

(ABP: 5 of 5 – DL4)

Proposed Lake Lothing Third Crossing (TRO10023)

Associated British Ports (20013261)

Comments on the draft Scheme of Operation

This documents sets out the comments of Associated British Ports ("ABP") on the Applicant's draft Scheme of Operation (Document Reference: SCC/LLTC/EX/41), which was submitted by the Applicant at Deadline 3 (8 January 2019).

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

1. General Comments

- 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, to be further considered by the Applicant.
- To assist the ExA, Appendix B to the Applicant's Response to ExA's Written Questions (Document Reference: SCC/LLTC/EX/10): –
 - sets out the Meeting Notes from NWG Workshop 3;
 - the draft Scheme of Operation that was considered by the NWG; and
 - includes all amendments and comments proposed by the NWG as a result of that meeting.
- 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). This document, however, only takes into account some, but certainly not all, of the amendments suggested previously by the NWG. It contains additional amendments and the 'Appendix A – Sequential Mitigation Flowchart', which were not provided to the NWG for review. When the position was queried by ABP, the Applicant

advised that the NWG was consultative only and the drafts were never intended to be identical.

- Given the primary purpose of Workshop 3 was for the NWG to consider and discuss the draft Scheme of Operation, the omission of key points by the Applicant renders the 'consultation' with the NWG somewhat disingenuous.
- Generally, ABP has maintained the position that the Scheme of Operation for the LLTC must be equivalent to the existing operating regime applied at the A47 Bascule Bridge - and in this respect, ABP has noted the Applicants somewhat ambiguous answer to the specific question addressed to them by the ExA, Question 2.26. In this regard, the most recent operating procedures are set out in the '*Small Craft and Yachts Notice 2018*' ("2018 Notice"), which ABP implemented on 3 December 2018. The Applicant has advised that the draft Scheme of Operation was informed by the 2018 Notice (see paragraph 4.3 of the NWG Workshop 3 Meeting Notes).
- ABP's general concerns regarding the draft Scheme of Operation are set out in **Paragraphs 11.10 to 11.18 of ABP's Written Representations.**

2. Paragraph 1.1.2

- ABP's specific comments regarding the revised draft Article 40 of the DCO are set out in **ABP's Comments on the Revised DCO.**
- ABP's starting point, however, 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 process for the Scheme of Operation as currently proposed by the Applicant in para. 1.1.2 *et seq.*
- This position does not, of course, preclude an agreed Scheme of Operation - but ABP must have an overriding ability to control the opening of the bridge without restriction. In reality, ABP is seeking nothing more than a reflection for the LLTC of the procedures in place for the existing bridge – which, as noted above, are about to be updated.
- ABP accepts that provided a Scheme of Operation can be agreed with SCC (as local authority and highway authority) – not necessarily the Applicant – then any proposed changes to the Scheme of Operation should be subject to consultation and agreement with the principal parties, namely ABP, the local authority and the highway authority. Additionally, ABP considers that it must also have the right to implement, albeit following consultation, changes to the Scheme of Operation – as the likely LLTC Bridge Operations

– as there will inevitably be certain issues that only arise once the Scheme of Operation is put into practice, and ABP has gained experience of the impact of vessel transit times, double openings, etc.

- In this context, however, ABP does question the status of the NWG. This is because, as noted on a number of occasions in ABP written submissions, the Applicant appears to be viewing the NWG as something less than as advisory body. Indeed, ABP questions the need for its continuing existence bearing in mind that all of the specific marine interests which are members of the NWG are regularly consulted by ABP in its capacity both as the operator of the Port and the Statutory Harbour Authority. Given that the Applicant's view is clearly that the NWG is an informal advisory group only and, as such, as has been demonstrated, it is not under any obligation to adopt the recommendations made by the NWG, it would appear that the NWG has no standing as far as responsibility of navigation risk is concerned. ABP considers, therefore, that no formal consultation with the NWG is required, apart from a stakeholder consultation with the specific parties which will in any case be undertaken by ABP in accordance with the Port Marine Safety Code, particularly in respect of port marine and safety matters. Importantly, for this consultation to be effective, the Applicant must consider all points raised by the stakeholders.
- The ExA will be aware, of course, that the Statutory Harbour Authority is ultimately responsible for navigational safety within the harbour and as such, must have ultimate control of the opening of the bridge.
- ABP does not agree that, in circumstances where changes proposed to the Scheme cannot be agreed between the parties those changes must be referred to and be approved by the Secretary of State. Whilst it might be necessary to involve the Secretary of State in an arbitration role should all negotiations fail, there must be sufficient flexibility in the Scheme of Operation to allow decisions to be made locally so as to reflect actual working conditions which may arise. This flexibility will be seriously inhibited if any changes not agreed by both ABP and the authorities are made subject to a lengthy approval process with the Secretary of State. Additionally, the Scheme of Operation must clearly state that any involvement by the Secretary of State should only occur in exceptional circumstances where agreement cannot be reached between the parties.

3. Paragraph 1.1.5

- This paragraph refers to the "*Lowestoft Harbour Byelaws 1993 as amended by the Order*" – ABP does not agree with this drafting, as the existing Lowestoft Byelaws have not been amended yet, and ABP does not agree with the amendments proposed by the Applicant.

- As such, ABP considers that this paragraph needs to be amended to reflect the fact that it is an aspiration of the Applicant to amend the Lowestoft Byelaws but, at this stage, no such amendments have been made.

4. Commercial on-demand openings – Section 1

- ABP cannot agree to the restriction on LLTC openings for commercial vessels proposed by the Applicant, or the qualification relating to "tidally restricted vessels". These are clearly more restrictive than the current regime operated by ABP in respect of the A47 Bascule Bridge.
- The current position regarding bridge openings of the A47 Bascule Bridge for commercial vessels is set out in the 2018 Notice, which relevantly provides that:

"4. The Lowestoft Harbour Bridge (between the Outer and Inner Harbours) [i.e. the A47 Bascule Bridge] will only be opened on demand for commercial shipping over 50 gross tonnes. A minimum of 20 minutes notice is required to facilitate a commercial bridge lift.

4(A) Commercial shipping is discouraged from passage: 0815 - 0900 hours, 1230 - 1300 hours and 1700 - 1745 hours."

- Although the procedures currently in place for the exiting bridge enable the Harbour Master, exercising his reasonable discretion, to open the bridge for commercial vessels during peak traffic periods, his practice is to try to avoid this occurring as far as practicable. This fact is underlined in **Paragraph 4.10 of ABP's Written Representations**, which explains that during the last 12 months, the A47 Bascule Bridge has only been opened on limited occasions during the rush hour for commercial vessels, the Harbour Master acting responsibly in the exercise of his powers so as to minimise the impact on vehicular traffic.

5. Time Restrictions – Section 2

- ABP has commented on the differences between the A47 Bascule Bridge opening regime and the Applicant's proposed Scheme of Operation for the LLTC in both its Written

Representations, and in respect of the Applicant's response to the ExA's Written Question 2.26. To assist the ExA, however, ABP's concerns are also set out below.

- ABP will be unable to operate the port on a commercially viable basis if the proposed time restrictions on opening of the LLTC as stated by the Applicant (i.e. 08:00 – 9:00 and 17:00 to 18:00) remain in place which incidentally do not even reflect the current position for the existing A47 Bascule Bridge - i.e. 8:15 – 9:00 and 17:00 – 17:45 - and ignores the exercise of the harbour Master's discretion. Incidentally, the ExA should note that the NWG did not understand why this position has been adopted by the Applicant (see paragraph 4.3.3 of the NWG Workshop 3 Meeting Notes), who advised that it was based on their study of traffic volumes – without consideration of the impact on commercial operations at the Port.
- The significance of an extended window of restriction relates to vessels which need to transit Lake Lothing (i.e. that are located to the west of the LLTC), which require both a LLTC bridge lift and an A47 Bascule Bridge lift to leave the Port. The 4-knot port speed restriction means that outbound vessels located at the western end of Lake Lothing (i.e. to the west of the LLTC) would only reach the A47 Bascule Bridge several minutes past the hour, likely missing the opening 'window' for the A47 Bascule Bridge. This will result in an unacceptable 'in-combination effect' for operators located to the west of the LLTC, who may in practice be forced to man their vessels and commence transit out of the Port some hours before they would otherwise need to, in order to clear both exclusion windows of the LLTC and the A47 Bascule Bridge. This impact also applies to inbound vessels that require a transit of both bridges which may, for example, transit through the A47 Bascule Bridge at 08:00hrs, but which would then be restricted from transiting through the LLTC for another hour (until 09:00hrs).
- Another key issue arising from the mis-alignment of the peak hour restrictions is that in practice, it is likely that a number of vessels will need to 'clear' the LLTC opening window before the prohibition commences and then essentially 'mill about' in the middle Inner Harbour (i.e. between the LLTC and the existing bascule bridge), until those vessels are able to pass under the existing bascule bridge as part of the scheduled lift. This of itself will increase navigational safety issues and will inevitably impede normal operations within the middle part of the Inner Harbour.
- ABP considers that the Applicant's concept of a "tidally restricted vessel" is too prescriptive and narrowly defined, and must be broadened to include other, as yet unspecified, circumstances. In line with the existing bridge operating regime, the Harbour Master must have discretion to open the bridge for commercial vessels, whether or not

they fall within the definition of 'tidally restricted'. Circumstances where commercial vessels are unduly impacted when the peak traffic period coincides with high tide represent only one example of the situation where the Harbour Master may have to exercise his discretion to open the bridge during a peak traffic period, so as to not detrimentally impact on port operations. As such, it is ABP's firm view that the Harbour Master must have discretion to open the LLTC bridge for commercial shipping, on the same basis as the A47 Bascule Bridge is currently operated.

- ABP considers the draft Scheme of Operation is overly restrictive in this respect, and must provide the Harbour Master with sufficient flexibility to carry out his statutory duties – one of which is to provide an open port – whilst being cognisant of the impact on traffic in Lowestoft.

6. Scheduled Openings – Section 4

- As noted above, ABP cannot accept the prescriptive nature of this provision, particularly given:
 - the 'in-combination' impact with the LLTC and the A47 Bascule Bridge (described above); and
 - the requirement for a 'double-lift' of one or both of the bridges, where there is two-way vessel movements at the A47 Bascule Bridge. For example, if the A47 Bascule Bridge is opened at 11:15am, it will require the LLTC to be opened approximately 10 minutes later to allow the vessel access the western end of Lake Lothing (this also applies to the reverse situation). If such a lift is not allowed (i.e. due to scheduled opening restrictions), such vessels would have to either moor or 'mill about' in the Inner Harbour until the next LLTC scheduled opening at 14:30 – over three hours later.
- The ExA should note that the Applicant did consider addressing this issue by including the word "approximately" as follows: *"opening at approximately the following times, having regard to the concurrent demand at the A47 Bascule Bridge"* (see paragraph 4.3.5 of the NWG Workshop 3 Meeting Notes). This flexibility, however, was deleted by the Applicant after the NWG Workshop and instead replaced with *"opening at the following times, which may be amended having regard to concurrent demand at the A47 Bascule Bridge."*
- As currently drafted, the clause is deficient. This insertion does not clearly state who an amendment can be made by, and in what circumstances.

- As such, ABP considers that the Harbour Master must have discretion to amend the Scheduled Openings in such circumstances that he sees fit.

7. Height Clearance – Section 8

- As ABP is likely to be the LLTC Bridge Operator, it is ABP who will ultimately be responsible for issues arising in relation to the height clearance of the LLTC.
- The possibility of a vessel striking the bridge is a serious navigational issue that must be formally assessed by the Statutory Harbour Authority prior to approval of the LLTC application.
- In the absence of a comprehensive Navigation Risk Assessment having been undertaken (and formally approved by the Statutory Harbour Authority), ABP cannot agree to any of the requirements set out in this clause for a number of reasons, including the following:
 - ABP has real concerns, based on decades of experience, that vessels Masters often do not precisely know the air draft of their vessel.
 - Further, vessels Masters are often unaware of additional pieces of equipment (such as radio masts, aerials, etc) that may increase the air draft of their vessel.
 - Recreational vessels are often under the control of persons without expansive, or even any, prior experience of the vessel.
 - It may be that a real-time clearance display is not sufficient to act as a measure designed to mitigate the risk of a vessel strike on a bridge.
- Accordingly, this section requires further consideration by ABP, as Statutory Harbour Authority, following completion and approval of the comprehensive Navigation Risk Assessment, to determine what types of restrictions may need to be imposed.
- As a practical issue, the ExA should note that the LLTC does not have a clearance of 12 m at HAT in terms of the passage of vessels. Subject to the completion of the formal navigation risk assessment, ABP anticipates that the actual height for safe passage will be 11 m at HAT (incorporating the vessel air draft clearance value) – this vertical clearance will itself be reduced through predicted sea-level rise over the life of the LLTC bridge. That this fact has not been recognised simply goes to underline the Applicant's lack of understanding of port operational issues and matters of safe navigation.

8. Double Openings – Section 9

- It is unclear how this clause is intended to interact with the other time restrictions and scheduled openings specified in the draft Scheme of Operation. As such, ABP does not oppose this section, provided that it is clear that the Harbour Master has the discretion to determine which bridge will need to be opened to accommodate two-way vessel movements.
- ABP will not be able to determine how this provision will affect timings of the opening of the bridge, until ABP has been operating both bridges and has gained experience of the impact of vessel transit times, double openings, etc.
- Accordingly, the current uncertainty as to how the Scheme of Operation will work in practice reinforces ABP's need to be able to make small changes to the Scheme of Operation without any involvement by the Secretary of State.

9. Adverse Weather Conditions – Section 10

- ABP recognises that there will inevitably be weather conditions where the LLTC may not be able to be opened as a result of the bridge's engineering design limitations. ABP is concerned, however, that any potential restriction on the Harbour Masters' discretion to open the LLTC may result in circumstances where the LLTC has to be closed to vessel traffic in weather conditions where the A47 Bascule Bridge is still operable. This would, consequently, result in a detrimental impact to the operation of the harbour.

10. Risk of vessels becoming trapped in the Inner Harbour – Section 11

- ABP, as the Statutory Harbour Authority, is of the firm view that an emergency berth must be provided within the Inner harbour, between the existing bridge and proposed LLTC, 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.
- The Applicant, on the basis of what ABP considers to be a defective preliminary Navigation Risk Assessment, has suggested that the risk can be mitigated by allowing a simultaneous "double-lift" of the A47 Bascule Bridge and LLTC, prior to a vessel entering the Port, to ensure that its passage to the western end of Lake Lothing is guaranteed. ABP notes, however, that this option will of itself lead to a detrimental impact on the underlying purpose of the LLTC, which is to improve highway traffic flow. The ExA should

note that the NWG was also of this view (paragraph 4.3.12 of the NWG Workshop 3 Meeting Notes).

- As stated above, following the NWG Workshop 3, the Applicant has introduced a critical restriction on the Harbour Master's discretion for circumstances where a "double-lift" may be required, without any prior consultation with or notification to either the NWG or the Statutory Harbour Authority. The amendments in question are as follows:
 - Insertion of the words "... *having following the sequential risk mitigation flowchart in Appendix A.*"; and
 - Insertion of a Sequential Mitigation Flowchart at Appendix A to the Scheme of Operation.
- ABP has serious concerns with these amendments for the following reasons:
 - The Harbour Master's discretion in respect of navigational safety should not be limited in this way, otherwise it will impede his ability to comply with his statutory duties;
 - The Sequential Mitigation Flowchart is not operationally practicable in that it fails to recognise port operational and navigational safety imperatives. In addition, it is overly prescriptive (not to mention nearly illegible and incomprehensible) and as a consequence, is not capable of realistic application without serious risk – the very risk that the provision of an emergency berth is designed to avoid; and
 - The amendments should not have been included in the draft Scheme of Operation without both prior consultation with the Statutory Harbour Authority, and a formal Navigational Risk Assessment so as to justify the amendments sought.
- Accordingly, ABP objects in the strongest terms to the insertion of the text and Appendix A, on the basis of both unacceptable content and lack of due process.

11. Emergency Response – Section 12

- ABP agrees with this proposed requirement, as it provides the Harbour Master with the broad discretion he requires in order to respond to emergencies within the harbour and at sea.