

(ABP: 3 of 5 – DL5)

Proposed Lake Lothing Third Crossing (TRO10023)

Associated British Ports (20013261)

Post Inquiry Note in respect of Funding Arrangements

- 1 At the examination hearing on 13 February 2019, ABP further explored the issue of funding, which was dealt with at Section 23 of its Written Representations and in its Deadline 4 submissions.
- 2 That section of ABP's Written Representations identified the failure of the Applicant to account for the additional funding required for mitigation/compensation measures and increased land acquisition costs which appear to have arisen, as well as the absence of transparency in the material set out in the Applicant's various statements¹.
- 3 ABP notes that in the Applicant's Response to Written Representations (Document Reference: SCC/LLTC/EX/51), the Applicant has responded to ABP's concerns regarding funding by reference to the:
 - a) Funding Statement;
 - b) The Applicant's response to ExA question 3.7 to 3.10; and
 - c) a letter dated 29 January 2019 from the Council's Section 151 Officer, which states that the requisite funding will be available to the Scheme (i.e. Appendix E to the Applicant's Response to Written Representations).
- 4 The Applicant's Outline Business Case² shows at Table 4-2³ a series of total cost elements attributable to the Scheme as at Q4 2015 prices. This identifies a total Scheme outturn cost of £91.73 million. The only item provided in respect of land acquisition cost is given as £3.63 million. There were no other sums accounted for

¹ See paragraphs 23.11 to 23.15

² Document 7.4

³ Page 101

by way of mitigation or compensation in respect of any parties adversely affected by the proposed Scheme.

- 5 The Applicant's Funding Statement⁴ builds upon the figures set out in the Outline Business Case. In particular, Paragraphs 3.2.4 to 3.2.9 set out that which is purported to be the Applicant's funding structure.
- 6 Firstly, the Scheme depends upon the provision of £75.39 million by way of a funding grant from DfT, which is subject to the satisfactory completion of all remaining statutory processes and the submission and approval by DfT of a full business case.⁵ We do not know whether this funding is time limited, as this information has not been provided by the Applicant. The Applicant should clarify the position.
- 7 As noted above, the cost of the delivery of the Scheme at that time was estimated to be £91.7 million. SCC's cabinet has agreed to underwrite the shortfall, which is identified as being £18.3 million – this figure comprises the additional £16.3 million required to meet the estimated scheme cost of £91.7 million, together with a further £2 million funding towards the Outline Business Case costs (i.e. a total cost of £93.7 million). None of those amounts are identified as relating to either compensation or mitigation for any other interested parties affected by the proposed scheme.⁶
- 8 It would appear that the local partners (comprising for these purposes not only the County Council but also the New Anglia Local Enterprise Partnership) have committed to funding 20% of the total cost of the proposed scheme⁷. Paragraph 3.2.7 states that "*this is currently estimated to be £18.3 million*". To that end, £10 million has been earmarked from the Council's Capital programme, with the remaining £8.3 million said to be "*anticipated to come from local contributions*". If such monies cannot be drawn down from other sources, however, then the

⁴ Document 4.2

⁵ See paragraph 3.2.4.

⁶ See Paragraph 23.3 of ABP's Written Representations, which references Paragraph 3.1.1 of the Funding Statement

⁷ Document 7.4 – Outline Business Case – appendix M

Applicant would, it is assumed, seek to borrow the monies or draw on its reserves if required to do so to deliver the Scheme.

- 9 If ABP's assumption is correct, however, that raises a greater level of attendant uncertainty than would be expected from a scheme of this sort and at this stage in the process.
- 10 Be that as it may, it is noted from paragraph 3.2.8 of the Funding Statement that the Applicant now expects the projected costs to rise by a further £8 million on the original Property Costs Estimate. That would appear to have raised the total cost of the project to £101.7 million⁸.
- 11 There is no indication as to where the total extent of this funding (now amounting in total to £26.31 million, above the £75.39 million which the Applicant intends to obtain from DfT) will come from, or where this is provided for within the Applicant's funding figures.
- 12 On 21 January 2019, SCC published the Detailed Capital Programme 2019-22, which stated that the Scheme budget is forecast as £91.011 million (2018/19 to 2023 onwards) – some £10.679 million below the project Scheme cost as advised by the Applicant in the Funding Statement (as calculated in paragraph 9 above).
- 13 In addition, the Capital Programme identifies that £13 million is anticipated to be borrowed by SCC in respect of the LLTC – this appears to be an increase on the £10 million previously identified by the Applicant in the Funding Statement.⁹ Further, the Revenue Budget 2019-20 (also published on 21 January 2019) states that the Capital Programme was allocated £15.3 million in funding for the LLTC, but does not clarify where this funding is coming from. Taken together, these figures appear to suggest that the total cost of the project is now £103.69 million.¹⁰ It is therefore unclear how these figures relate to the funding position set out in the Funding Statement, and ABP requests clarity from the Applicant in this regard.

⁸ Being the original £91.7 million plus £2 million towards OBC costs, plus the further £8 million now referred to.

⁹ Paragraph 3.2.8 of the Funding Statement

¹⁰ Being the original £75.39 million DfT funding plus the £13 million to be borrowed and the £15.3 million in allocated funding now being referred to.

- 14 None of the Applicant's correspondence, including Appendix E,¹¹ provides anything in the nature of adequate assurance upon the matter. All that the Section 151 Officer's letter dated 29 January 2019 suggests is that the additional £8 million budget pressure identified and reported in the cabinet report of June 2018 "*has already been accounted for in the Council's future capital budget should it be required*", but this is not explained in the funding structure provided by the Applicant. For example, does this £8 million shortfall form part of the £13 million to be borrowed as identified in the 21 January 2019 reports? If this is the case, does the £5 million gap relate to a further increase in the Scheme costs?
- 15 Further, no detail has been provided to date to indicate whether any consideration has been made for financial provision to cover any costs of compensation and mitigation. With respect, rather more vaguely, the Applicant initially made provision for £3.6 million and has now purported to increase this to £8 million in respect of property acquisition. Self-evidently, property acquisition does not equate to mitigation and compensation. In other words, even the apparent "*additional £8 million budget pressure*" has not been adequately, let alone robustly, identified as being sufficient to provide for the funding of the Scheme. The Section 151 Officer's letter, and for that matter other reports, do not appear to suggest anything in the nature of a "blank cheque" indemnity for any (unspecified) figure representing the costs of the Scheme. That does not appear to be an approach consistent with the Government guidance related to procedures for the compulsory acquisition of land under the 2008 Act, in particular paragraphs 17 and 18.
- 16 As stated in its Deadline 4 submissions in response to ExA Questions 3.7 and 3.10, ABP is extremely concerned as to the Applicant's ability to secure funding for the Scheme. These concerns remain, notwithstanding the Section 151 Officer letter provided by the Applicant.

¹¹ To document SCC/LLTC/EX/51

- 17 It is recognised that as a public authority the Applicant has to be prudent in its conduct of financial commitments¹².
- 18 That said, in overview, the funding structure accounts for a total scheme cost of £91.73 million, whereas in fact the true scheme cost may total at least £99.73 million (if not more), plus the costs of mitigation and compensation measures that may be significant.
- 19 It is also unclear why the reported scheme cost as at 21 January 2019 is only £91.011 million. It is imperative that sufficient funding is established for compensation and mitigation measures as ABP (and other interested parties) need security that they will receive payment, if such compensation and mitigation measures are secured.
- 20 On this basis alone, it is clear that the Applicant has failed to demonstrate its ability to fund the Scheme, and has failed to demonstrate that the funding will be available at the time which it is actually required.

¹² It is understood, subsequent to the oral hearing of this matter I became aware that the Council has determined not to proceed with another bridge project in Ipswich which was to be the subject of a DCO application due to insufficient funding from other parties.