

The Lake Lothing (Lowestoft) Third Crossing Order 201[*]



Lake Lothing
**THIRD
CROSSING**

Document SCC/LLTC/EX/75: Written summaries of oral submissions at Issue Specific Hearing 1 (draft DCO)

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

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SUFFOLK COUNTY COUNCIL – LAKE LOTHING THIRD CROSSING - DEVELOPMENT CONSENT ORDER APPLICATION

ISH ON DEVELOPMENT CONSENT ORDER – 13 FEBRUARY 2019 – SUMMARY OF CASE

1. INTRODUCTION

- 1.1 This note summarises the submissions made by Suffolk County Council ("SCC") ("the Applicant") at the Development Consent Order Issue Specific Hearing held on 13 February 2019 ("the hearing") in relation to SCC's application for development consent for a new bridge in Lowestoft known as "Lake Lothing Third Crossing" ("the Scheme").
- 1.2 Oral submissions by all parties attending the hearing were made pursuant to the agenda published by the Examining Authority ("the ExA") on 7 February 2019 ("the agenda").
- 1.3 As the Examining Authority will be aware, discussions on the day of the hearing roamed across the agenda. As such, in setting out SCC's position on the issues raised in the agenda, as submitted orally at the hearing, this note is formatted to deal firstly with a brief explanation of changes to the draft DCO to Deadline 4, then deals with the matters that were raised in relation to articles of and then the Schedules to the DCO, the latter two both in numerical order.
- 1.4 These notes set out the Applicant's oral submissions at the hearing, and further written points where it is considered this would assist the Examining Authority.
- 1.5 In this submission, the Applicant has also dealt with points raised on the DCO in Interested Parties' Deadline 4 submissions, to avoid unnecessary duplication. To aid the Examining Authority, the entries that deal solely with these written points are highlighted in yellow.

PINS' ISH Agenda Item / Issue	Questions/Points Made	Response	Relevant document references
Reasons for the changes applied to the dDCO			
<p>Robbie Owen, on behalf of the Applicant, explained that in broad terms the changes made in the latest dDCO had been made for the following reasons during the Examination:</p> <ul style="list-style-type: none"> • changes arising from the Examining Authority's First Written Questions; • changes arising from issues raised by Interested Parties in their Written Representations (e.g. articles 3 and 20, Requirements 3 and 11, paragraphs 16 and 18 of Schedule 2, and the Network Rail PPs); • on-going discussions with Interested Parties, including those recorded in the SoCG Report submitted at Deadline 4 (PINS Reference REP4-011, Document Reference SCC/LLTC/EX/53) (e.g. article 25 and Schedule 6, requirements 12 and 13); • changes made to the Deemed Marine Licence arising from continuing discussions with the Marine Management Organisation (MMO); • changes arising from continuing discussions with Associated British Ports (ABP) (e.g. article 40, Requirement 11, ABP's Protective Provisions and the Byelaws); and • other minor and typographical points which the Applicant had identified as requiring amendment since the draft DCO was submitted with the Applicant. <p>The Draft DCO remains a live document, as the Examination continues and discussions continue with Interested Parties.</p>			
Articles			
<p>Article 2</p>	<p>Lowestoft Cruising Club Deadline 4 Submission</p> <p>“the Navigation Working Group” means the group consulted by the undertaker in relation to its preparation of the preliminary navigation risk assessment and maintained by the undertaker following this Order coming into force for the purposes of article 40 and Schedule 2, as its membership may from time to time be varied by the undertaker;</p>	<ul style="list-style-type: none"> • The Applicant considers that it is appropriate that it determines the membership of the group, as it will be for the Applicant to assess those parties who are affected based on any changes to the scheme of operation or the NRA that may be brought forward. • As a public authority, the Applicant has a duty to act reasonably and justly and so the 'unbiased' selection would apply to its consideration of the membership of this group. • The Applicant has in any event brought forward a small amendment to this article so that the Applicant must consult 	<p>Lowestoft Cruising Club Deadline 4 response (REP4-025)</p>

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	<p>LCC Comment: Allowing the undertaker (Suffolk County Council (SCC)) to decide the membership of the Navigation Working Group (NWG) runs the risk of a genuine stakeholder being denied membership solely on criteria decided by SCC. A safeguard of unbiased membership selection should be implemented as part of the draft Development Consent Order (dDCO).</p>	<p>with the group before changing the membership.</p>	
<p>Article 3</p>	<p>The Examining Authority's agenda noted that reference to section 24 of the Water Resources Act 1991 deleted from this Article, further to discussions with the Environment Agency.</p> <p>The Examining Authority's agenda also noted that article 3(3) has also been amended further to discussions with Northumbrian Water Ltd.</p>	<ul style="list-style-type: none"> • Robbie Owen explained that it was understood by the Applicant that the EA's policy is not to approve a disapplication for abstraction under section 24 of the Water Resources Act further to recent changes which mean that more projects will now need to seek abstraction licences. For this project, it is understood that an abstraction licence may not be required and will not be time critical in any event; as such, the Applicant has agreed that it can be removed, and this was done at Deadline 4. • In relation to article 3(3), Isabella Tarfur, of Counsel, on behalf of Northumbrian Water Limited (NWL), expressed concern that this wording is unprecedented, that NWL are not convinced that it can be provided within a DCO under section 120 of the Planning Act 2008, and are not reassured by WDC expressing in their SoCG with the Applicant that they are content with the impact of the Scheme on NWL's planning consent. • Article 3(3): Robbie Owen, in response, explained that, as 	<p>Responses to NWL Written Representation (PINS Reference REP4-014, Document Reference SCC/LLTC/EX/51) pp.79-80</p>

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		<p>stated in the Applicant's response to NWL's written representation (PINS Reference REP4-014, Document Reference SCC/LLTC/EX/51):</p> <ul style="list-style-type: none"> ○ the granting of a DCO will create a new chapter in the history of the land affected; ○ the Applicant considers that that both section 120(3) and section 120(5)(c) of the Planning Act 2008 are general provisions that are broad enough to enable the inclusion of article 3(3) in the DCO as it relates to a matter which relates to the development for which consent is granted, and enables full effect to be given to the Applicant's powers to construct Riverside Road granted by the Order; ○ it is unlikely that it can be considered 'expedient' for WDC to enforce any potential breach given the support for the Scheme in local and national policy plus their statement that the removal of the area of land from the habitat management for NWL's site is acceptable in the SoCG; and ○ in any event, the Applicant continues to discuss this matter with NWL, and made the amendment to DCO article 3(3) at Deadline 4 further to these discussions, to ensure that all land that is subject to NWL's planning permission is subject to the effect of article 3(3). <ul style="list-style-type: none"> ● At the hearing, Peter Goatley, on behalf of ABP, indicated that ABP were concerned that article 3 of the Deadline 4 DCO provided for the disapplication of Byelaw 36 of the Port of Lowestoft Byelaws 1993, which requires a permit from the harbour master before diving commences. Robbie Owen 	

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		<p>explained that this disapplication would be removed from the draft DCO at deadline 5.</p> <ul style="list-style-type: none"> • At the hearing Daniel Stedman Jones, of Counsel, on behalf of Lings set out that his clients were seeking an amendment to article 3 to disapply section 158 of the Planning Act 2008 (defence to statutory nuisance) from Lings' land, under article 3. • In response, Robbie Owen set out the Applicant's view that disapplication of section 158 is not appropriate for a NSIP and is wholly unprecedented. Lings will be able to make a claim for injurious affection under s.10 Compulsory Purchase Act 1965 and/or section 152 of the Planning Act 2008, which both apply despite section 158, i.e. they would allow Lings to make such a claim in any event. 	
Articles 16 and 17	<p>Isabella Tarfur, on behalf of NWL repeated NWL's concerns with regard to these articles as is set out in their Written Representation, namely that the geographic scope of the articles are too broad, that they should provide for more notice (in line with the Neighbourhood Planning Act 2017), the ability for counter notices to be served, landowner review and approval of works proposed.</p>	<p>Robbie Owen, in response, explained that, as stated in the Applicant's response to NWL's written representation (PINS Reference REP4-014, Document Reference SCC/LLTC/EX/51):</p> <ul style="list-style-type: none"> • The Applicant notes that the geographical extent of article 16 is preceded in the DCOs made for the A14 Cambridge to Huntingdon and the A19/A1058 schemes, and reflect the fact that until the detailed construction methodology is known, the identification of which buildings may require some form of protection is not known. • The power is essentially of benefit to interested parties; and the provisions for notice and the provision of information (including time periods) are preceded in Orders such as the Silvertown Tunnel Order 2018 and the M20 Junction 10a Development Consent Order 2017, 	<p>NWL Written Representation (REP3-11)</p> <p>Responses to NWL Written Representation (PINS Reference REP4-014, Document Reference SCC/LLTC/EX/51)</p> <p>pp.81-82</p>

PINS' ISH Agenda Item / Issue	Questions/Points Made	Response	Relevant document references
		<p>both of which considered the applicability of the Neighbourhood Planning Act 2017 and decided against imparting that (currently not in force) regime into the DCO.</p> <ul style="list-style-type: none"> • They reflect the fact that as construction is a constantly moving activity, issues of subsidence and settlement may not become predictable until nearer the time that the activity is to be carried out. Similar logic applies to article 17, which is also well precedented, including in the most recent DCO for Eggborough Power Station. The extent that the power will be required outside the Order limits will be dependent on the details of construction which will change as the project is built out, but given the results of the ES and works to date, it is considered that the scope of the use of this power will be limited. • As such, the Applicant does not propose to make any changes to these articles at the present time, but continues to discuss NWL's concerns with them. 	
Article 20	<p>The Examining Authority's agenda noted that following discussions with ABP and the Navigation Working Group, and considering the Lowestoft Cruising Club's Written Representations, article 20 had been amended at Deadline 4 to provide for a notification period of three months. Additional amendments made to provide flexibility for situations where less notice may be required.</p>	<ul style="list-style-type: none"> • Dr Bennet on behalf of the Lowestoft Cruising Club, indicated that whilst the club was content with the notice changes made in this article by the Applicant at Deadline 4, they considered that article 20 should be further amended to a) provide for compensation for affected recreational users, and b) that a timed backstop should be provided (these submissions are also made in the club's Deadline 4 submissions). • In response, Robbie Owen noted that as the Applicant has noted previously throughout the Examination, the detailed design and construction methodology for the bridge has not yet been finalised, and so the length and time of year in which 	<p>Lowestoft Cruising Club Deadline 4 response (REP4-025)</p>

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		<p>any temporary closure would be required is not yet known. Putting a seasonal restriction or maximum closures on the face of the DCO would inhibit the ability for this piece of nationally significant piece of infrastructure to be built.</p> <ul style="list-style-type: none"> • The Applicant further notes that this power is subject to ABP's consent, who will be able to ensure that these restrictions are considered properly in the wider context of Port activities. • In relation to compensation, Robbie Owen noted that it is not appropriate and is unprecedented for there to be compensation for loss of a public, rather than a private, right of navigation. As such, the Applicant does not agree that compensation provisions should be added to this article. 	
<p>Article 21 (removal of vessels)</p>	<p>As set out in its Deadline 4 submissions, Peter Goatley, on behalf of ABP set out that ABP does not accept the current wording of this article, as it considers that any removal or relocation of vessels must be first agreed in advance by the Harbour Master.</p> <p>It is acknowledged that the Applicant has attempted to address this issue, but ABP considers that the current wording, as proposed, lacks clarity. For example, if the Applicant only has the power to relocate vessels outside of the Order limits, what is meant by "if elsewhere within Lowestoft Harbour"?</p> <p>ABP is also concerned that the powers</p>	<p>Robbie Owen made the following points in response:</p> <ul style="list-style-type: none"> • Article 21 sets out that the Applicant must consult with the harbour master if it wishes to remove vessels to a location within the Order limits. • If the Applicant wishes to move a vessel elsewhere within the harbour then that is with the agreement of the harbour master. • As such, in the latter case, ABP will be able to retain sufficient control outside of the areas which affect the new bridge. • Given that vessels striking the bridge could cause serious effects to the construction or operation of it, it is entirely appropriate that the undertaker should be able to remove the vessel without having to wait for <u>consent</u> of ABP. <p>The Applicant has considered the wording of this article following the hearing and made amendments to it to bring it in line with</p>	<p>ABP Comments on DCO r1 (REP4-031)</p>

PINS' ISH Agenda Item / Issue	Questions/Points Made	Response	Relevant document references
	<p>sought by the Applicant will impact on ABP's ability to comply with its statutory duties and obligations.</p> <p>ABP, as the Statutory Harbour Authority, already possesses these statutory powers and will cooperate by exercising these powers, when so requested by the Applicant, where it is reasonable and safe to do so.</p>	<p>article 20. This is included in the draft DCO r3 submitted at Deadline 5.</p>	
Article 25	<p>The Examining Authority's agenda noted that several amendments had been made to these provisions at Deadline 4, following discussions with Cadent Gas Ltd, to provide more certainty as to the rights to be granted to them by the Applicant if the Order were to be made. The matters in square brackets are to be finalised in discussion with Cadent Gas Ltd.</p>	<ul style="list-style-type: none"> • Robbie Owen noted that this article continues to be discussed with Cadent alongside article 48 (transfer of benefit). • The Applicant has brought forward further minor changes at Deadline 5 in response to these comments. • In a response to a query from Mr Dewey on behalf of Lings, Robbie Owen confirmed that even if powers were transferred to Cadent, they would be under the same restrictions and controls under the Order as the Applicant. 	
Article 40	<p>ABP have made a number of comments in its Deadline 4 submissions on this article which were reflected by Peter Goatley, on behalf of ABP, at the hearing. In summary, these points are:</p> <ul style="list-style-type: none"> • 40(2) should provide that SfO can be varied by the harbour authority in consultation with highway authority. 	<p>Robbie Owen responded and SCC's points, expanded further for this note, are set out below:</p> <ul style="list-style-type: none"> • ABP's representations lose sight of the fact that the new bridge is a highway scheme. As such the undertaker needs to retain an element of control of its operation to ensure that the highway benefits of the Scheme are met. • However, ABP (and its statutory duties) are protected by the fact that its consent is required for any variation to the 	<p>ABP Comments on DCO r1 (REP4-031)</p> <p>Justification and Traffic Effects of draft Scheme of Operation (PINS Reference REP4-016, Document</p>

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	<ul style="list-style-type: none"> • NWG is informal group and should have no standing. In any event ABP has navigation safety consultation duties under Port Marine Safety Code. • SoS shouldn't have a role in variation - arbitration is enough. • Additionally, there can be no limit on whether the harbour authority can withhold consent for proposed changes to the Scheme of Operation, as proposed by Article 40(2) of the draft DCO. 	<p>scheme of operation.</p> <ul style="list-style-type: none"> • Article 40(2) is expressed with reference to ABP's consent not being 'unreasonably withheld', to ensure that in considering any changes to the Scheme of Operation, ABP does so in the context of its statutory duties and responsibilities, which ABP has noted are its main concern in relation to the new bridge. • The Applicant considers that the Secretary of State is the appropriate determining body as the issues which would potentially be in conflict would be the <u>statutory</u> duties of a highway authority and the <u>statutory</u> duties of a harbour authority. It would therefore not be a technical arbitration issue that would need to be considered - the Secretary of State is therefore the appropriate body as the overall arbiter of the public interest. • The article references the Navigation Working Group to ensure that it is consulted, as a change to the scheme of operation may not necessarily be a navigational safety issue. The Applicant does not have control of ABP's consultations under the Port Marine Safety Code, and has brought forward this article in recognition of its duties as a public authority and scheme promoter, which are relevant above and beyond ABP's statutory duties as harbour authority. Robbie Owen went on to say that the Applicant is receptive to suggestions for improvements to the wording defining this group. • ABP have not provided evidence to show that having the peak hour restriction would materially impact on the Port's 	<p>Reference SCC/LLTC/EX/60)</p> <p>Port Impacts Paper (PINS Reference REP4-015, Document Reference SCC/LLTC/EX/59)</p>

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		<p>operations such that it would become practically or commercially unviable for the Port to accommodate that restriction, and unless and until ABP does so, the Applicant cannot accept the assertion that the Scheme would cause ABP to be unable to meet its statutory duties or to carry on its statutory undertaking.</p> <ul style="list-style-type: none"> • By contrast the Applicant has justified the restriction in traffic terms (Justification and Traffic Effects of draft Scheme of Operation (PINS Reference REP4-016, Document Reference SCC/LLTC/EX/60)) and port impact terms (the Port Impacts Paper). These reasons can be summarised as: <ul style="list-style-type: none"> ○ there is already a constraint in the Port with the existing Bascule Bridge; ○ delays are hypothetical because evidence from the operation of the existing bascule bridge is that vessels can adjust timings when requested to do so; ○ on existing and future growth scenarios, there would be minimal delays to CTVs; and ○ berths west of the Scheme are such a distance away that there are already commercial risks to future growth. • The Applicant notes in this context that it has repeatedly requested berth occupancy data from ABP throughout the development of the Scheme but that it has still not been provided with it despite being told that the data exists. 	
	Lowestoft Cruising Club	<ul style="list-style-type: none"> • This article provides for consent for the harbour authority (and any dispute arising from that to escalate to the 	Lowestoft Cruising Club Deadline 4

PINS' ISH Agenda Item / Issue	Questions/Points Made	Response	Relevant document references
	<p>Should the harbour authority fail to consent to any varied or replacement Scheme of Operation the undertaker (SCC) can make a submission to the Secretary of State for consent. What opportunity is there for local maritime stakeholders to disagree with SCC's proposals and seek rejection, for example, by the Secretary of State? Should greater emphasis be placed upon the role of the NWG?</p>	<p>Secretary of State) given its statutory duties to ensure navigational safety and ensure the needs to all vessels within the Port are met.</p> <ul style="list-style-type: none"> The NWG is given the role of consultee so that it may comment and shape the scheme of operation. However, consent of the group is not considered appropriate as it contains a group of private, rather than statutory, interests. The dDCO has been amended at Deadline 5 to provide that the Applicant must include a consultation report of the comments of the NWG on proposed changes to the Scheme of Operation when applying to the Secretary of State under this article. 	<p>response (REP4-025)</p>
<p>Article 44</p>	<p>Peter Goatley, on behalf of ABP, indicated that ABP did not agree with the need for the Applicant to consent to ABP dredging within the limits of dredging and consider that ABP should only need to notify the Applicant, as ABP need to have the ability to get on with dredging without waiting for the Applicant.</p> <p>In any event the consent period should be reduced from 28 days.</p>	<ul style="list-style-type: none"> Robbie Owen noted that ABP had, in their Deadline 4 submissions, indicated that this article was agreed. In any event, he noted that the DCO is a statutory authorisation for a statutory undertaking; that as such it needs protecting, even if that is from another body carrying on its own statutory undertaking. The Applicant continues to discuss this article with ABP, however, and has made some changes to it at Deadline 5 to facilitate those further discussions. 	<p>ABP Comments on DCO r1 (REP4-031)</p>
<p>Article 45</p>	<p>Article 45(3), ABP considers should not be geographically confined to byelaws which control navigation and mooring "in the limits of dredging" only, but must apply to the whole of the Port estate in order for ABP to carry out its statutory functions.</p>	<ul style="list-style-type: none"> Article 45(3) has been amended at Deadline 5 to refer to the Order limits. The Applicant considers that the phrase 'in the vicinity of the new bridge' is appropriate in its context – it is for the master of a vessel to determine if mooring its vessel (depending, for example, on its air draft, or length) would damage the new 	<p>ABP Comments on DCO r1 (REP4-031)</p>

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	<p>In relation to proposed byelaw 37A(b), it is unclear what is meant by "in the vicinity of the new bridge" – this is geographically unclear and imprecise.</p> <p>At the hearing, Peter Goatley, on behalf of ABP re-emphasised the point made in its Deadline 4 submissions that ABP opposes the inclusion of Article 45(6), which purports to restrict ABP's ability to amend or revoke the byelaws inserted into the Lowestoft Harbour Bylaws 1993, or make other byelaws within its statutory estate. ABP must be free to change its byelaws.</p> <p>ABP's power to issue, amend and revoke byelaws is subject to confirmation by the Secretary of State for Transport. Accordingly, if the Applicant does not agree with any changes made by ABP to its own harbour byelaws, the Applicant has the ability to object to the confirmation of such a byelaw and the matter would be determined by the Secretary of State.</p>	<p>bridge or the new bridge infrastructure.</p> <ul style="list-style-type: none"> In relation to article 45(6), Robbie Owen explained at the hearing that this provision is required to ensure that the Order is not able to be amended retrospectively, in effect, by ABP. He noted that article 45(6) was essentially a mirror to 45(3), where the Applicant is required to consult ABP and obtain its agreement before amending the byelaws in the Order, where such an amendment would relate to navigation or mooring issues. Article 45(6), as drafted, was therefore necessary to ensure that the Applicant's statutory undertaking authorised by the Order is protected. 	
Schedule 2 (Requirements)			
Requirement 3	The Examining Authority's agenda noted that the text has been added to this Requirement at Deadline 4 to provide for	<ul style="list-style-type: none"> Robbie Owen confirmed that this text was added following consideration of the representations of NWL and Nexen and discussions with the highway authority. 	Mitigation Route Map Table 1-1 v1 (PINS Reference REP3-041,

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	<p>the detailed design of key highway elements of the Proposed Development to be approved by the county planning authority before relevant works may commence.</p>	<ul style="list-style-type: none"> • Peter Goatley, on behalf of ABP suggested that this requirement was worded inappropriately generally and that the provisions should have more correlation with the ES. • In response, Robbie Owen noted that the wording of 'general accordance with' is well precedented in DCOs, including with reference to general arrangement plans (e.g. Silvertown Tunnel Order 2017, where a similar approach to GAs, a DGM equivalent, and some aspects of approval by local authorities within the requirements, was tested and approved). • He confirmed that it is not the role of the DCO to secure the specific contents of an ES, other than its specific mitigation proposals. The role of an ES was to assess the <u>likely</u> significant effects of a Scheme and to determine the relevant mitigation measures. • DCOs typically do not reflect a detailed design, they reflect a preliminary design brought forward with appropriate parameters to be assessed. An ES does not assess the full detail of a fully worked up Scheme, and nor would it be appropriate for it to do so. • The requirements and the certified documents to which they relate secure those matters where controls are necessary to avoid likely significant effects arising as determined by ES (see the Applicant's update to the Mitigation Route Map). The DCO does not need to go wider than this and related 'NEWT' provisions. • Peter Goatley, on behalf of ABP also suggested that requirements 4, 6 and 7 should be amended to reference consultation with the harbour authority. Robbie Owen responded to confirm that this was not necessary as ABP will get to approve the relevant details under its protective 	<p>Document Reference SCC/LLTC/EX/21)</p>

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		provisions.	
Requirement 4	Daniel Stedman Jones, of Counsel, on behalf of Lings set out that his clients were seeking an amendment to requirement 4 to provide for a dust management plan to be produced for approval by the Applicant	Robbie Owen confirmed that this was not necessary as the interim CoCP already provides that dust mitigation and monitoring measures must form part of the full CoCP to be approved under Requirement 4.	Interim CoCP v2 (PINS Reference REP4-017, Document Reference SCC/LLTC/EX/61) section 3
Requirement 11	<p>In its Deadline 4 submissions and at the hearing, ABP raised a number of concerns in respect of this requirement, in summary:</p> <p>ABP raises concern that the wording of the DCO does not provide for its approval of the NRA, which goes to its fundamental legal responsibility as Statutory Harbour Authority.</p> <p>It questions the precedents suggested by the Applicant for its approach to the NRA and the interaction with the harbour authority, and suggests the example of Tidal Lagoon Swansea Bay as a potentially appropriate approach.</p> <p>ABP also indicates that it has said to the Applicant on countless occasions that a full and formal NRA of port impacts should be brought forward by the Applicant.</p>	The Applicant's response to these points are set out in its response to Interested Parties' Deadline 4 submissions (SCC/LLTC/EX/81), however for the purposes of the DCO, and as confirmed by Robbie Owen at the hearing, the deadline 5 version of the DCO makes it specifically clear that ABP will be required to approve the NRA.	<p>ABP Comments on DCO r1 (REP4-031)</p> <p>ABP Comments on Applicant's response to FWQ 2.24 (REP4-032)</p>

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Requirement 12	The Examining Authority's agenda noted that the Deadline 4 DCO had removed works to the existing B1531 Victoria Road/B1531 Waveney Drive/Kirkley Run mini-roundabout from this Requirement as they do not need to be undertaken as a consequence of the Proposed Development.	Robbie Owen confirmed that these works have been removed following discussions with SCC as local highway authority, as recorded in the SoCG with them.	Agreement recorded in SoCG Report PINS Reference REP4-011, Document Reference SCC/LLTC/EX/53 SoCG008 Item 21.
Requirement 13	This Requirement has been added further to discussions with the Environment Agency, as recorded in the Statement of Common Ground [PINS Reference REP4-011, Document Reference SCC/LLTC/EX/53].	<ul style="list-style-type: none"> • Robbie Owen confirmed that this is a requirement requiring the Applicant to submit an updated piling works risk assessment to the EA prior to piling being undertaken. This was agreed with the EA following the latter's review of the Applicant's Deadline 3 Ground Investigation Report and Initial Piling Works Risk Assessment (Document Reference SCC/LLTC/EX/32) and REP3-047 (SCC/LLTC/EX/34). • The Environment Agency had no comments on this item. 	Agreement recorded in SoCG Report PINS Reference REP4-011, Document Reference SCC/LLTC/EX/53 SoCG003 Item 10.
Discharge	Paragraph 16(1): Amended to extend the deemed discharge period from six to eight weeks.	<ul style="list-style-type: none"> • Robbie Owen confirmed that this change was made following the representations of NWL and Nexen, and to give the county planning authority the same time for considering such discharges as it has for dealing with normal planning issues. • Isabella Tarfur, on behalf of NWL raised NWL's concerns that, given that local businesses were not involved in requirements discharge, deemed consent was not appropriate, and risked the project being brought forward not in compliance with the ES, noting that paragraph 14 (amendments to approved details) has no tie in to the ES. 	

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		<ul style="list-style-type: none"> • In response, Robbie Owen explained that the creation of a bespoke process for the discharge of requirements is well precedented in DCOs made to date and reflects the fact that DCOs provide consent for nationally significant infrastructure projects which should not be delayed unreasonably by third parties, with deemed discharge precedented in the recent Wrexham and Eggborough DCOs. • The bespoke discharge process is primarily in place as it streamlines the appeals process, thus minimising the risk to timely delivery of the Scheme. As set out in the Applicant's submissions, the Scheme is working to a quick construction timeline thus the bespoke process allows the programme to progress in the timeframes envisaged. • As noted in the discussion on requirement 3, it is not appropriate for a DCO to secure the Scheme against 'the ES'. Sufficient controls exist through the requirements and related documents, but also through the 'NEWT' wording that is found in the ancillary works part of Schedule 1 and in articles 41 and 42 relating to operation. Similar wording has now been added to paragraph 14 (now 15) in Schedule 2 to the DCO submitted at Deadline 5. • In ending the discussion on this point, Suffolk County Council as county planning authority confirmed that they considered that 8 weeks was a sufficient discharge period and that by the time of submission, informal engagement would have been undertaken to ensure the details were right across multiple discharges, enabling quicker approval. 	
Schedule 10 (Bylaws)			
The Examining Authority's agenda noted that additions have been	Robbie Owen explained that the principle of these amendments was discussed at a recent meeting with ABP, and reflects	ABP Comments on DCO r1 (REP4-	

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made to this Schedule following discussions with ABP.		<p>behavioural issues that ABP have experienced at the existing bridge.</p> <p>It is understood that the byelaws are now agreed by ABP.</p>	031)				
7. Schedule 12 (Deemed Marine Licence)							
	<p>The Examining Authority's agenda noted that the Deemed Marine Licence (DML) had been amended at Deadline 4 to reflect the most recent position agreed between the Applicant and the Marine Management Organisation (MMO) including its preferred approach to coordinates. Further discussions with the MMO are still on-going and consequently the wording of the DML is not yet fully agreed.</p>	<ul style="list-style-type: none"> • Robbie Owen confirmed that comprehensive changes were made to the DML at Deadline 4 following the receipt of comments from the MMO. • Further comments were awaited at the hearing. These have now been received and have informed further amendments to the DML at Deadline 5. • The main outstanding issue at Deadline 4 was in respect of arbitration, an issue which Robbie Owen confirmed that the MMO had raised recently for the first time on the Tilbury2 project. Both parties had agreed to take a view on their positions on this point once a decision had been reached on that project. • That decision has now been made and the Secretary of State found in favour of the MMO. Amendments have therefore been made to the dDCO at Deadline 5 to deal with this issue. • The Applicant also understands that the MMO will be making submissions at Deadline 5 in respect of DCO drafting points. The Applicant responds to these points below: <table border="1" data-bbox="1032 1134 2074 1347"> <thead> <tr> <th data-bbox="1032 1134 1554 1198">MMO Comment</th> <th data-bbox="1559 1134 2074 1198">Applicant Response</th> </tr> </thead> <tbody> <tr> <td data-bbox="1032 1201 1554 1347">Under article 5 of the DCO, reference is made to the "Limits of Deviation". The MMO notes that this article does not appear to reference the limits of the</td> <td data-bbox="1559 1201 2074 1347">The Applicant considers that this is not necessary as the MMO will approve the dredging depths pursuant to their approval of the method statements.</td> </tr> </tbody> </table>	MMO Comment	Applicant Response	Under article 5 of the DCO, reference is made to the "Limits of Deviation". The MMO notes that this article does not appear to reference the limits of the	The Applicant considers that this is not necessary as the MMO will approve the dredging depths pursuant to their approval of the method statements.	
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PINS' ISH Agenda Item / Issue	Questions/Points Made	Response	Relevant document references
		<p>dredging area. Specifically, the limits of deviation do not appear to account for, or reference, intended depths to which material will be dredged. The MMO advises that this information must be presented for dredging activities to be undertaken under the DCO.</p>	
		<p>Under article 48 of the DCO, reference is made to the 'transfer of benefit of Order, etc'. In the event that this article applies to the DML, the MMO wishes to advise that it must be revised to ensure that appropriate consultation of, and notification to, the MMO is provided.</p>	<p>Amendments have been made at Deadline 5 to provide for the MMO to be notified of any transfer of benefit under this article.</p>
		<p>The MMO wishes to highlight inaccuracies in the numbering of the paragraphs under Schedule 1 of the DCO. The MMO preferred format would be for the ancillary works to all be labelled alphabetically, restarting at (a) for each discrete Work No.</p>	<p>This is not agreed. The ancillary works could take place in any of the numbered works within Schedule 1, which is why they are set out at the <u>end</u> of Schedule 1.</p>
		<p>The MMO wishes to highlight that any intended ancillary and maintenance activities to be undertaken within the UK marine environment, as referenced under article 42 of the DCO, should be clearly captured within Schedule 1 to the DCO.</p>	<p>This is not agreed. Article 42 is a general power of maintenance, but which is limited to the definition of 'maintain' within the DCO.</p> <p>The Applicant has set out in its response to the Examining Authority's First Written Question 1.6 (REP3-029) that the activities involved in this definition have</p>

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		<p>been assessed. Furthermore, the DML, in its definition of construction activity, and in respect of maintenance dredging, provides for a method statement to be submitted to the DML.</p> <ul style="list-style-type: none"> In its Deadline 4 submissions, ABP also requested two further amendments to the DML which have been taken forward at Deadline 5. 	
8. Schedule 13 (Protective Provisions – Part 4 and 5)			
	<p>The Examining Authority's agenda noted that the Protective Provisions for the benefit of Network Rail had been amended at Deadline 4 in accordance with its Written Representations.</p>	<p>Robbie Owen explained that the Applicant accepted all of NR's requested changes to the Protective Provisions at Deadline 4, and so it is considered that these are agreed.</p>	
	<p>The Examining Authority's agenda noted that the Protective Provisions for the benefit of ABP as harbour authority had been amended at Deadline 4 to reflect some of the discussions held and ongoing with ABP further to its Written Representations.</p> <p>Peter Goatley, on behalf of ABP summarised the points made in its Deadline 3 and Deadline 4 submissions in relation to the indemnity, namely their view that:</p> <ul style="list-style-type: none"> the Scheme is a unique set of circumstances so the indemnity in the DCO is not fit for purpose. There is no precedent for a bridge constructed at such height in the middle of an operational port (certainly no NSIP) apart from Newport and the M4; 	<p>Robbie Owen and Peter Goatley agreed that the protective provisions for ABP were mainly settled and that the main outstanding matter related to the indemnity provided to ABP within the PPs (although noting that, further to the discussion relating to navigation risk assessments earlier in the hearing, a provision would need to be added to the PPs for ABP's specific approval of any updated NRA).</p> <p>In relation to the indemnity as required by ABP, Robbie Owen made the following points that had been set out in greater detail in the Port Impacts Paper:</p> <ul style="list-style-type: none"> the scale of indemnity is unprecedented both in other crossing authorisations (including bridges over Poole Harbour and London), other ABP schemes and the 1970 Agreement governing the existing bascule bridge; it ignores the history of protective provisions, starting with 	<p>PINS Reference REP4-015, Document Reference SCC/LLTC/EX/59 (Port Impacts Paper) chapter 10</p>

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<ul style="list-style-type: none"> • the Scheme by its inherent nature is creating an additional navigational risk in perpetuity that needs to be indemnified; • the Applicant's suggestion that some aspects could be compensated through the compensation code should be rejected as ABP was anticipating various losses beyond those included in the Compensation Code; so ABP will, without sufficient indemnity, have to bear liability for risk created by SCC; • precedent examples do refer to 'operation', so this Scheme should too; and • the 'acts or omissions' wording should be widened to deal with blockages to navigation. 		<p>the Railway Clauses Consolidation Act 1845 and the TWA Model Provisions Order 1992, as being focussed on the protection of statutory undertakers' apparatus;</p> <ul style="list-style-type: none"> • it duplicates matters already covered by the Compensation Code and the general law (e.g. negligence, nuisance and breach of statutory duty); • most of the matters suggested to be covered by the indemnity would be dealt with through the 'failure' provisions already covered in the DCO; • despite the Applicant asking for the information for months, ABP had refused to provide a copy of the Newport indemnity which it was relying upon; and • an indemnity is only good as the insurance behind it, and at the moment, even if the indemnity was accepted, the Applicant had been unable to find an insurance product on the market which would provide for the full suite of losses and liabilities suggested by ABP. <ul style="list-style-type: none"> • He concluded by saying that it is a well established matter of public policy that a statutory body or undertaking should not be expected to indemnify for all claims, etc., arising from the very existence and/or use of the scheme concerned – if they were, then the vast majority of schemes would not be built. • As such, references to 'operation' within the indemnity in the PPs should be seen in the context of the <u>workings</u> of the Scheme, not that it is <u>there</u>. • The Applicant has brought forward some amendments to the indemnity at Deadline 5 with this principle in mind, which it hopes will be seen as helpful. 	