonable necessary at any one time.</p> <ul style="list-style-type: none"> <li>• <b>Operation:</b> For the operational phase of the LLTC, it will be necessary to consider all the Port's berthing utility within the vicinity, as well as berthing further upstream of the proposed new crossing, in order to understand the scale of the detriment that will be caused to the Port.</li> <li>• A detailed explanation of the consequential impacts of the LLTC scheme is provided in <b>ABP's WR's at Parts 10, 11, 12 and 14.</b></li> </ul>
2.18	<b><i>How many commercial ships have passed through the site of the proposed bridge in the previous twelve months?</i></b>	<ul style="list-style-type: none"> <li>• The number of commercial vessels transiting the LLTC area (inbound and outbound) in the past twelve months that are considered to be sufficiently large to warrant a LLTC Bridge opening is 1,454. The number of commercial vessels transiting the LLTC area (inbound and outbound) in total in the past twelve months is 1,806.</li> <li>• This includes a range of vessels, including large commercial vessels through to smaller commercials (CTVs, tugs and survey vessels).</li> <li>• This data covers the period from 1st December 2017 to 30th November 2018 and has been obtained using commercial and CTV log books maintained at Lowestoft Port control.</li> </ul>
2.19	<b><i>Will you as the SHA allow two-way working through the proposed new bridge for recreational vessels?</i></b>	<ul style="list-style-type: none"> <li>• ABP is not in a position to give a definitive answer to this question without having had the opportunity to assess the Applicant's formal NRA.</li> <li>• That said, two-way traffic operation is allowed in certain controlled circumstances with the existing Bascule Bridge and it may be possible that this can be allowed with the LLTC Bridge. It is, however, too early in the process to give a firm commitment at this stage.</li> </ul>

		<ul style="list-style-type: none"> <li>Once the LLTC scheme is operating and experience has been gained, it may well be necessary to amend navigational controls and operating procedures for the new bridge in the light of operational experience.</li> </ul>
2.20	<b><i>Approximately how much material is removed at each of your biannual dredging programmes?</i></b>	<ul style="list-style-type: none"> <li>ABP has an MMO disposal licence for up to 200,000 tonnes per annum. In a normal year, the total disposed can be around 150,000 tonnes. The quantities disposed of are reported on a twice-yearly basis to the MMO.</li> <li>As a guide, approximately 70% is disposed of during the spring campaign and 30% in the autumn. The actual quantities vary annually and for each campaign based upon the degree of siltation/accretion.</li> <li>Siltation rates are largely governed by meteorological factors including wind direction and wave activity and also the frequency of passage of deep draft vessels.</li> </ul>
2.21	<b><i>How much notice do you usually receive of a commercial vessel requiring a bridge lift on (a) the inward passage and (b) departure?</i></b>	<ul style="list-style-type: none"> <li>Commercial vessels arriving at the Port will normally give 24 hours' notice of intended arrival, followed by notice three hours and then one hour before arrival.</li> <li>In exceptional circumstances, the notice period can be reduced to the minimum of 20 minutes, albeit usually only for smaller commercial vessels not requiring the services of a pilot.</li> <li>The minimum notice requested for departing commercial vessels is 20 minutes. In practice, however, it is customary to be given notice of at least 1 hour for vessels requiring a pilot and linesmen for unmooring.</li> <li>Preliminary consideration of operating with two bridges indicates that it may be necessary to increase these notice periods to facilitate preparation and phasing of two openings as may be appropriate in the circumstances.</li> </ul>

2.22	<p><b><i>Do you consider that the raised north shore approach section of the bridge will have any adverse impact on the operation and use of the adjacent transit shed?</i></b></p>	<ul style="list-style-type: none"> <li>• This is an area of serious concern to ABP, as there is a roller door allowing HGV vehicles to access the east end of this warehouse. Any impairment to this vehicle access would have a detrimental impact on the utility and commercial viability of this warehouse.</li> <li>• At this stage, ABP has not seen final designs for the roadway structure and its supporting piers. Until these are finalised, ABP cannot comment categorically on the level of adverse impact and this uncertainty could impact potential customers for the facility.</li> <li>• Any construction methods used in this location must be approved by civil engineers appointed by ABP, to ensure they do not cause structural damage to ABP’s infrastructure including warehouses, quay walls and surface areas.</li> </ul>
<b>Compulsory Acquisition</b>		
3.4	<p><b><i>i. What evidence is there that the acquisition of land within the port estate will act to the serious detriment of the port undertaking?</i></b></p> <p><b><i>ii. What proportion of the existing berth space to be acquired is in current active or proposed use?</i></b></p> <p><b><i>iii. What specific detriment do you identify to the existing port operations to the east of the proposed crossing location?</i></b></p> <p><b><i>iv. In what ways will the bisecting of the inner harbour damage your ability to secure further business from the off-shore wind sector?</i></b></p>	<ul style="list-style-type: none"> <li>• (i) Details as the serious detriment caused to the Port are provided in <b><i>ABP’s WR’s at Part 8</i></b>. This aspect of the proposal encompasses both the proposed compulsory acquisition of part of the statutory port estate – both temporary and permanent - and the consequences of that compulsory acquisition.</li> <li>• (ii) At present all berths within the Port are in active use.</li> <li>• In addition, many berths are likely to become more intensively used going forward as the commercial activities within the Port continue to expand.</li> <li>• (iii) The Port is very well-positioned to win additional business related to the offshore energy sector (including offshore wind), sea-won aggregates, and other port-related commercial activity.</li> <li>• In summary, the proposed LLTC will result in: <ul style="list-style-type: none"> <li>a) The direct loss, when measured in whole berths, of</li> </ul> </li> </ul>

v. **What specific evidence do you have that the effects identified above will result in the deflection of future business to competitor ports?**

vi. **What other mitigation measures have you proposed in respect of the above matters?**

approximately 165m of berthing;

b) A consequential detrimental impact on a further 720m of berthing within the Inner Harbour;

This of itself will have a seriously detrimental impact on the statutory port undertaking.

- (iv) to (v) The issue as to how the proposed compulsory purchase of part of the statutory ports estate will damage the Port's ability to secure further business, not just from the growing offshore wind sector, is discussed in detail in **ABP's WR, at Parts 8, 10, 11 and 14**.
- As the ExA are aware, this is also an issue that is being addressed formally with the Secretary of State in the context of certification under section 127 of the Planning Act 2008;
- The ExA will appreciate that ongoing discussions with potential occupiers/tenants as to future arrangements and the taking of berthing space with the Port are commercially confidential. Insofar as ABP is able, however, information in this regard has been provided by **ABP in its WR's at Part 14** and this will be supplemented, as far as is possible during the course of the examination.
- (vi) The practical reality is that the serious detriment that will be caused to the Port by the construction and consequent operation of the LLTC cannot be eliminated in its totality in that no organisation would sensibly propose to construct a low bridge through the middle of an operational port.
- Nevertheless, in the light of ABP's wish to work collaboratively with the Applicant, whilst maintaining its objection to the location and form of the currently proposed third crossing, ABP has assembled a package of mitigation measures which would at least go some way at least to reducing the extent of the serious detriment that will be caused to the Port.
- The principal elements of this package are outlined in **ABP's WRs at Parts 15 – 19 (inclusive)**.

		<ul style="list-style-type: none"> <li>As at the date of the submission of its Responses to the ExA's Written Questions, however, the Applicant has given no indication that it is prepared to deliver any of these mitigation measures.</li> </ul>
<b>Draft Development Consent Order</b>		
4.1	<p><i>i. With regard to your Relevant Representation [RR-022], in particular, paragraphs 3.1 (a) (b) (c) (d) could you please explain in greater detail how the proposed bridge will have a seriously detrimental effect on your day to day port operations?</i></p> <p><i>ii. As the SHA are you satisfied that the provisions of the dDCO will give you proper control of the harbour especially in an emergency in the vicinity of the proposed bridge?</i></p>	<ul style="list-style-type: none"> <li>(i) As stated above, the serious detriment that will be caused to the Port by the LLTC scheme is dealt with in detail in <b>ABP's WRs at Part 8.</b></li> <li>(ii) In terms of the dDCO, ABP's comments are detailed in its <b>WRs at Parts 2.8 – 2.59 (inclusive) and 22</b>, although the ExA will appreciate that discussions between ABP and Applicant on the terms of the draft Order are ongoing. Nevertheless, the current position is as follows -</li> <li>In general terms, ABP is concerned that the Applicant's assumption of SHA powers within the dDCO will circumvent ABP's statutory duties and responsibilities in a manner which will be detrimental to Safety of Navigation and Control of the SHA jurisdiction area.</li> </ul> <p><b>Article 3 – Disapplication of legislation – bylaws</b></p> <ul style="list-style-type: none"> <li>The Applicant has sought to disapply a number of the Lowestoft Harbour Bylaws due to what they term as unavoidable 'breaches' during construction and maintenance of the LLTC. Although ABP recognises this may well be the case, specific exceptions can be made by ABP to meet the circumstances.</li> <li>The bylaws contain a range of important provisions relating to navigational safety, and compliance with these bylaws is a matter of safety for users of the port.</li> <li>For example, the disapplication of Bylaw 36, which requires the Applicant to obtain a permit before diving in harbour waters is unacceptable. The Harbour Master must be aware of any</li> </ul>

diving taking place within the Port for obvious health and safety reasons.

**Articles 20, 21 and 41**

- ABP is concerned that the powers sought by the Applicant in a number of provisions will impact on ABP's ability to comply with its statutory duties and obligations. These include:
  - a) Article 20 – Temporary suspension of Navigation with Lake Lothing in connection with authorised development.
  - b) Article 21 – Removal of Vessels.
  - c) Article 41 – Extinguishment of right of navigation within Lake Lothing in connection with authorised development.
- All the powers sought within these Articles (20, 21 and 41) of the dDCO are already vested in the SHA through various statutes. ABP considers that these powers should not be granted to the Applicant and that they should instead be exercised by the SHA at the request of the Applicant, with agreement to exercise not being unreasonably withheld.

**Article 40 - Operation of the New Bridge**

- ABP considers that including the Scheme of Operation within the DCO is detrimental to the operation of the Port and unnecessarily restrictive for all parties.

**Article 45 - Byelaws**

- To have two sets of byelaws controlling navigation within one SHA is unacceptable.
- It is imperative that ABP is free to amend its own harbour bylaws without the consent of another party.
- The management of navigation on an ongoing basis is the statutory function and responsibility of the harbour authority. As such, ABP must be both free to amend its harbour byelaws and have the right to agree byelaws made by others which perform this function.

***Schedule 2 – Requirements, Requirement 11 – Preliminary Navigation Risk Assessment***

- This requirement is wholly unacceptable to ABP. The LLTC scheme must be subject to a formal and properly undertaken Navigational Risk Assessment (NRA). This is not an exercise that has been undertaken by the Applicant to date.
- As such, ABP is unable to confirm whether it will be able to comply with its statutory obligations, particular in terms of safety of navigation, and have proper control of the harbour.