

(ABP: 4 of 5 – DL5)

Proposed Lake Lothing Third Crossing (TRO10023)

Associated British Ports (20013261)

Post Inquiry Note in respect of Compulsory Acquisition Matters

- 1 At the last examination hearing, ABP was asked to provide a note of those matters to which its oral presentation on compulsory acquisition matters would have otherwise been dealt with at the compulsory acquisition hearing held on 13 February 2019. This hearing has been adjourned until 8 March 2019 and this note is provided by Deadline 5 so as to assist both the ExA and the Applicant in formulating any reply.

- 2 At the outset, ABP wishes to draw the ExA's attention to the following two key points:
 - (a) **Serious Detriment** – ABP's fundamental objections as to the serious detriment that the LLTC Scheme will have on the Port remain. ABP notes, however, that although the serious detriment test under Section 127 of the Planning Act 2008 is founded on compulsory, it is inextricably linked to wider issues including the carrying on of the statutory undertaking, navigational safety, port operational matters, marine matters and impact on current and future business.

 - (b) ABP has provided the ExA with its submissions regarding serious detriment in its Written Representations and various related submissions, in particular, within its response to the Applicant's "Impact of the Scheme on the Port of Lowestoft" report, submitted at Deadline 5. ABP also understands that issues pertaining to serious detriment will be addressed at the scheduled hearings on 7 and 8 March 2019.

 - (c) As such, ABP considers that its submissions regarding serious detriment are most appropriately considered in the context of these wider issues. As a consequence, ABP's submissions regarding serious detriment are not duplicated in this post inquiry note.

(d) **Draft Side Agreement** – As the ExA is aware, ABP received a draft Side Agreement from the Applicant at 9:00pm the evening before the Compulsory Acquisition hearing, which purported to give an outline of what appears to be an entirely new set of proposals in relation to the LLTC scheme and its impact on the Port. ABP is still awaiting additional information from the Applicant in this respect – which has been promised – but as the ExA will be aware, the import of the Applicant's proposal may affect ABP's submissions regarding compulsory acquisition matters.

3 On the basis of the above, therefore, ABP is now in some difficulty in predicting precisely what its submissions will be with regard to compulsory acquisition matters, nor how much time will be required to address these matters during the resumed hearing on 8 March 2019.

4 Nevertheless, to assist the ExA, ABP's concerns regarding the compulsory acquisition of land and rights, as identified in the Land Plans (Sheet 3 of 5), are set out in respect of each plot below.

5 The issues relating to funding uncertainty were dealt with at the oral hearing on 13 February and a separate note has been prepared and submitted in respect of those matters. The remaining submissions relate to Agenda Item 10 (statutory undertakers) and item b) Associated British Ports, and are directed to 3 principal subject areas:-

- (a) Whether proper consideration has been given to all reasonable alternatives including the “Western Option”;
- (b) Whether there is a compelling case in the public interest for:
 - (i) The permanent acquisition of land in respect of those parcels identified on Sheet 3 of 5 of the land plans;
 - (ii) The permanent acquisition of airspace and rights over land;
 - (iii) The permanent acquisition of rights over land; and
 - (iv) The temporary possession of land.
- (c) Impact of the construction of the Scheme on Commercial Road

Issue 1 - Reasonable alternative and the Western Option

- 6 ABP remains of the view the Western Option would result in a less detrimental impact on port operations than the Central Option.
- 7 ABP's specific comments on the "Technical Report: Review of central and western bridge options", which is Appendix B to the Applicant's Response to Written Representations (Document Reference: SCC/LLTC/EX/51), is Annex 7 to ABP's response to the "Impact of the Scheme on the Port of Lowestoft" report, submitted at Deadline 5.

Issue 2 – Examination of the parcels proposed for compulsory acquisition

- 8 This may be described as follows:-
- (a) ***Pink land*** – parcels 2-23, 3-04, 3-05, 3-52;
 - (b) ***The pink and blue hashed land*** – parcels 2-32, 2-33, 3-33, 3-34, 3-35;
 - (c) ***The blue land*** - parcels 2-21, 2-34, 3-03, 3-11, 3-36, 3-55; and
 - (d) ***The green land*** – parcel 2-20, 2-22, 3-01, 3-10.
- 9 ABP objects to the compulsory acquisition of any land or rights comprising part of its statutory port estate. Its preference, if land and rights are required for the Scheme, is for arrangements to be put in place giving the Applicant long leasehold of, or covenants over, such parcels of land as are required, subject to provisions for reversion to ABP at any time when the bridge ceases to exist. It is noted that the anticipated lifespan of the bridge is 120 years and in that context the provision of a long leasehold interest of 125 years would appear suitable for the purpose.
- 10 There is a precedent for the approach with the M4 motorway at Newport. However, if and to the extent that it is considered necessary for the transfer of any freehold land to the Applicant, this should be limited and only extend to the freehold land necessary for the areas of land comprising the footprint of the pillars supporting the bridge deck found in parcel 2-23, 3-04 and 3-05.
- 11 As the ExA will be aware, ABP has permitted development rights for its operational land. Self-evidently, any land where the freehold is alienated will cease to have

those rights. Hence the desire on the part of ABP to avoid, so far as is possible, any such alienation or to keep such alienation to the absolute minimum.

- 12 With regard to airspace above the water and under the deck, the objective is to maintain these rights for the purposes of carrying out the harbour activities.

Parcel 2-22 (green land)

- 13 ABP objects to the temporary possession of the whole of this land. Whilst it is accepted that the Applicant will need an area for the construction compound for carrying out the bridge works, there is no justification as to why the Applicant requires the entirety of that plot. It appears disproportionate and should not be accepted by the ExA without clear justification. ABP would be entirely content to look to deal with the matter by way of the provision of a lease or similar arrangement providing, among other things, for arbitration of disputes if such were to arise.

- 14 It should be noted that this parcel includes an area which has a suspended quay. In order to provide adequate and continuing access to the quay it will be necessary for a zone 15m deep along the length of the quay to avoid the suspended quay (5m deep) and 10m for any port activity and movements including mobile equipment such as mobile cranes. As presently required by the Applicant, this would sterilise the use of that part of the port including the quay and any moorings over the entire extent of the temporary possession land sought.

Parcels 3-10 and 3-01 (green land)

- 15 The temporary possession of these plots would preclude the use of the Port and the adjacent quay for port activity and for the mooring of vessels over the entirety of that area, in effect sterilising it, during the period of time provided for by the Order. Although it represents a temporary possession, given the need for proper planning and arrangements, at face value it will prevent the use of that area for the entirety of the Scheme construction. No justification has been given as to why such an extensive area of the port is required. Further, it would have the effect, by reason of the temporary possession, of severing the western part of the inner harbour from the remainder of the port.

Parcel 2-20 (green land)

- 16 No adequate justification has been given for the requirement for temporary possession of this part of Commercial Road (which comprises the sole roadway of the Port and will affect access and egress for anything west of the proposed bridge). The statement of reasons simply describes it as “working space” but this is simply not adequately justified.

Parcel 3-52 (pink land)

- 17 No adequate justification has been given for why this pontoon area is required for the purposes of the Scheme – and will in any case be of no practicable utility to commercial traffic.

Issue 3 - Impact on Commercial Road and the area of the port to the west of the LLTC

- 18 The Applicant seeks permanent rights over parcel 2-34 and temporary possession of parcels 2-20 and 2-22. In addition to the permanent acquisition of airspace and rights over land in respect of parcel 2-33 and 2-32 (together with the permanent acquisition of parcel 2-23) this has the effect of severing the entirety of the western area of the Port from the remainder of the Port. If the remainder of the Port to the west of the proposed LLTC is to remain functional for the duration of the construction works, it will be necessary for a diversionary route to be put in place¹. An indicative diversionary route is shown schematically in Annex 5 to the ABP's Written Representations; although it would appear that the greatest width available is 5.1m. There are a series of difficulties about this approach set out in paragraphs 10.32 to 10.35 of the ABP's Written Representations and other submissions made at Deadline 4 and Deadline 5. In procedural terms, a further concern is that the Applicant has not sought to reflect the requirement to make any provision for a diversionary route in any of the land plans for the proposals.
- 19 Consequently, the Applicant does not have the ability to provide such a diversionary route without ABP's agreement. Understandably ABP would not be content to give such consent until a proper assessment of the suitability of such a diversionary route was in place for all users (pedestrians, cyclists and motor vehicles up to HGV) had

¹ See ABP written representations paragraph 10.31

been undertaken by the Applicant and considered suitable by ABP. This of itself underlines the need for the provision of an Indemnity by the Applicant in terms of the risks and hazards being created.

20 This is not some theoretical proposition. Given that the draft DCO appears to place no temporal restriction on the length of time that plot 2-20 might be taken “temporarily” it cannot be excluded that the severance of the port to the west of the LLTC would occur for the duration of the proposed crossing works (some two to three years) unless suitable arrangements were put in place now. Self-evidently, this will create serious practical difficulties for ABP as the port operator and for ABP’s tenants which, so far as is relevant, would be those at North Quay such as Peterson, JFMS, Fender Care, Sunny Campers, Caudwell Marine, plus users of the former Shell Berth Quay. Indeed, no assessment has been made by the Applicant of the suitability of using such a diversionary route having regard to the safety of road users, the structural impact on the quay’s suspended deck, the interaction with the proposed temporary construction yard to the east on parcel 2-22 and the ability to access the entrance to Shed 3 and the Dudman operation.

21 It is noted that having explicitly made this concern manifest in the ABP's Written Representations, the Applicant has singularly failed to make any constructive proposals or indeed to pass any substantive comment upon it in their deadline for representations. This is, to put it at its mildest, both surprising and disappointing.

Water

22 It is acknowledged that the Applicant will require rights for the purposes of maintenance of the bridge structure, but it will fall to ABP to dredge under the bridge and through the channel². As was explained in the dDCO hearing, ABP considers this will simply require prior notification to the Applicant of 5 days – which is the notice period already in place with the MMO when dredging is required adjacent to the existing Bascule Bridge.

Land rights

23 Once again, it is acknowledged that rights for the purposes of maintenance are required in respect of parcels 2-21 and 2-34. In the latter case, subject to an access

² This has also figured in the hearing dealing with the draft DCO.

agreement rather than acquisition by compulsion of permanent rights over the land. Rights sought should be more limited and should be restricted to those necessary for the purposes of maintenance and such rights of access should be on the basis of prior notice save in the event of emergency. It is, with respect, unjustified for the Applicant to seek any wider or further rights.

24 In respect of rights over parcel 2-34 (Commercial Road) that should also be subject to the sharing of cost in respect of fair wear and tear. It is surprising, notwithstanding this being the subject of discussion with the Applicant on a number of occasions, that this suggestion of an access agreement has not been taken up, nor has there been, to date, any substantive response.

25 As has already figured in the debate as to the land that will be either compulsorily acquired or sterilised, this necessarily extends beyond simply the 62m of land proposed to be acquired by the Applicant in order to carry out the Scheme. As the plan at Annex 6 to the ABP Written Representations identifies, the Applicant seeks a total cross-sectional distance of 72m including 5m on either side of the bridge for the purposes of protection of the bridge (i.e parcels 3-03, 3-36 and 3-55). With respect, if that land is to be the subject of compulsory acquisition so as to control rights of access to that land (both on land and over the water) it necessarily restricts and inhibits the extent of both the harbour and the quay which are available for the purposes of harbour activity including the berthing of vessels both to the east and west of the proposed bridge.

Parcels 2-23, 3-04 and 3-05

26 This appears to be a much larger parcel of freehold land which is sought to be acquired than for the purposes either of the deck or the piers which are proposed to be installed for the purposes of supporting the deck within this parcel. Whilst the scheme design is apparently still to be finalised by SCC the indicative drawing at Document 2.9 shows 18 piers within this location. A summary review by ABP indicates that the extent of land sought to be acquired permanently is more extensive than that which is necessary for the purposes of constructing the bridge as proposed within the corridor as proposed. Hence, this is, once again, unjustified.