

**(ABP: 3 of 3 – DL8)**

**Proposed Lake Lothing Third Crossing (TRO10023)**

**Associated British Ports (20013261)**

**ABP Response to the Examining Authority's Second Suite of Written Questions**

This document sets out, insofar as they relate to the Port of Lowestoft, the comments of Associated British Ports ("ABP") on the Applicant's Response to the ExA's Second Suite of Written Questions (Document Reference: PD-012).

Where appropriate, the responses made by ABP are cross-referenced to ABP's Written Representations and other submissions made by ABP for various Deadlines.

**1. EXA QUESTION 1.12:**

**The ExA's Question:**

*Document ABP: 2 of 3 – DL7, in para 1.11, suggests that the loss of the freehold at the location of the bridge would result in both the loss of an interest in this land and the loss of ABP's permitted development rights in connection with this land, should the bridge be removed at some later time [REP7-007]. Apart from 'the transfer of a leasehold interest' in the land, are there any other ways in which an interest in the land could be retained by ABP and are there any other ways in which permitted development rights could be again given to ABP in relation to this land?*

**ABP's Response:**

- The key point is that if the Applicant acquires the freehold of land owned by ABP within the Port estate then ABP will lose any permitted development rights granted over this land in perpetuity.
- ABP is not aware of any other practicable means by which ABP can retain an interest in the land other than by means of the creation of a leasehold interest – for example, a right of reverter (i.e. ABP having a contractual right to reacquire land from the Applicant in the event that land ceases to have a bridge pier built on it) will result in ABP having ownership

of a parcel of land within the Port estate that, critically, would not automatically enjoy permitted development powers and therefore be of little or no practical use to ABP's statutory port undertaking.

- The permitted development rights relied upon by ABP in its capacity as statutory port undertaker can only be conferred by way of a parliamentary process involving: (i) a local or private Act; (ii) an order approved by both Houses of Parliament; or (iii) an order under section 14 or 16 of the Harbours Act 1964 (i.e. a Harbour Revision Order or a Harbour Empowerment Order), which specifically designates the nature of the development authorised and the land upon which it may be carried out. Given that obtaining such Acts or Orders involve a lengthy and complex process, and having regard to the small parcels of land that will be subject to the extinguishment of permitted development rights, ABP considers that it would be difficult to obtain the necessary Act or Order to reinstate permitted development rights of those parcels of land impacted by the Scheme at a future date.

## 2. **EXA QUESTION 1.13:**

### **The ExA's Question:**

*Document ABP: 2 of 3 – DL7, in para 1.28, states that “There is no means of access for Plots 2-32 and 2-33” [REP7-007]. ABP is requested to clarify this statement.*

### **ABP's Response:**

- The main point being made within paragraph 1.28 is that the Applicant appears to have given no thought as to how to keep the western part of the Port open for business whilst the proposed bridge is being constructed – and appears to be suggesting that a diversionary route can be created, for the duration of the closure of Commercial Road and/or the occupation of Plot 2-20, between 3 Shed and the edge of Lake Lothing itself. This appears to have not been subjected to any risk assessment process by the Applicant and will have a further detrimental effect on operations and customers within that area – as ABP has made clear in its email correspondence to the Applicant dated 20 March 2019, which states that:

*“... the Council would be ill-advised to proceed on the assumption that ABP will grant the Council the necessary contractual access rights, in order to create those parts of the diversionary route(s) that are not covered within the CPO powers currently being sought under the LLTC proposal. To do so in the circumstances*

*where the safety assessments and risk apportionment are so inchoate – not to mention the scale of operational/commercial impacts on a number of the Port’s customers – would be to expose the Port and ABP to an intolerable level of exposure.”*

- As a subsidiary point, ABP cannot see how it can access Plots 2-32 and 2-33, amongst others, if it is denied access along Commercial Road and over Plot 2-22, which is an outcome envisaged under the powers sought by the Applicant. Moreover, in its summary of oral submissions at the hearings held on 7th and 8th March 2019, the Applicant makes the point, at page 23, that:

*“The Applicant considers that it was the correct approach not to impose a set diversion route within the Order limits, as to do so and to facilitate such flexibility would have required a larger swathe of the Port’s land to be included within the proposed temporary land take, causing more concern to ABP.”*

- This is an extraordinary statement by the Applicant on a number of levels, in particular as:
  - (a) This appears to be an admission by the Applicant that it has not sought to acquire by compulsion all the land it needs in order to deliver the Scheme.
  - (b) ABP does not know how much land the Applicant needs to acquire for the diversionary route. Given the apparent lack of any safety or risk assessments, ABP suggests that the Applicant does not know how much land the Applicant needs to acquire rights over in order to deliver the proposed Scheme.
  - (c) The Applicant appears to have understated its requirements, seemingly in order to avoid “causing more concern to ABP”. This inevitable raises the question – what else has the Applicant failed to mention that may cause concern to ABP?