

(ABP: 1 of 5 – DL4)

Proposed Lake Lothing Third Crossing (TRO10023)

Associated British Ports (20013261)

Comments on the Applicant's Response to ABP's Relevant Representations

The Relevant Representations of Associated British Ports ("ABP") in relation to the proposed LLTC application were submitted on 24 September 2018 - (Document Reference: RR- 022). The Applicant's '*Response to Relevant Representations*' is dated 20 November 2018 (Document Reference: SCC/LLTC/EX/2) and was published on the Planning Inspectorate website on 27 November 2018.

To assist the ExA, these representations, submitted on behalf of ABP, have been divided into two sections:

- **Section 1** – provides ABP's response to the Applicant's comments on its Relevant Representations.
- **Section 2** provides ABP's response to the comments made by the Applicant on the Relevant Representations made by other Interested Parties.

Where appropriate, these responses are cross-referenced to ABP's Written Representations and other submissions made by ABP for Deadline 4.

Section 1: Response to the Applicant's Comments on ABP's Relevant Representation (RR-022)

1. ISSUE NUMBER: DCO1

ABP's Relevant Representation:

ABP queried whether the Applicant had - *failed to comply with the requirements of the PA 2008 in terms of meaningful consultation and negotiation. This has led to the submission of an ES*

that is inadequate, misleading and legally deficient in terms of the requirements of the EIA Regulations.

The Applicant's Comment:

The Applicant assumes that ABP is referring to acceptance of the application under section 55 of the Planning Act 2008.

ABP's suggestion that the Applicant failed to comply with the requirements of the Planning Act 2008 in terms of meaningful consultation and negotiation is not replicated in any of the Adequacy of Consultation Responses submitted by relevant local authorities prior to the acceptance of the Application (see PINS references AoC-001 to AoC-007).

The Applicant does not consider that the ES (document reference 6.1 to 6.3 / PINS document reference APP-136 to APP-205) is inadequate or misleading; further, the Planning Inspectorate's Section 55 Checklist, published following acceptance of the Application, indicated that the ES was of a satisfactory standard in terms of the requirements of the EIA Regulations.

ABP's Response:

- ABP remains of the view that the Applicant did indeed fail to undertake meaningful consultation and negotiation in respect of both the practical impact that the LLTC will have on the Port of Lowestoft's existing operations and future port operational growth.
- ABP's concerns extend beyond commercial impact to issues relating to, for example, navigational risk, and user safety – both of the bridge and the Port, alternatives and the seriously detrimental impact that the LLTC project will have on the Port.
- ABP's concerns with regard to the consultation undertaken in respect of the Applicant's submitted Preliminary Navigation Risk Assessment (Doc Ref: APP-208) are provided in **Part 12 of ABP's Written Representations.**
- Whilst ABP recognises that its concerns were not accepted by PINS as being sufficiently substantive at the time, those concerns remain on the record. Indeed, if anything, ABP would suggest that they are now being underlined by the fact that the LLTC scheme is not even, as yet, in a finalised form capable of genuine assessment – as supplemented by the responses of other Interested Parties.

- In this context, ABP highlights the below a selection of the concerns raised by various Interested Parties in their Written Representations in respect of the Applicant's inadequate consultation/negotiation and lack of meaningful assessment of the Scheme:
 - **BS Pension Fund Trustee Ltd:**

"The Interested Party disagrees that the Applicant has - "engaged in extensive consultation and negotiations" in regard to the acquisition of the Land. Notwithstanding the Interested Party's positive engagement with the Promoter, the Promoter has been slow to progress draft documents or engage in negotiations with the Interested Party. The Promoter's engagement to date demonstrably falls short of the threshold of "extensive".
 - **Cadent Gas:**

"Cadent have had no substantive response from the promoter as to whether the wording that they require will be included in the Order or not or how the Promoter otherwise intends to address the issue. Only holding e-mails have been received. A response is still awaited from the Promoter on this point."
 - **Cara Robinson:**

"No response has been received to Carter Jonas's letter of 31st August 2018 following up on the relevant issues, nor chasing emails of 17th October 2018. Therefore we have had no substantive correspondence with the Applicant for six months."
 - **Nwes Property Services:**

"Despite repeated requests we did not receive a link to the appropriate plans demonstrating how the proposed development would affect our site until 20th December 2018...We believe the late availability of that information has impacted on our ability to develop and present a full and detailed representation as we would have liked by the 8th January."
 - **Northumbrian Water Ltd:**

"It is also far from clear from the application documents whether the Applicant has properly assessed the worst case development scenario for the Scheme in its Environmental Statement ("ES").

NWL has not been able to identify from the application documents whether the worst case scenario has been assessed or to identify the controls to ensure that effects do not extend beyond those assessed. This is a significant deficiency in the application documents.

NWL notes that the absence of detail in the application documents is a matter that has been raised by (i) the Secretary of State in his Scoping Opinion; (ii) the Planning Inspectorate in its s.51 Advice and (iii) a number of interested parties in their Relevant Representations. Plainly it is a matter to which the Applicant must give further attention.

NWL is concerned that its ability to provide an informed response to the proposed development has been prejudiced by the absence of detail, which was also lacking in the pre-application consultation material and also that the ES may be deficient in that it has not properly adopted a Rochdale envelope approach of identifying the worst case parameters, assessing their effects and securing controls through the DCO to ensure that no additional environmental effects arise."

○ **Marine Management Organisation:**

"The MMO identified several issues within the ES. Consequently, the MMO advised that further consideration of the likely environmental impacts of the proposed development was required."

2. ISSUE NUMBER: DCO2

ABP's Relevant Representation:

As promoted, the DCO is both legally deficient and unacceptable in port operational terms. The applicant has failed to take into account: -

- (a) The seriously detrimental impact that its scheme will have on ABP's day to day operations;*
- (b) The ability of ABP to operate, manage and regulate the Port in terms of its bye-laws;*
- (c) ABP's future operations; and*
- (d) ABP's need to comply with its statutory duties and obligations, including those as SHA, the ISPS Code and ABP's statutory obligation to ensure the safety of navigation and protection of people, vessels and the environment.*

The Applicant's Comment:

The dDCO is based on the information available to the Applicant at the time of drafting. Its drafting and structure recognises the existing Port regime (including its byelaws) and seeks to establish the bridge within that framework. The Applicant does not consider the drafting in the dDCO to be legally deficient; however, it does recognise that the dDCO is currently and necessarily, at this relatively early stage in the DCO application process, a working draft document. As such, it follows that there are a number of areas where the drafting will require further development or refinement. In particular, such areas relate to matters which are under discussion, but remain to be settled with ABP.

As ABP will be aware, the Applicant has sought to engage with ABP over a considerable period of time, including time prior to submission of the Application, and has, during that time, requested information from ABP to inform the preparation and content of the Application. A history of this correspondence is set out in the Negotiations Tracker (document reference 4.4/PINS document reference APP-010). Where the information sought has not been forthcoming or is yet to be provided, the Application documentation is, of course, either silent on those points or is informed by the Applicant's own investigative and assessment work.

As ABP will appreciate, the interface between the DCO and any related side-agreement with ABP will be complex, and will need to be identified and defined in collaboration with ABP over the coming months, in advance of and during the Examination of the Application. The Applicant would very much welcome ABP's ongoing collaboration on that front, in order to ensure that the DCO accommodates appropriately both ABP's and the Applicant's respective statutory functions.

The Applicant has addressed matters relating to the operation of the Port in the ES (document reference 6.1 / PINS document reference APP-136) within Chapter 15 and more specifically in paragraphs 15.5.5 to 15.5.41.

With regard to the safety of navigation and ABP's statutory duties these have been addressed within the Preliminary Navigation Risk Assessment (document reference 6.7 / PINS document reference APP-208). The 'serious detriment' test has also been considered in the Statement of Reasons (Applicant Document Reference 4.1, PINS Document Reference APP-007).

These matters are under discussion with ABP.

ABP's Response:

- ABP's initial comments on the drafting of the dDCO and the inadequacy of the approach adopted by the Applicant are set out in **Part 22 of ABP's Written Representations**.
- The Applicant has since submitted a revised version of the draft DCO at Deadline 3 (8 January 2019 – DCO Revision 1), together with an explanation of the amendments made. ABP has separately commented on the proposed amendments in its response to DCO Revision 1, which has been submitted by ABP at Deadline 4 – **(ABP: 4 of 5 - DL4)**.
- In general terms, bearing in mind the comments made elsewhere by ABP:
- ABP has sought to collaborate with the Applicant about the side agreements which will be required if the project is to proceed.. Unfortunately, however, the Applicant has been disappointingly less than forthcoming in terms of engagement in this regard – to such an extent that ABP queries whether the Applicant genuinely intends to enter into any such agreements.
- ABP remains of the view that the Applicant's assessment of the effects of the LLTC on the Port contained in the ES is inadequate for a number of reasons, which are discussed in detail in **Part 21 of ABP's Written Representations**.
- The ExA should also note that it remains ABP's firm view that the Applicant has failed adequately to address navigational risk or ABP's statutory duties and functions in the Preliminary Navigation Risk Assessment ("pNRA"). The pNRA is consequentially defective. Although not a detailed analysis, some of ABP's concerns with the pNRA are set out in **Paragraph 12.17 of ABP's Written Representations**.
- As the ExA are aware, and as is repeated in ABP's response to DCO Revision 1 submitted for Deadline 4, **(ABP: 4 of 5 - DL4)**. Any decision to approve the DCO application without a correctly formulated NRA - approved by ABP as the Statutory Harbour Authority – will be susceptible to legal challenge.
- ABP's consideration of the Applicant's assessment of the 'serious detriment' test, as set out in its Statement of Reasons, is contained in ABP's Response to Issue Number: LD2 (see below).

3. **ISSUE NUMBER: DCO3**

ABP's Relevant Representation:

ABP will require a comprehensive indemnity against the risks and hazards that the applicant, by constructing the LLTC, will introduce to the Port. The current indemnity is inadequate.

The Applicant's Comment:

It is the Applicant's position that the indemnity within the dDCO both in its approach and its specific drafting is well precedented under both the Planning Act 2008 regime (e.g. ABP Protective Provisions that were included in the DCOs made for Hornsea One, Hornsea Two, Tidal Lagoon Swansea and Able Marine Energy Park), and indemnities for harbour authorities affected by bridges found under other consenting regimes such as Mersey Gateway, Poole and Gateshead. It is therefore considered that it is adequate. Discussions on this matter continue with ABP.

ABP's Response:

- Despite this point being made on numerous occasions by ABP, the Applicant seems unable to appreciate that the standard indemnity provisions normally offered to a statutory undertaker whose undertaking will be impacted by a given NSIP simply do not meet the risks and hazards that the LLTC scheme will introduce to the port.
- The ExA should be aware that this is not a position upon which ABP can compromise. Without an indemnity in the terms sought by ABP, it is ABP's ability to operate the Inner Harbour which will be compromised – which in turn will extend to the viability of the Port itself thereby impacting upon the local economy.
- The Applicant's failure to understand the position is underlined by the examples that it has cited as demonstrating the acceptability of the indemnity currently contained in the draft DCO. Suffice to say, not one of the precedents referred to by the Applicant (i.e. Hornsea One, Hornsea Two, Tidal Lagoon Swansea Bay, Able Marine Energy Park, Mersey Gateway, Poole and Gateshead) involve the construction of a bridge through the middle of an operational port. It is self-evident that the mere existence of the new bridge will introduce a hazard into the middle of an operational port – a hazard which clearly does not exist today.

- Indeed, the reality of the position is so self-evident that ABP really does not understand why the Applicant is not prepared to discuss with ABP the negotiation of a stand-alone Indemnity designed specifically to meet the circumstances and consequences of this project – adopting the structure, for which there is precedent elsewhere, as was suggested by ABP last year.
- ABP's position, therefore, is that whilst the established precedent indemnity provisions offered by the Applicant in the current version of the DCO are acceptable – subject to one or two amendments and adjustments – those indemnity provisions are simply not designed to and do not meet the specific risks that will be introduced by the bridge and which – in the absence of an indemnity – would fall to ABP's potential liability.
- Further detail regarding the rationale and justification for the nature of the indemnity sought by ABP is set out in **Section 20 of ABP's Written Representations**.

4. **ISSUE NUMBER: EN22**

ABP's Relevant Representation:

In ABP's view, the PEIR published by the applicant was incomplete and deficient, failing properly to describe the LLTC scheme and assess its impact on the Port.

The Applicant's Comment:

The Applicant refutes that the PEIR was incomplete and deficient as it presented the assessment as it was at the time of the statutory consultation.

The Preliminary Environmental Information Report ('PEIR'), as its name suggests, was a preliminary document and the Applicant is of the view that it was fit for purpose at the time that it was published.

Environmental impact assessment has been carried out subsequently to inform the content of the ES submitted in support of the Application (see document references 6.1 to 6.3 / PINS document references APP-136 to APP-205). The ES includes a full description of the Scheme and of its likely significant environmental effects, including potential impacts on the Port.

Section 15.5 of the ES (document reference 6.1 / PINS document reference APP-136) assessed the impact of the Scheme on port operations during both the construction and operational phases. The ES also includes, at Appendix 15A (document reference 6.3 / PINS

document reference APP-198) a Vessel Simulation Report. The Application documentation also includes the Applicant's Preliminary Navigation Risk Assessment (document reference 6.7 / PINS document reference APP-208), which appended a Vessel Survey Report.

The impact on the Port is under discussion with ABP.

ABP's Response:

- ABP considers that the environmental impact assessment undertaken by the Applicant is inadequate in respect of its assessment of the effects of the LLTC on the Port. ABP's concerns regarding the adequacy of the environmental assessment are set out in **Part 21 of ABP's Written Representations**.
- In addition, ABP considers that both the Preliminary Navigation Risk Assessment and the Vessel Simulation Report are defective and the conclusions cannot be relied upon in terms of environmental assessment of the scheme, for the reasons set out in **Sections 12 and 13 respectively of ABP's Written Representations**.
- Indeed, ABP would suggest that the mere fact that the Applicant acknowledges that the *"impact on the Port is under discussion with ABP"* confirms the inadequacy of the Applicant's PEIR and its environmental statement, being an issue that should have been properly considered by the Applicant prior to submission of the scheme.

5. ISSUE NUMBER: EN23

ABP's Relevant Representation:

Despite advice given by PINS in their Scoping Opinion, issues that should have been assessed in the PEIR were not assessed – and the fundamental deficiencies apparent in the PEIR have been perpetuated in the ES.

The applicant has:-

(a) Failed to assess "the direct and indirect significant effects of the proposed development";

The Applicant's Comment:

The likely significant effects of the Scheme upon the Port have been considered in Chapter 15 of the ES (document reference 6.1/ PINS document reference APP-136) and more specifically in Paragraphs 15.5.5 to 15.5.41.

ABP's Response:

- The assessment of the likely significant effects of the Scheme is deficient, due to the fact that the assessment methodology adopted by the Applicant is inadequate and the Applicant's own methodology was incorrectly applied. In addition, the Applicant has failed to take into consideration all relevant factors when considering the impact of the LLTC on the Port.
- As such, the Applicant's assessment that the LLTC will have a 'slight adverse' effect on the Port is incorrect and legally questionable.
- ABP's concerns regarding the adequacy of the environmental assessment is set out in **Part 21 of ABP's Written Representations**, in particular, **Paragraphs 21.2 to 21.17** relate to the Applicant's failure to adequately assessment the likely significant effects of the LLTC.

6. ISSUE NUMBER: EN24

ABP's Relevant Representation:

(b) Failed to provide an adequate and meaningful baseline scenario in relation to the Port;

The Applicant's Comment:

The baseline scenario with regard to the Port that the assessment within the ES (document reference 6.1 / PINS document reference APP- 136) is based upon is presented in paragraphs 15.4.4 to 15.4.6 as well as within the Vessel Survey Report included as Appendix B to the Preliminary NRA (document reference 6.7 / PINS document reference APP-208).

Chapter 4 of the ES, specifically paragraphs 4.2.4 to 4.2.6 also identifies baseline information about the Port.

The Applicant continues to seek further information from ABP on current port operations and ABP has recently agreed to provide information on current berth occupancy.

ABP's Response:

- ABP is working with the Applicant with a view to assisting the Applicant's understanding of the Port's activities; although ABP is bound to query why this information was not sought before the Applicant selected the central, as opposed to the western, location for the LLTC?
- The fact that this is still an ongoing process underlines ABP's concern that the Applicant has failed to provide an adequate and meaningful baseline in relation to the Port – without which the Applicant is not in a position to properly to assess the impact of its proposal.
- It follows that the baseline environment description provided in the ES and the supporting documents provided by the Applicant are limited and general in nature. As such, it is ABP's view that the information and data provided by the Applicant to date cannot be relied upon and should be disregarded by the ExA.
- To assist the ExA, a schedule has been prepared by ABP, attached as **Annex 1** to this document, which explains by reference to Plans already before the ExA current and future berth use within the Inner Harbour. **Annex 2** to this document also provides the ExA with photographs of the Inner Harbour use. This information is also being supplemented by historic data to be provided as a standalone submission. ABP's concerns regarding the baseline adopted in respect of the environmental assessment of the LLTC scheme are set out in **Paragraphs 21.18 to 21.32 of ABP's Written Representations**.

7. ISSUE NUMBER: EN25

ABP's Relevant Representation:

(c) Failed to include an outline of the likely evolution of the Port in a no development scenario;

The Applicant's Comment:

Paragraph 15.5.13 of the ES (document reference 6.1 / PINS document reference APP- 136) identifies that there are no detailed development proposals or timescales associated with

ABP's vision for an 'East of England Energy Hub' and in paragraph 15.5.39 it concludes that the assessment is based upon the information available at the time of the assessment.

The Applicant is in discussion with ABP on this point with a view to agreeing a potential future scenario for further assessment – for example by testing a particular level of vessel movements associated with the support of offshore windfarm development.

ABP's Response:

- The Applicant's approach to consideration and assessment of the evolution of the baseline of Port is wholly inadequate and fails to comply with requirements of Regulation 14(2)(f) and Schedule 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, which the Secretary of State advised the Applicant to consider in terms of the production and content of the Environmental Statement.
- ABP's specific concerns regarding the Applicant's failure to consider the evolution of the baseline in respect of the Port are set out in **Paragraphs 21.26 to 21.32 of ABP's Written Representations.**
- ABP's concerns are fundamental in this respect, in that it fails to see how the ExA can assess the DCO application before them, or the Secretary of State determine it, without being in full possession of all the relevant data and information – as initially required by the Secretary of State in any case.
- This concern goes to "serious detriment" and the Applicant's wish to compulsorily acquire part of the statutory port estate - separate representations upon which are being made to the Secretary of State.

8. ISSUE NUMBER: EN26

ABP's Relevant Representation:

(d) Failed to undertake an adequate assessment of alternatives;

The Applicant's Comment:

The ES (document reference 6.1 / PINS document reference APP-136) has considered alternatives to the Scheme within Chapter 3.

The requirements of the EIA regulations are for the Applicant to identify the main alternatives studied by the applicant and the information in the ES meets this requirement. It is also noted that paragraph 4.27 of the National Networks

NPS notes that for road schemes, proportionate option consideration of alternatives will have been undertaken as part of the investment decision making process – this is set out in the Outline Business Case (document reference 7.4/ PINS document reference APP-107). The NPS notes that it is not necessary for the Examining Authority and the decision maker to reconsider this process, but they should be satisfied that this assessment has been undertaken – this is set out in the Outline Business Case and in Chapter 3 of the ES.

ABP's Response:

- With regard to the assessment of alternatives contained in the ES, ABP queries whether the Applicant has in fact adequately addressed the various alternatives to the current LLTC scheme in the context of the *Holohan CJEU judgement (C-461/17)*, issued on 7 November 2018, and consequently, the EIA Directive. Given the proximity of European sites to the LLTC scheme, ABP is concerned that the Applicant may have given insufficient regard to these issues in its assessment of the scheme.

9. ISSUE NUMBER: EN27

ABP's Relevant Representation:

(e) Ignored the future development of the Port, despite the very clear aspirations of ABP, the Local Planning Authority (Waveney District Council), the applicant (Suffolk County Council) itself and indeed, the SoS in his section 35 Direction where he recognises "the Port of Lowestoft's role in being the hub for the off-shore wind farms that are part of the East Anglia Array, a major energy supplier for the UK";

The Applicant's Comment:

Paragraph 15.5.13 of the ES (document reference 6.1 / PINS document reference APP- 136) identifies that there are no detailed development proposals or timescales associated with ABP's vision for an 'East of England Energy Hub'.

The ES also identifies that the impacts upon the Port are no greater than slight adverse due to the ability of the Scheme Bascule Bridge to open to allow vessels to pass through – meaning that development west of the Scheme will still be able to take place if it was brought forward by ABP.

As noted above, the Applicant is in discussion with ABP on this point with a view to agreeing a potential future scenario for further assessment – for example by testing a particular level of vessel movements associated with the support of offshore windfarm development.

ABP's Response:

- It is not ABP's intention simply to duplicate the comments that it has already made above, and in its Written Representation.
- The lack of detailed development proposals/timescales associated with ABP's vision of an East of England Energy Hub is not unusual, as ABP needs to retain the flexibility to offer potential operators various opportunities for sites ranging from anywhere between approximately 1 – 13 acres on the former Shell Base site. As ABP is currently experiencing, there will be a sequential level of interest in varying sizes of land within this area, as land within the Inner Harbour becomes scarce. Factors such as quay loadings and berth depths required for various operators also play an important factor in operational requirements and land allocation within the East of England Energy Hub, and further confirms why, at this stage, this area is not subject to a detailed development proposal for the site.
- ABP's clear position is that the Applicant's assertion is incorrect because: –
 - It failed properly to assess the actual baseline at the Port; as a consequence of which
 - Its environmental statement is defective; with the consequence that
 - Its assessment of the serious detriment that will be caused to the Port must be similarly incorrect;
 - As is demonstrated by the separate port capability report contained at **Annex 1**; and
 - The simple fact that to contemplate the construction of a bridge through the middle of an operational port, thereby ignoring the consequential damage to port operations, interruption to business, deterrence of future business opportunities and impact on the local economy defies common sense.

10. ISSUE NUMBER: EN28

ABP's Relevant Representation:

(f) Failed to explain and justify its assessment methodology;

The Applicant's Comment:

The assessment methodology is provided in section 15.3 of the ES (document reference 6.1 / PINS document reference APP-136).

ABP's Response:

- The Applicant has failed to explain and justify its assessment methodology, which differs from usual assessment practice because no attempt has been made in the methodology to define:
 - The magnitude of the impact to be generated; or
 - The sensitivity of the receptor receiving the impact.
- The assessment methodology and approach set out in the DMRB – which the Applicant indicates in its ES is appropriate for the LLTC and sets the national standards for such developments (APP 136, paragraph 6.4.9) – makes it clear that the significance of an effect is formulated as a function of the receptor value and the magnitude of the impact. This is clearly set out within DMRB Volume 11, Section 2, Part 5 (HA 205/08) 'Assessment and Management of Environmental Effects' - a key aspect of the DMRB which the Applicant fails to refer to in its assessment of the impacts on Private Assets in Chapter 15 of the ES.
- As a result of the inadequate assessment methodology applied by the Applicant, some conclusions in terms of likely significant effects are, at best, questionable and pose difficulties to rely upon.
- ABP's concerns regarding the Applicant's assessment methodology are set out in **Paragraphs 21.2 to 21.13 of ABP's Written Representations.**

11. **ISSUE NUMBER: EN29**

ABP's Relevant Representation:

(g) Failed to explain how the scheme will be operated which of itself, raises the question as to what actually has been assessed.

The Applicant's Comment:

A Scheme of Operation is being developed in collaboration with key stakeholders (including ABP) and will set out the basis on which bridge openings will occur. The Applicant anticipates providing a draft to Deadline 3.

The ES (document reference 6.1 / PINS document reference APP-136) assumes that the Scheme Bascule Bridge will not lift during peak AM and PM periods to present a worst case impact on ABP. Paragraph 15.5.21 of the ES states that "During the AM Peak and PM peak, ABP and their tenants will have to arrange for vessels that require an opening of the Scheme Bascule Bridge to either delay departure or arrival until the peak hour has passed."

In Chapter 16 of the ES (document reference 6.1 / PINS document reference APP-136) it states in Paragraph 16.5.6 how the assessment has been based upon the vessel survey results. The number of openings of the Scheme Bascule Bridge has been based upon the observed number and height of vessels using Lake Lothing in the survey period.

ABP's Response:

- ABP's concerns regarding the draft Scheme of Operation are set out in **Paragraphs 11.10 to 11.18 of ABP's Written Representations** as supplemented by its submissions for Deadline 4 – see below.
- ABP must state at the outset, however, that if the Applicant is basing its assessment and analysis of bridge opening times on the limited – and accepted as such by the Applicant – vessel survey results, then that of itself simply demonstrate the inadequacy of the exercise undertaken by the Applicant and points to the serious detriment that will be caused to the port undertaking.
- The Applicant provided a draft Scheme of Operation to ABP at the third Navigation Working Group ("NWG") Workshop, held on 18 December 2018. The members of the

NWG commented and made suggested amendments to the draft Scheme of Operation, to be further considered by the Applicant.

- Underlining the somewhat secondary role played by the NWG, the Applicant submitted a revised draft Scheme of Operation to the ExA as part of Deadline 3 (Document Ref: SCC/LLTC/EX/41), but this only take into account some but certainly not all, of the amendments suggested by the NWG.
- ABP's starting point is that it must have overall control of the opening of the LLTC if it is to be able to continue to operate the Inner Harbour on a practical and indeed commercially viable basis. As such, it strongly objects to the draft Scheme of Operation proposed by the Applicant.
- ABP's additional detailed comments regarding the draft Scheme of Operation have been separately provided to the ExA as part of ABP's Deadline 4 submission – (**ABP – 5 of 6: DL4**).

12. **ISSUE NUMBER: EN30**

ABP's Relevant Representation:

(h) Failed to provide a properly and correctly formulated Navigation Risk Assessment.

The Applicant's Comment:

The Preliminary NRA (document reference 6.7 PINS document reference APP-208) has been prepared to the methodology agreed with the NWG (on which ABP are represented). Further iterations of this assessment will be undertaken as the design develops.

This matter is under discussion with ABP.

ABP's Response:

- ABP remains of the view that the pNRA is inadequate and that the LLTC application cannot be determined by the Secretary of State until the navigation risks of the scheme have been properly assessed by the statutory harbour authority, and a final NRA is approved by ABP. Once the Applicant's NRA is finalised, ABP will then undertake its own NRA of the scheme.

- The NWG was provided with an outline methodology for a pNRA some months prior to submission of the LLTC application. The NWG were of the view that the maritime engineers would be best placed to assess whether it was a sound methodology. There was, however, some uncertainty as to the identity of the maritime engineers.
- Members of the NWG noted that the NRA methodology was not recorded in, nor annexed to, the minutes of the Workshop 2 meeting. Without the methodology being recorded it is difficult to determine whether any assessment outcomes were based on a sound methodology.
- The Applicant's practice of treating the NWG as an unofficial "sounding-board" but then only listening to the comments which it so chooses to accept, renders the entire process fundamentally flawed – a point of particular relevance in terms of the proposed DCO. As the ExA is aware, the proper and effective exercise of the consultation process by the Applicant is crucial to the DCO.
- Significantly, the Applicant did not consult ABP prior to publication of the pNRA – indeed, ABP was unaware that the Applicant had even produced a pNRA prior to submission of the LLTC application.
- ABP's views on the Applicant's lack of consultation are set out in **Paragraphs 12.9 to 12.5 of ABP's Written Representations.**
- Although not a detailed analysis, some of ABP's concerns with the pNRA are set out in **Paragraph 12.17 of ABP's Written Representations.**

13. **ISSUE NUMBER: LD1**

ABP's Relevant Representation:

The compulsory acquisition of land and rights within ABP's statutory port estate will act to the serious detriment of the port undertaking, leading directly to:

- (a) The loss of existing berth space within the Port's Inner Harbour;*
- (b) A detrimental impact on existing Port operations to the east of the LLTC;*
- (c) The loss of port utility to the west of the proposed LLTC;*
- (d) The need for an emergency berth to the east of the LLTC within the Inner Harbour;*

- (e) *The bisection of the Inner Harbour, damaging ABP's ability to secure further business from the offshore wind sector; and*
- (f) *The consequent prospect of the deflection of future business from the Port – not just offshore wind, but including aggregates, agribulks, general cargos, offshore oil and gas – to competitor ports.*

The Applicant's Comment:

The DCO includes powers to enable the Applicant to acquire land, and to create and acquire new rights (including the right to impose restrictive covenants) over land, and to occupy and use land temporarily for the purposes of constructing, operating and maintaining the Scheme.

As ABP is aware, in its capacity as a statutory undertaker, ABP enjoys a degree of protection from the exercise of such powers to acquire land compulsorily and to use land temporarily. That protection will derive from the protective provisions included in the DCO (see Part 5 (For the Protection of the Harbour Authority) of Schedule 13 (Protective Provisions) to the draft DCO (document reference 3.1 / PINS document reference APP-005)).

These protective provisions set out that the temporary possession or acquisition of any land or acquisition of rights over any land within ABP's port estate can only take place with the consent of the harbour authority (such consent not to be unreasonably withheld and with an arbitration mechanism to resolve any disputes).

Where such land use or acquisition is necessary to facilitate the delivery of the Scheme, any detriment arising or expected to arise will need to be subject to assessment in order to determine appropriate levels or forms of mitigation and compensation, to be provided in accordance with the principles of reinstatement enshrined in the Compensation Code.

The dDCO, including Protective Provisions, as well as a Side Agreement are under discussion with ABP.

The Applicant welcomes ABP's contribution to the process of identifying the likely impacts of the Scheme, for the purposes of quantifying any loss arising from those impacts and identifying appropriate and proportionate forms of mitigation or compensation. The Applicant would like to agree such matters with ABP as early as possible during the Examination, to enable the Examining Authority to present a settled position in its Report of Recommendation to the Secretary of State at the close of the Examination.

Incidentally, land-take for the purposes of the Scheme (both permanent and temporary) has been assessed to ensure that no more land than is necessary for the delivery of the Scheme is included within the Order limits (see Chapter 15 of the ES (document reference 6.1 / PINS document reference APP-136) and the Book of Reference (document reference 4.3/ PINS document reference APP-009, which was updated and submitted to the Planning Inspectorate 8 October 2018, document reference OD-002), and the Statement of Reasons (Applicant Document Reference 4.1/ PINS Document Reference APP-007); the latter of which sets out the Applicant's view on why a serious detriment has not been caused.

In relation to the specific issues raised by ABP:

(a) and (b) The ES has assessed that the loss of berth space would have a slight adverse effect on ABP's operations, given current usage of the Port and the amount of berth space to be taken. The Applicant awaits further information as to current and future berth statistics from ABP, but on current information, it is not considered that serious detriment is caused.

(c) The Scheme is an opening bridge, and so there is no loss of port utility west of the Scheme – as vessels will still be able to access it.

(d) The Applicant has discussed the need for an Emergency Berth with ABP and does not consider that such a berth is required, and that the matter can be dealt with through the Scheme of Operation.

(e) The Scheme is an opening bridge with a 12m air draft. As such, the Crew Transfer Vessels (CTV) which currently use the Port of Lowestoft, which require less than 11.5m air draft (the basis of the assessment presented in the Vessel Survey (document 6.7, Appendix B / PINS document reference APP-208), will be able to pass under the bridge. Even in a scenario where this was not the case, the bridge would be able to open for them.

(f) The Applicant awaits evidence from ABP that this will be the case – as an opening bridge the Applicant does not consider that ABP's case on this point is made out.

These matters remain under discussion with ABP.

ABP's Response:

- The serious detriment that will be caused to the Port by the LLTC scheme is dealt with in **Part 8 of ABP's Written Representations**, which reiterate points that have been made to the Applicant on numerous occasions by ABP and which appear, at present, to have been disregarded by the Applicant.

- The Applicant has attempted to assess the impact of the scheme on the Port in terms of serious detriment as defined in the 2008 Act in its Statement of Reasons (PINS Document Reference: APP-007). That assessment falls short on a number of counts – all of which derive principally in practical terms from the extent of the required compulsory purchase and from the commercial implications and consequences that then follow – exacerbated by the Applicant's fundamental lack of understanding of the port industry generally, and the operations of the Port of Lowestoft specifically.
- With a view to avoiding duplication, ABP's comments on the implications of the LLTC proposal, and the defects in the Applicant's assessment of 'serious detriment' in the Statement of Reasons, are set out in its response to **Issue Number LD2** (below).
- ABP wishes to highlight, however, that it has sought to assist the Applicant with its assessment of the serious detriment the LLTC will cause to the Port, and has provided the Applicant with details of a range of measures which ABP considers will to an extent mitigate at least some of the serious detriment that will be caused to the Port. Details of these mitigation measures are set out in **Section 16 of ABP's Written Representations**, and are further discussed in ABP's response to **Issue Number MP1** (below).
- In relation to the specific comments made by the Applicant above, and adopting the same numbering, ABP would draw the ExA's attention to the following:
 - **Paragraphs (a) and (b):**
 - i) As set out in ABP's response to **Issue Number LD2** (below) and with reference to **Paragraphs 21.2 to 21.17 of ABP's Written Representations**, it is ABP's view that the Applicant's assessment of the real impact that the LLTC scheme will have on the Port is incorrect and that the ES, as a consequence, fails in its principal objective – namely to provide an impartial objective assessment of the project.
 - ii) In particular, the Applicant appears only to have assessed the impact of the loss of berth space on the "*current usage of the Port and the amount of berth space to be taken*". This is a defective and in the circumstances a totally inappropriate applied methodology which takes no account of the fact that shipping is cyclical within each given year, subject to the influence of tidal cycles, natural fluctuations in the shipping market and political uncertainty.
 - iii) ABP considers that at least 5 years of berthing information would be required to provide even a basic indication of the previous average usage level of the

Port – and even that would be misleading, in that it would take no account of what can often be a rapid change in the nature and type of operations being undertaken at any Port – the sudden surge in offshore energy being an obvious case in point.

- iv) As can be seen, it is naïve for the Applicant to attempt to assess the impact of the loss of berth space within the statutory port estate, based simply on current usage of the Port. Such a limited exercise will never be able to provide an accurate representation of port activities – and this is true of every port in the country.
- **Paragraph (c):** In terms of the proposed compulsory acquisition, the LLTC scheme results in an indirect loss of berth utility to the west of the LLTC, by virtue of the operational restrictions imposed by the restrictions on the opening of the bridge together with the imposition of a low height restriction when the bridge is closed – namely 11 m HAT, gradually reducing over time as a result of climate change – all in the face of a trend for an increasing size of vessels – as noted below. As access to these berths will be restricted by the proposed Scheme of Operation, it will limit the utility and commercial attractiveness of these berths.
- **Paragraph (d):** ABP does not agree with the Applicant's analysis of the need for an emergency berth. ABP, as the SHA, is of the firm view that an emergency berth must be provided in order to mitigate the serious risks that will arise should a vessel become trapped between the two bridges – for example, where one or both of the bridges fails (stuck down or partially closed), the vessel itself fails or is caught by unfavourable weather conditions. Further information regarding the need for an emergency berth is set out in **Section 18 of ABP's Written Representations**.
- **Paragraph (e):**
 - i) ABP does not agree with the Applicant's assessment of CTVs that will be able to pass under the bridge. First, the Applicant has failed to take into account the 'safety margin' required to be imposed for navigational safety reasons, which is likely to be 1m and will thereby reduce the clearance under the bridge deck to 11m Highest Astronomical Tide. Such an omission underlines ABP's concern that in selecting the central option for the LLTC, the Applicant has failed even to attempt to understand the impact that its proposal will have on the operational port and the serious detriment that it will cause.

- ii) The ExA should be aware that currently, operators use CTVs that have air draughts in the 10 – 13m range. Additionally, based on an upward trend in vessel size, it is likely that CTVs deployed in future offshore wind farms will have air draughts of up to 15m. It follows, therefore, that the majority of CTVs operating from the Port will not be able to traverse Lake Lothing without a LLTC bridge lift, in addition to the existing bascule bridge lift. This is because the Scheme of Operation currently proposed for the opening of bridge will restrict the passage of vessels from the Outer harbour, along Lake Lothing to the valuable berthing space lying to the west of the proposed bridge – effectively the proposed East of England Energy Hub.
- iii) The ExA will appreciate – even though the Applicant refuses to acknowledge the fact – that a self-evident consequence of imposing a further restriction on the passage of vessels through the Inner Harbour is that operators, many of whom operate on strict timescales both in terms of cost and operational need will be deterred from selecting Lowestoft as their operational base. Put simply, the LLTC will reduce the attractiveness of the Port of Lowestoft to future operators - to the serious detriment of ABP's ability to operate its undertaking and indeed to the serious detriment of the local economy.
- iv) Further information regarding the extent to which CTV usage within the Inner Harbour will be detrimentally impacted by the LLTC scheme is set out in **Paragraphs 14.21 and 14.22 of ABP's Written Representations.**
- o **Paragraph (f):**
 - i) Putting aside the fact that simply constructing a low bridge through the middle of an operational Port strikes at common sense, to attempt then to restrict times when the bridge can be opened – presumably to justify funding for the LLTC project – merely underlines the fact that the project, as proposed, is fundamentally flawed.
 - ii) ABP's comments on the proposed Scheme of Operation are provided separately as part of ABP's submissions at Deadline 4, but in summary, the Applicant is being disingenuous when it attempts to disregard the expressed concerns of ABP in relation to the restrictions imposed by the bridge on the basis that it is an "opening bridge".
 - iii) Commercial confidentiality prevents the disclosure of specific details, but suffice to say – and ABP would suggest that it is undeniably self-evident - that

a number of commercial clients of ABP have already expressed their unwillingness to locate their operations in a part of the Port separated from the sea by two bridges. Whilst indicating that they would be prepared to consider operating from behind one bridge – especially as the existing bridge is operated by the Harbour Authority – they have expressed either extreme nervousness or outright refusal to consider operating from behind a second bridge.

- iv) In addition to these commercial clients which have expressed their views to ABP, it is very likely that there are other potential clients that ABP is not aware of, who may have already discounted the Port due to a combination of existing and potential challenges due the LLTC and A47 Bascule Bridge, Critically, ABP is of the firm view that this impact cannot be discounted, simply because it is difficult to 'prove', other than through the course of time or due to disclosure of commercial information.
- v) Further information about the impact of the LLTC on the offshore energy section is set out in **Section 14 of ABP's Written Representations**, which includes references to the impact of the LLTC scheme on other key sectors.
- vi) The fact remains, as has been noted elsewhere, that it defies logic for a local authority, on the one hand to claim that it wishes to support the local Port and the local economy and on the other, proposes a scheme that is operationally unique in this country and can only act to the detriment of the Port and the local economy which it wishes to support. This point has been made by ABP to the Applicant who has in turn claimed that bridges through the middle of an operational port are commonplace and has as a consequence, attempted to provide examples of similar bridges. These examples are reviewed by ABP in **Annex 2** to ABP's Comments on the Applicant's Answers to the ExA's First Written Questions (**ABP: 2 of 5 – DL4**). As the ExA will see, the Applicant's claims have no merit whatsoever.

14. **ISSUE NUMBER: LD2**

ABP's Relevant Representation:

The LLTC Scheme as currently promoted will, without adequate and satisfactory mitigation, act to the “serious detriment” of ABP as statutory port undertaker. The SoS will not be in a position,

unless the scheme is suitably modified and mitigated, to authorise the compulsory acquisition of the land required for the scheme.

The Applicant's Comment:

As noted above (see LD1), although the dDCO does include powers of compulsory acquisition, pursuant to the protective provisions for the benefit of ABP as statutory harbour authority, such powers within the port estate are subject to the consent of ABP (such consent not to be unreasonably withheld and with an arbitration mechanism to resolve any disputes).

As noted in the Statement of Reasons, it is the Applicant's view that the compulsory acquisition of land proposed for the Scheme does not cause a serious detriment to ABP's statutory undertaking.

The Applicant is aware that the case of 'serious detriment' has been particularly considered by the Examining Authorities in the Able Marine Energy Park, Richborough and Hinkley Point Connection DCOs.

Paragraph 9.9.101 of the Richborough Recommendation Report noted that the term 'serious detriment' goes beyond just 'detriment', and that something would be 'serious' if it was 'important or significant'. All of these cases have involved the statutory undertaker seeking to make the case that the land affected by the Scheme is required for the current and/or future use of the Port's undertaking and that there is a paramount need for the affected land to be retained (see, for example, Hinkley Connection Recommendation Report paragraph 8.5.276 and Able Marine Recommendation Report paragraphs 18.200 – 18.206).

To date, ABP have not demonstrated this to the Applicant such that a replacement site has been required to form part of the application (as per section 127(3) of the Planning Act 2008).

The impact of the Scheme on the Port, and therefore the necessity for further mitigation measures remains under discussion with ABP.

ABP's Response:

- ABP has some difficulty in understanding the rationale for the Applicant's statement above, which singularly fails to recognise the operational reality of the Port. The serious detriment that will be caused to the Port by the LLTC scheme has already been discussed in **Part 8 of ABP's Written Representations.**

- In terms of 'serious detriment' precedent DCOs cited above, the Applicant mistakenly appears to believe that all of these cases involved an assessment of the impact a proposed scheme would have on a port's undertaking. For clarity, the *Richborough* case involved the proposed development of a reservoir, and the relevant statutory undertaker impacted by the scheme was South East Water. As such, this case has nothing to do with a port use and does not apply to a port undertaking.
- Further, the *Able Marine* case involved the development of a green field site, which was not an existing operational Port. As such, ABP considers that some caution should be applied by the ExA when considering parallels between the issues considered in those cases, and the issues that are particular to the LLTC scheme.
- Paragraph 8.5.276 of the *Hinkley Connection* case Recommendation Report (cited by the Applicant above) relevantly states as follows:

"We recognise that the area affected would be relatively small in comparison to the whole of the land available to the statutory undertaker. However, we have been persuaded by those with an intimate knowledge of the Port that the constraints imposed by the proposed development in this particular location would be likely to cause serious detriment to the carrying on of the undertaking. The land affected represents an important part of the resource available to the BPC, and there is a paramount need to retain the ability to use this land in a flexible manner. However, as indicated above, this concern would be overcome by the alternative proposal that provides for an increase in the height of the pylons, and hence ground clearance in this location."

- As such, this extract clearly emphasises that serious detriment can arise in circumstances where only a small part of the overall port estate is impacted by a proposed scheme, and that it is imperative that ports retain the ability to use their land in a flexible manner. In particular, it highlights that only persons with a thorough understanding of the commercial and operational requirements of a particular port are best placed to understand the serious detriment that a potential scheme will cause – as is the case at Lowestoft.
- The perils of an uninformed person attempting to undertake an assessment of serious detriment on a port undertaking is self-evident when considered in the context of ABP's consideration of the Applicant's Statement of Reasons, as set out below.
- In terms of the assessment of serious detriment contained in the Applicant's Statement of Reasons, ABP considers this is incorrect for the following reasons:

- ***Slight adverse*** - The overall finding that the LLTC will result in a 'slight adverse' impact on the Port is wholly incorrect, as discussed in **Paragraphs 21.2 to 21.17 of ABP's Written Representations (Paragraph 6.1.12 of the SoR)**.
- ***Air draught*** - Vessels wishing to navigate west of the LLTC scheme that are constrained by the air draught clearance of 11m will as a consequence be subject to the operational restrictions imposed on opening of the LLTC. As far as ABP is aware, no attempt has been made by the Applicant to assess the direct and indirect detriment cause by the imposition of this obstruction through the middle of the Port.
- The statement (at paragraph 6.1.12.2 of the SoR) that '*an infinite air-draft will also not constrain a vessel of any height that wants to navigate west of the Scheme bascule bridge*' is also incorrect. Unfortunately, this again underlines the Applicant's clear lack of familiarity with port operations. Large vessels with over-hangs which can currently access the Port by clearing the bridge leaves of the existing A47 bascule bridge, for example, vessels with heli-decks – see image at **Annex 2**, will not be able to transit through the LLTC by virtue of the very large rolling-lift single bascule leaf. This imposes an additional constraint on the Port, as these types of vessel, which would normally be located at the North Quay 6 and 7 berths, will need to be moored between the two bridges.
- ***Vessel simulation report*** - There are a number of deficiencies with the Vessel Simulation Report, which are detailed in **Paragraph 13.4 of ABP's Written Representations**. Accordingly, the report is defective and cannot, as a consequence, be relied upon to demonstrate that the Scheme will not have a significant effect on the navigation of vessels within the Port (Paragraph 6.1.12.3 of the SoR).
- ***Preliminary Navigation Risk Assessment*** - There are also a number of deficiencies with the Preliminary Navigational Risk Assessment, which are detailed in **Paragraph 12.17 of ABP's Written Representations**. Although this summary does not constitute a detailed analysis of the deficiencies of the pNRA, it sets out some of ABP's concerns with the content, evaluation and assessment scenarios adopted in that report. As a result of these deficiencies, the conclusion contained in the pNRA cannot be relied upon.
- ***Statutory duties*** - In section 6.1 of the Statement of Reasons, the Applicant sets out its understanding of ABP's statutory undertaking. In addition to the general duties and power of ABP that are set out in the Transport Act 1981, as referred to in the Statement of Reasons, ABP is also subject to a myriad of other statutory duties,

powers and obligations through other legislative instruments. A brief summary of ABP's powers and duties is set out in **Paragraph 2.6 to 2.59 of ABP's Written Representations**.

- **Serious detriment** - The Applicant's reference to the interpretation of 'serious detriment' by cross-referring to the Consumer Regulation Review for 2013/2014 (Paragraph 6.3.6 of the SoR) is incorrect and inappropriate. To assist the ExA, a summary of the interpretation of 'serious detriment', by reference to recent NSIP examinations is included in **Paragraph 9.17 of ABP's Written Representations**. ABP would suggest that these recent decisions provide a more appropriate precedent as to the type and level of detriment that would constitute 'serious detriment'.
- Importantly, the Applicant has failed to identify or appreciate that the serious detriment test considers not just current activities, but also the impact on future activities.
- The Applicant states it has considered whether the LLTC would cause serious detriment to ABP's "*ability to provide port facilities in line with section 14 of the Transport Act 1981*" (Paragraph 6.3.9 of the SoR). In response, the ExA should note first, that the Applicant has not actually been able to refer to the correct statutory provision – it is section 9 which provides ABP with the duty to provide port facilities, and the 'Open Port' duty is contained in section 33 of the Harbours, Docks, and Piers Clauses Act 1847 and the Port Marine Safety Code. ABP would point out that the Applicant's assessment of the impact of the LLTC is distinctly narrow, based as it is on only one aspect of ABP's numerous statutory duties.
- The Applicant's assessment of the differences between the LLTC and the M4 Relief Road scheme in Paragraphs 6.3.11 to 6.3.16 of the SoR is factually correct. What the Applicant omits to mention or perhaps fails to understand is that the M4 Relief Road scheme provides the only precedent where a public authority propose to acquire land and rights to construct a bridge through an operational port. The ExA should be aware that the M4 Relief Road scheme was subject to the requirements of section 16 of the Acquisition of Land Act 1981, which is an equivalent legislative provision to section 127 of the Planning Act 2008 containing a near-identical statutory test of 'serious detriment'. Accordingly, the M4 Relief Road scheme is the only equivalent precedent involving the consideration of the 'serious detriment' statutory test, which also involved the construction and operation of a bridge over an operational port.

- As noted, although the LLTC features a lifting/opening bascule bridge, it will still preclude any vessels with overhangs, side projections and/or listing that may be constrained by proximity to the raised leaf of the bridge (Paragraph 6.3.17 and 6.3.19 of the SoR). Accordingly, this will constrain the size of vessels that are able to transit to the west of the LLTC.
- Generally, the Applicant's assessment of the serious detriment test in relation to its impact on ABP's ability to carry out its statutory undertaking in Lowestoft (Paragraphs 6.3.17 to 6.3.23) does not consider the myriad of detrimental impacts that will arise as a result of the LLTC, which are summarised at **Paragraph 9.19 of ABP's Written Representations**.
- ABP's compliance with the qualifying tests for serious detriment as set out in Section 127(3) of the Planning Act 2008 in Paragraphs is demonstrated in **Paragraphs 9.8 to 9.31 of ABP's Written Representations**.

15. **ISSUE NUMBER: MP1**

ABP's Relevant Representation:

ABP has convened workshop meetings with the Applicant at which it has raised the question, amongst others, of mitigation. If the applicant wishes to mitigate the serious detriment that its scheme will cause, as it is the Applicant who is proposing to introduce a hazard, namely the LLTC, into the Port – it is for the applicant to promote the necessary mitigation which must encompass a series of measures, including the loss to compulsory acquisition of operational berth space and the provision of an emergency berth, without which the Port may be faced with in perpetuity with safety issues which go to ABP's long-term ability to operate the Inner Harbour.

The Applicant's Comment:

Section 15.5 of the ES (Document reference 6.1 / PINS document reference APP-136) assessed the impact of the Scheme on port operations during both the construction and operational phase on the basis of the information available.

The Applicant remains willing to provide mitigation to ABP on a reasonable and proportionate basis based on robust evidence of necessity and is willing to collaborate with ABP in identifying what mitigation may be necessary in this context.

As ABP notes in its Relevant Representation, it has recently engaged with the Applicant to outline a package of mitigation measures which ABP has recently stated it considers are necessary to mitigate the impacts of the Scheme on the port estate.

The Applicant's position is that any detriment arising or forecast to arise will need to be subject to analysis to ensure that any mitigation designed to address it does in fact relate to, and address, the actual detrimental impacts of the Scheme (as distinct from facilitating ABP's wider or more long-term commercial aspirations).

The Applicant would like to agree mitigation matters with ABP as early as possible during the Examination, to enable the Examining Authority to present a settled position in its Report of Recommendation to the Secretary of State at the close of the Examination.

The impact of the Scheme on the Port, and therefore the necessity for further mitigation measures remains under discussion with ABP.

ABP's Response:

- ABP's analysis of the mitigation measures required to offset some of the serious detriment that the LLTC scheme will cause to the Port is set out in **Section 15 of ABP's Written Representations**.
- Particular aspects of this mitigation are further expanded upon in subsequent sections of ABP's Written Representations, such as the provision of replacement berthing (**Section 16**), an emergency berth (**Section 18**), statutory port security (**Section 19**), indemnity (**Section 20**) and other consequential mitigation (**Section 17**).
- The mitigation measures sought by ABP are solely designed to offset the detrimental impact of the LLTC and are based on the principle of 'equivalence', such that the Port will be neither better nor worse off as a result of the mitigation works.
- The mitigation measures proposed are not designed to facilitate ABP's wider or long-term commercial aspirations.
- ABP is encouraged by the statement that the Applicant would like to agree mitigation measures as early as possible during the Examination. As the ExA will have noted, ABP has sought to assist the Applicant in this process and has continued to engage with the Applicant in relation to the required measures of mitigation.

- Unfortunately, however, as at the date of this submission, no assurances have been given by the Applicant as to whether it is prepared to contemplate the provision of any mitigation and ABP must, therefore, record that it has serious misgivings as to the true intent of the Applicant in this respect.

Section 2: Response to the Applicant's Comments on Other Interested Parties' Relevant Representations

1. ISSUE NUMBER: EN13

Interested Party Relevant Representation: Marine Management Organisation (RR-028)

The draft DCO indicated that the Lowestoft Circular North offshore disposal site (TH005) will be utilised for the disposal of dredged sediment. Having reviewed the application, it does not appear that the impact of dredge disposal is considered within the submitted ES.

It is also acknowledged that whilst indicative volumes were provided to the MMO during pre-application, they have not been included within the ES. Specifically, the MMO advises that the ES be amended to detail the volume of dredged materials arising from the project and their impact, including cumulative impacts with concurrent disposal licenses, on any offshore disposal site to be utilised.

The Applicant's Comment:

The assessment has assumed that 10,400m³ of material is to be removed from Lake Lothing during the construction phase of the Scheme to construct the cofferdams and also to provide a permanent access to the small craft pontoon.

It has likewise been assumed that the sediment will be disposed of at the same location as ABP dispose of maintenance dredgings, namely disposal site TH005 located 1nm east of Lowestoft. Sediment sampling including around the area of the mooring (see Appendix A within Appendix 12B of the Environmental Statement (document reference 6.3 / PINS document reference APP-192)) undertaken as part of the assessment of the Scheme has identified that the sediment in Lake Lothing is largely uniform and suitable for offshore disposal in accordance with the Marine Management Organisation's criteria. Similarly, the Habitat Regulations Assessment undertaken by ABP to support their licence application for offshore disposal at

disposal site TH005 identified that there was no adverse effect upon the integrity of the Outer Thames Estuary SPA or the Southern North Sea SAC as a result of the maintenance dredge and disposal activity.

Furthermore, ABP's disposal licence is for a total tonnage of 200,000 wet tonnes per annum of which only approximately a half was used in 2017 (102,000 wet tonnes). It is accordingly concluded that the small increase in volume of sediment to be disposed of, combined with the temporal separation of the activity from the likely programme of ABP's maintenance dredging, does not materially affect the conclusions of the HRA undertaken for ABP and there are no significant effects upon the integrity of the Natura 2000 site. The Habitats Regulation Assessment has been updated (document reference SCC/LLTC/EX/6) to address this issue with respect to the Scheme.

This issue is identified as an issue still under discussion in the SoCG with the MMO.

ABP's Response:

- The disposal figure quoted by the Applicant above (102,000 wet tonnes) is incorrect. The actual quantity of dredging spoil deposited in 2017 was 150,000 wet tonnes. The figure quoted by the Applicant only captures the dredging campaign figures from April and May – and fails to include the November campaign, which involved 48,000 wet tonnes.
- ABP is concerned that the Applicant has simply taken a 'snapshot in time' when considering the impact of maintenance dredging and disposal activities.
- Maintenance dredge disposal quantities vary year by year, depending upon the degree of siltation. In years with higher than normal periods of easterly gales, the level of sedimentation is much greater. As such, it is not unknown for the quantity to be dredged and disposed of to be close to ABP's 200,000 tonne disposal licence limit.
- As the Applicant does not know when dredging associated with the Scheme will take place, it cannot guarantee that there will be a temporal separation between the Scheme's dredging requirements and ABP's maintenance dredging. Relevantly, ABP does not have control over when its dredging regime will take place, as this is ultimately detriment by the availability of UKD's vessels.
- ABP is of the strong very that the Applicant should be advised to obtain their own disposal licence, which does not in any way impact on ABP's capability to undertake its dredging programme.

2. **ISSUE NUMBER: MP5**

Interested Party Relevant Representation:

- Lowestoft Cruising Club (RR-016)
- Royal Yachting Association (RR-035)

Welcome the setting up by Suffolk County Council (SCC) of the Navigation Working Group (NWG), which Lowestoft Cruising Club (LCC) attended and contributed. The minutes of the NWG meetings (APP-090) form an important discussion of the navigation issues for recreational vessels. We agree with the overall conclusions and expect them to be implemented, and welcome a later meeting for a discussion with contractors regarding risks and mitigation measures during the construction process.

The Applicant's Comment:

The Navigation Working Group (NWG) was set up to enable discussion between the Applicant, ABP and representatives of key maritime businesses and organisations representing boating and recreational interests.

The working group aims to facilitate:

- *the exchange of information in regard to the navigational and associated socio-economic impacts of the Lake Lothing Third Crossing*
- *the exploration of opportunities to minimise those impacts*
- *the exploration of opportunities to maximise benefits*

Two meetings have taken place so far, with a further one planned in December 2018. Implementation of all recommendations from the NWG has fed into the Preliminary Navigation Risk Assessment (NRA) (document reference 6.7 / PINS document reference APP- 208).

Further development of the NRA, in conjunction with the NWG, will be undertaken with the Contractor during the design development and construction phases, as required by the pNRA.

Reports of the previous meetings can be found in Appendix 37 of the Consultation Report (document reference 5.2/ PINS document reference APP-090).

ABP's Response:

- As stated in ABP's response to Issue number EN30, the NWG were provided with an outline methodology only, and were of the view that the maritime engineers for the LLTC scheme would be best placed to assess whether or not the proposed outline methodology was sound.
- The NWG also noted that the pNRA outline methodology was not recorded in, or annexed to, the minutes of the Workshop 2 meeting – without the method recorded it is difficult to determine whether any assessment outcomes were judged on a sound methodology.

3. ISSUE NUMBER: MP8

Interested Party Relevant Representation:

- Lowestoft Cruising Club (RR-016)
- Royal Yachting Association (RR-035)

There is no clear commitment in the documentation (e.g. APP-136, page 330, para.15.5.18-21; Table 16-9) to maintain the existing navigation rights with at a minimum, openings of the new bridge to match the existing 24/7 opening schedule of the A47 bascule bridge, as given in ABP "Lowestoft Small Craft & Yacht Notice", dated 7 November 2011.

While most motor yachts will not require the new bridge to open, many larger yachts will require the new bridge to open and integrate with the A47 bascule bridge openings. The opening schedule for the new bridge should only be decided with the full involvement of the maritime community west of the bridge.

The Applicant's Comment:

A Scheme of Operation will be developed in collaboration with key stakeholders and will set out the basis on which bridge openings will occur. The dDCO sets out that no opening will occur in AM and PM peak times, as such it will be different from ABP's 2011 Notice.

The effects on recreational vessels arising from the Bridge being in place are set out in chapter 16 of the ES (document reference 6.1 / PINS document reference APP-136).

ABP's Response:

- ABP is concerned that the differences between the opening schedule of the existing bascule bridge and the proposed Schedule of Operation for the LLTC will, in effect, prescribe an extended window of restriction for vessels located to the west of LLTC and will need both a LLTC bridge lift and an existing bascule bridge lift to leave the Port.
- ABP's consideration of this issue is set out in **Paragraphs 11.13 to 11.16 of ABP's Written Representations.**

4. ISSUE NUMBER: MP10

Interested Party Relevant Representation: Royal Yachting Association (RR-035)

However, should the application be granted we would hope that Suffolk County Council could liaise with the Cruising Club and other local stakeholders such as ABP and other local sailing clubs for alternative moorings to be made available during the three-week closure period which would allow Cruising Club members to continue sailing.

The Applicant's Comment:

The Applicant is currently considering the feasibility of this request, having regard to the availability of alternative berths to the east of the Scheme and the challenges/constraints of temporarily installing others.

ABP's Response:

- Although the Royal Yachting Association's response is reasonable, ABP is unable to provide alternative berths within the Port to the east of the LLTC, due to ABP's current operational requirements and the navigational risks associated with mixing recreational and commercial berthing. ABP shared this view with the stakeholders present at the NWG Workshop 3.
- This highlights the need for any closure of the navigational channel associated with the LLTC to take place within the winter period, to avoid significant disruption to windfarm and leisure activity located to the west of the LLTC.

Annex 1 – Current and Future Anticipated Berthing in the Inner Harbour

1. The Applicant's Representations

- 1.1 In the Applicant's Response to Relevant Representations (PINS Document Reference: AS-013) the Applicant states "*with regard to the safety and navigation and ABP's statutory duties these have been addressed within the Preliminary Navigation Risk Assessment.*" PINS Document reference APP-208). The "serious detriment" test has also been considered in the Statement of Reasons (PINS Document Reference: APP-007).
- 1.2 ABP notes that in its Statement of Reasons (PINS Document Reference: APP-007), the Applicant, in an attempt to address the issue of "serious detriment" that will be caused to the Port as a result of its proposed Scheme, states that:–
- "*An infinite air draft will also not constrain a vessel of any height that wants to navigate west of the Scheme bascule bridge*" (6.1.12.2) – which, for the reasons provided by ABP, is clearly not an accurate assessment;
 - "*A Vessel Simulation Report has demonstrated that the Scheme will not have a significant effect on the navigation of vessels within the Port*" (6.1.12.3) – which for the record as noted elsewhere, ABP considers to be defective;
 - "*A preliminary Navigational Risk Assessment concludes that the risks created between the bridge and vessels navigating through and around it are as low as reasonably practicable*" (6.1.12.1 – cf incorrect numbering) – the ExA are fully aware of ABP's concerns in this respect;
 - "*Loss of berthing space is unlikely to be greater than 60 m (out of 2100 m available) but would require three berths to be redefined (i.e. changed in length)*" (6.1.12.2 – a position which ABP refutes, as noted in its Written Representations;; and
 - "*In terms of the operation of the Scheme, as noted above, the Scheme features a lifting/opening bascule bridge which will not preclude tall vessels from entering the Inner Harbour at Lowestoft. Furthermore, the Applicant has committed to deliver a bridge design which, when in the closed position, guarantees a minimum air-draft of 12 metres above HAT, which means the frequency with which the new bridge needs to open to allow vessels to pass will be less than that of the existing A47 bascule bridge to the east of the*

scheme at the Outer Harbour which the air draft is 2.16 metres" (6.3.17) – As above, the ExA are aware that ABP has serious reservations about the design of the bridge, overhangs and the ability of some vessels to pass through the bridge even when open whilst the reference to the height of the bridge pays no regard to the need for a safety clearance and demonstrates, as ABP has indicated in its representations, a lack of understanding as to what is meant by a tidal regime, the practical implications, rising sea levels and storm surges.

- 1.3 The Applicant clearly believes that the likely significant effects of the scheme upon the Port have been considered in Chapter 15 of the Environmental Statement (PINS document reference APP-136) and more specifically in paragraphs 15.5.5 to 15.5.41. In terms of Port development, the ES:
- states that there are no detailed development proposals or timescales associated with ABP's vision for an 'East of England Energy Hub' (paragraph 15.1.13);
 - suggests that the impacts upon the Port are no greater than 'slight adverse' due to the ability of the Scheme's bascule bridge to open to allow vessels to pass through – meaning that development west of the Scheme will still be able to take place if it was brought forward by ABP (paragraphs 15.5.32 and 15.5.35); and
 - concludes that the assessment in respect of the impacts of the scheme on the port is based upon the information available at the time of the assessment (paragraph 15.5.39).
- 1.4 It is not the purpose of this representation to comment on all the points made above by the Applicant. For the record, however, ABP considers them to be either misconceived or incorrect – or both - as detailed in its Written Representations submitted for Deadline 3 and those now being submitted for Deadline 4.
- 1.5 The purpose of this representation, however, is to assist the ExA in understanding first the current use of the Port's Inner Harbour and second, its potential future use in a no-Scheme scenario.

2. Current Operations in the Inner Harbour

- 2.1 To assist, the ExA's attention is drawn to the two plans identified as Annex 1A and Annex 1B which were produced for Deadline 3 as part of ABP's Written Representations (PINS Document Reference REP3-024). As the ExA will note, Annex 1A delineates the western

sector of the Inner Harbour, and Annex 1B delineates the eastern end of the Inner Harbour, commencing effectively from the existing bascule bridge.

2.2 By reference to both Annex 1A and 1B (working from East to West), current operations within the Inner Harbour comprise the following:

- **Town Quay 1** – Berths for smaller windfarm vessels including, tugs, support and survey vessels;
- **Town Quay 2 and 3** – Berthing for deep draft windfarm and survey/support vessels;
- **CEFAS Quay** – H.M. Government research vessel berth - long term lease with berth exclusivity for their research vessel. It may be used by other vessels with permission of the tenant when not in use by their vessel;
- **Talisman's Quay/Silo East** – A port operated common user berth used for commercial vessels for ship repair and cargo operations;
- **Silo (west)** – Agribulks and cement import and export – the berth has priority utilisation by adjacent grain and cement silo operations - otherwise may be used as a common user berth when not required by priority customer;
- **North Quay Berth 1** – General, bulk and project cargo operations and energy support vessel berthing – port operated common user berth;
- **North Quay Berth 2** – General, bulk and project cargo operations and energy support vessel berthing – port operated common user berth;
- **North Quay Berth 3** – General, bulk and project cargo operations and energy support vessel berthing – port operated common user berth;
- **North Quay Berth 4E** – General, bulk and project cargo operations and energy support vessel berthing – port operated common user berth;
- **North Quay Berth 4W** – General, bulk and project cargo operations and energy support vessel berthing – port operated common user berth;
- **North Quay Berth 5** – General, bulk and project cargo operations and energy support vessel berthing – port operated common user berth;
- **North Quay Berth 6** – Logistics base for Peterson oil and gas related supply vessel cargo work; providing support to their Southern North Sea customers – priority allocation of berth to this operation;

- **North Quay Berth 7E** – Logistics base for Peterson oil and gas related supply vessel cargo work; providing support to their Southern North Sea customers – priority allocation of berth to this operation;
- **North Quay Berth 7W** – Allocated to Fendercare operations base for their support of MCA approved Ship to Ship oil and gas transfer operations off the coast at Southwold – tenant has priority use of this berth; and
- **Shell Quay** – Used to berth vessels engaged in offshore construction support and operations & maintenance of Southern North Sea windfarms as well as vessels awaiting work– port operated common user berth.

3. Prospective Operations over the next years in a no-Scheme scenario

- 3.1 As ABP has already indicated on numerous occasions, both to the Applicant and more recently the ExA, the Port of Lowestoft – like its competitor ports both regionally and nationally – operates in a fluctuating market, having both to accommodate existing commercial needs whilst at the same time having to anticipate future requirements and seize every commercial opportunity in an economically volatile market subject to the vicissitudes of national and indeed international politics.
- 3.2 On this basis alone, the ExA does need to understand that the potential future use of the Inner Harbour in a "no Scheme" scenario, as detailed below and provided at this submission date of 29 January 2019, could well have changed both by the time of the commencement of the examination in mid-February and almost certainly by the conclusion of the examination in May – as indeed has happened since the commencement of the examination.
- 3.3 By reference to both Annex 1A and 1B (working from East to West), based on ABP's current commercial understanding, future prospective operations within the Inner Harbour over the next few years in a no-Scheme scenario contemplate the following:
- **Town Quay 1** – Berths for smaller windfarm vessels including, tugs, support and survey vessels,
 - **Town Quay 2 and 3** – Planned to become the permanent main operational base for Peterson Oil and Gas support operations, as well as potentially supporting their desire to support offshore windfarm logistics. Some vessel fuelling facilities for Peterson operated vessels;

- **CEFAS Quay** – H.M. Government research vessel berth - long term lease with berth exclusivity for their research vessel. It may be used by other vessels with permission of the tenant;
- **Talisman's Quay/Silo East** – A port operated common user berth used for tugs, ship repair and cargo operations;
- **Silo (west)** – Agribulks and cement import and export – the berth has priority utilisation by adjacent grain and cement silo operations - otherwise may be used as a common user berth when not required by priority customer;
- **North Quay Berth 1 & 2** – Bulk aggregates import terminal with cargo transfer by conveyor to adjacent rail sidings for inland shipment by rail;
- **North Quay Berth 3** – General, bulk and project cargo operations and energy support vessel berthing – port operated common user berth;
- **North Quay Berth 4E** – General, bulk and project cargo operations and energy support vessel berthing – port operated common user berth;
- **North Quay Berth 4W** – General, bulk and project cargo operations and energy support vessel berthing – port operated common user berth;
- **North Quay Berth 5** – General, bulk and project cargo operations and energy support vessel berthing – port operated common user berth;
- **North Quay Berth 6 & 7E** – Common user berth available as supplementary facility for customers such as Peterson O&G/OWF support operations, as well as vessel bunkering facility – import fuel by coastal tanker, load to PSV's, SOV's and CTV's;
- **North Quay Berth 7W** – Allocated to Fendercare operations base for their support of MCA approved Ship to Ship oil and gas transfer operations off the coast at Southwold – tenant has priority use of this berth; and
- **Shell Quay** – Enhanced common user operational quay with adjacent warehousing, workshop buildings, personnel processing, training, storage and offices to support Windfarm operators and their Tier 1, 2 & 3 contractors. Berth provided of tugs, CTV's, survey vessel and potentially SOV's if adopted as an O&M facility.

3.4 **East of England Energy Hub** – ABP notes that the prospects for the East of England Energy Hub have been questioned by the Applicant. ABP would suggest that this was probably

predictable in that the Applicant is currently failing to recognise the serious detriment that its project will cause to the port.

- 3.5 The ExA will, however, appreciate the commercial reality. That commercial reality is that any port which adopts a commercial strategy of 'standstill' with a view to waiting to see what happens will not in the real world actually standstill but will simply decline.
- 3.6 If a port is genuinely to increase its commercial viability it must always be looking ahead.
- 3.7 The Applicant has not questioned the very real prospects open to ABP in the context of the offshore energy market both in terms of wind energy and oil and gas, and it would be surprising if it did so, in light of the fact that the Section 35 Direction issued by the Secretary of State for the LLTC scheme relied on the Port's future role as a hub for offshore wind farms in the East Anglia Array.
- 3.8 In very simple terms, the East of England Energy Hub is a critical and very necessary opportunity for ABP – to the serious benefit also of the local community - which could not be taken forward if the proposed Third Crossing were to be approved.

Annex 2 – Photographs of the Inner Harbour

1. Vessel with helideck clearing bridge leaves



2. Shell Quay – September 2018



3. Vessels on Shell Quay



4. Silo Quay



5. Talismans Quay



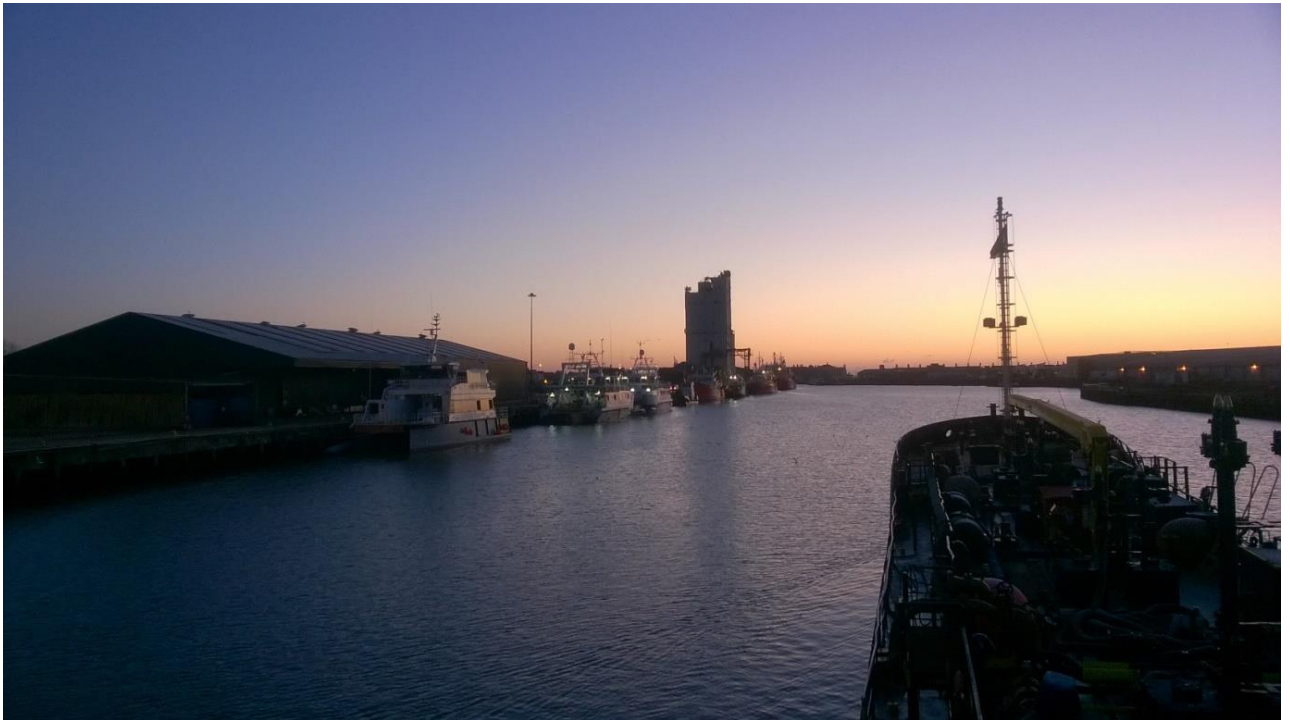
6. Full Inner Harbour Berths – December 2018



7. North Quay 1, 2 and 3



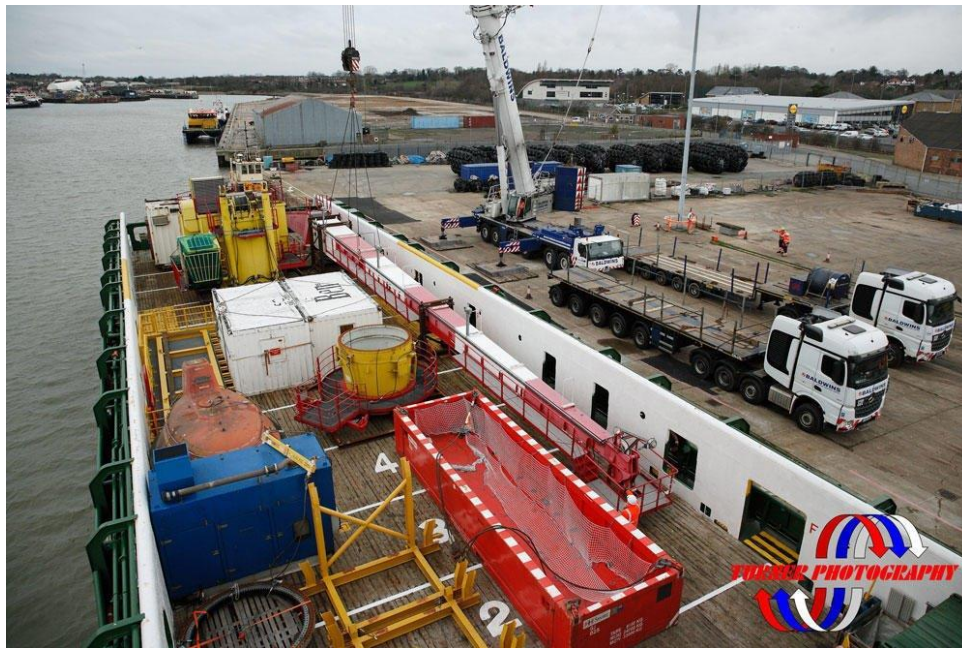
8. North Quay full in March 2018



9. Local management team welcomes Peterson UK to Lowestoft



10. Peterson Vessel Unloading (January 2018)



11. Peterson Vessel Unloading (January 2018)



12. North Quay from Commercial Road



13. North Quay Berths 3 to 5 – Pipe Salvage Ops



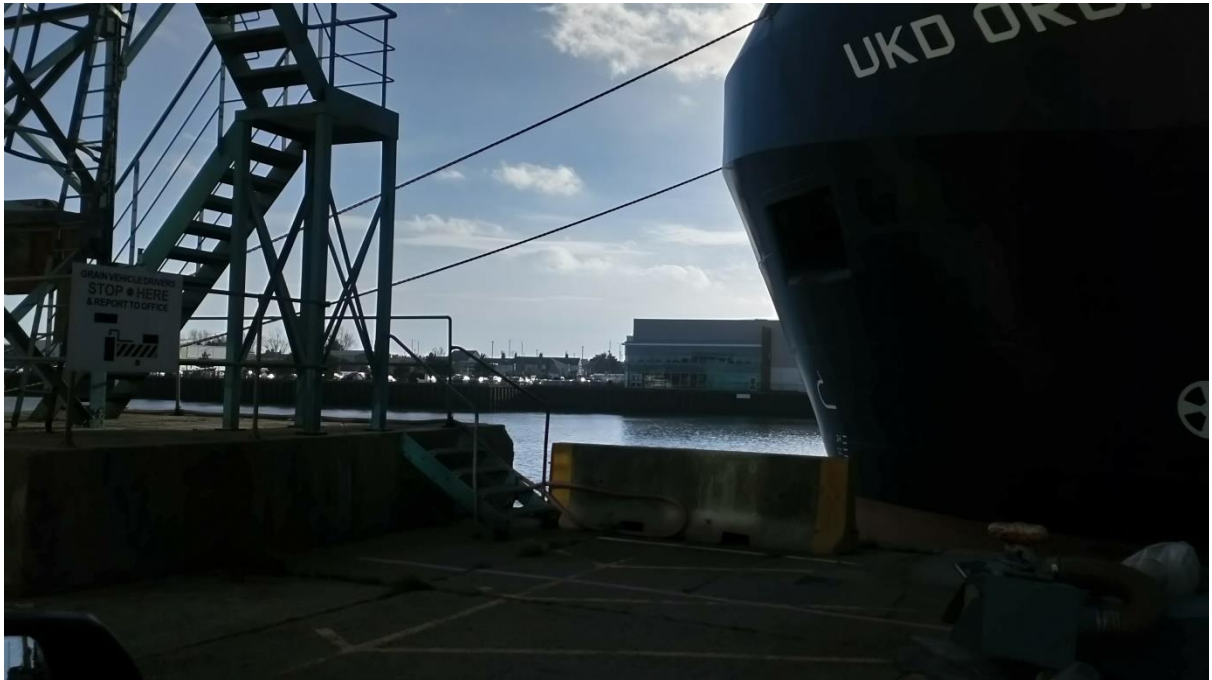
14. North Quay – Pipes in yard



15. UKD Orca Cardiff – Mooring Lines



16. UKD Orca – Mooring Lines



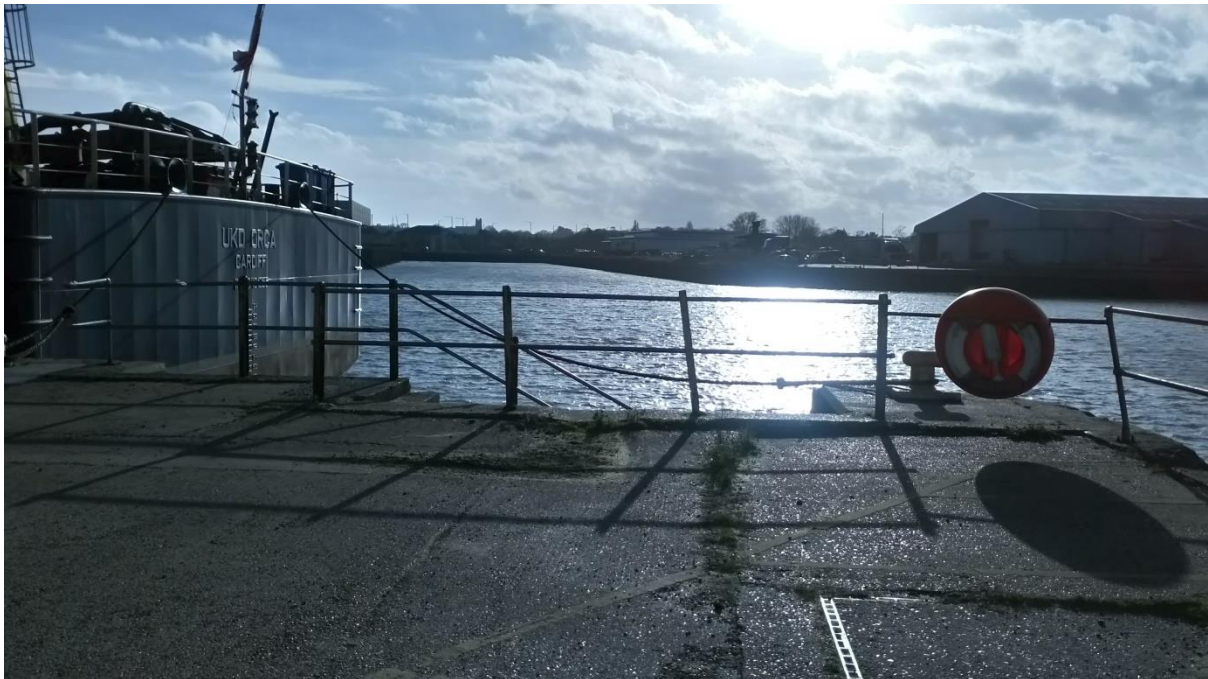
17. UKD Orca – Mooring Lines



18. UKD Orca – across quay



19. UKD Orca



20. North Quay – Marshalling area in use



21. North Quay – Marshalling area in use



22. North Quay – Marshalling area in use



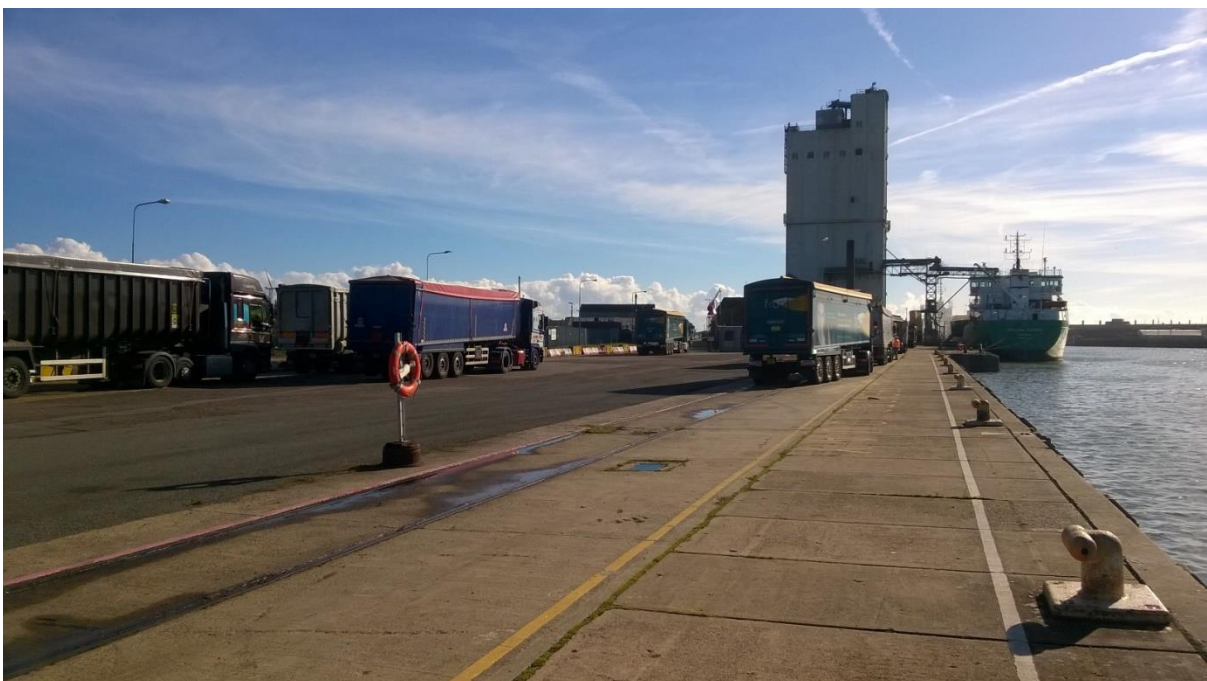
23. North Quay – Marshalling area in use



24. North Quay – Marshalling area in use



25. North Quay – Marshalling area in use



26. North Quay – Marshalling area in use



27. North Quay – Marshalling area in use



28. 3 Shed



29. Ground Investigations in front of Shed 3

