

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



Lake Lothing
**THIRD
CROSSING**

Document SCC/LLTC/EX/80: Explanation of changes to draft DCO

Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

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THE LAKE LOTHING (LOWESTOFT) THIRD CROSSING ORDER

EXPLANATION OF CHANGES MADE TO THE DRAFT DCO AT DEADLINE 5 (REV 3)

1. INTRODUCTION

- 1.1 This document provides a commentary on changes made to the draft Development Consent Order ("dDCO") in the version submitted at Deadline 5 (22 February 2019) (DCO Revision 3), compared with the version of the draft DCO submitted at Deadline 4 (DCO Revision 2) (Examination Library document reference REP4-007). The Applicant's revised draft DCO (Revision 4) is document 3.1 (Revision 3) [SCC/LLTC/EX/78], and an electronic .pdf comparison between the two versions has also been submitted [SCC/LLTC/EX/79].
- 1.2 In broad terms the changes made in the latest dDCO have been made for the following reasons:
- 1.2.1 changes arising from issues raised by Interested Parties in their submissions to the Examination;
 - 1.2.2 on-going discussions with Interested Parties, including ABP and the MMO;
 - 1.2.3 discussions at the Issue Specific Hearing on the draft DCO held on 13 February ('the Hearing'); and
 - 1.2.4 other points which the Applicant has identified as requiring amendment since revision 2 of the draft DCO was submitted at Deadline 4.

2. TABLE OF CHANGES TO THE DRAFT DCO REVISION 2

Provision in revised draft DCO and/or issue	Brief description and explanation
Article 3 (disapplication of legislation, etc.)	Following discussions at the Hearing, Lowestoft Harbour Byelaw 36 has been removed from the scope of this article.
Article 20 (temporary suspension of navigation within Lake Lothing in connection with authorised development)	A minor change has been made to this article to provide for an emergency scenario.
Article 21 (removal of vessels)	This article has been further amended to better reflect the changes made to article 20 in revision 2. This follows discussion at the Hearing where it was clear that this article has been included to allow the Applicant to deal with obstructive vessels as soon as possible.
Article 25 (compulsory acquisition of rights etc.)	Further minor amendments have been made to this article following discussions with Cadent Gas Limited.
Articles 32 and 33 (temporary possession)	These articles have been amended further to the Applicant's discussions with affected land interests, and will allow flexibility for both sides to agree a shorter notice period if this would be practicable.
Articles 34-36 (articles relating to statutory undertakers) and	These articles have been amended following the Applicant's advisers' experiences on other projects. Although these articles are well precedented, they leave a lacuna for

Provision in revised draft DCO and/or issue	Brief description and explanation
consequential change to article 2	<p>telecommunications companies, as the protection in their protective provisions refers back to article 34 which refers to 'statutory undertakers', the definition of which does not include telecommunications companies.</p> <p>Changes have therefore been made to all these articles, to ensure that the Applicant's powers, and the relevant protections for telecommunications companies within these articles, align with those held by other statutory undertakers.</p>
Article 40 (scheme of operation)	<p>A paragraph has been added to this article to ensure that the views of the NWG are passed on to the Secretary of State to consider as part of his/her deliberations on a revised or replacement scheme of operation that has not been able to be agreed between the Applicant and ABP.</p> <p>Other changes have also been made further to comments by ABP.</p>
Article 41 (permanent extinguishment of navigation)	This article has been amended following comments by ABP.
Article 44 (protection against dredging)	<p>Changes have been made to this article pursuant to the submissions made by ABP and the Applicant at Deadline 4.</p> <p>Consequential changes to article 43 and article 2 have been made as a result of the changes to this article.</p>
Article 45 (byelaws)	A small change has been made to this article further to ABP's submissions at Deadline 4.
Article 48 (transfer of benefit)	This article has been amended following discussions with Cadent and the MMO.
Article 59 (arbitration)	<p>The Applicant is concerned to protect the timely and efficient delivery of the scheme if the DCO is made. Whilst all efforts will continue to be made to reach agreement with all interested parties on all issues, it is possible that there will be areas of disagreement during implementation which could ultimately lead to this article needing to be invoked.</p> <p>In this scenario, the Applicant is concerned that any process of arbitration should not delay a project which already has a contractor on board and will be 'shovel-ready' once the pre-commencement requirements of the DCO are met.</p> <p>Therefore amendments have been made to this article to ensure that both parties in dispute are put under a requirement to make their case to the arbitrator as soon as possible, to allow a decision on the dispute to be made promptly.</p> <p>A further change has been made to the article in relation to the DML (as explained below).</p>
Schedule 2, requirement 3	Following discussions with the CPA and WDC, it is agreed that,

Provision in revised draft DCO and/or issue	Brief description and explanation
(design of the authorised development) and consequential changes to articles 2 and 5.	<p>whilst good progress has been made on developing the DGM, it will not be possible to complete the document prior to the end of Examination owing to the parallel timescales associated with the detailed design process.</p> <p>As such, this article has been amended to provide for a process of post Examination finalisation of the DGM, to be developed in accordance with the (now 'interim') DGM that is before the Examination and approved by the CPA.</p> <p>Consequential amendments have been made to articles 2 and 5.</p>
Schedule 2, requirement 8 (contaminated land and groundwater)	This requirement has been amended further to discussions with SCC, WDC and the Environment Agency.
Schedule 2, requirement 11 (navigation risk assessment)	This requirement has been amended following consideration of ABP's submissions at Deadline 4 and the hearing.
Schedule 2, requirement 14 (new bridge operating signals)	This has been added further to discussions with the county planning authority, pending the final design of the bridge operating signals.
Schedule 2 paragraph 15 (amendment to approved details)	Following the points raised by Northumbrian Water Limited at the Hearing, this paragraph has been amended to apply the 'NEWT' test to amendments to details approved under Schedule 2.
Schedule 9 (Land of which only temporary possession may be taken)	Further to the submissions of Lings and Nexen at the Hearing, two plots have been added to this Schedule to clarify the purposes for which temporary possession of this land is sought.
Schedule 12 (DML)	The Deemed Marine Licence has been amended to reflect discussions with the MMO, the representations of ABP and the Secretary of State's decision (20/02/2019) on the Tilbury2 DCO in relation to arbitration. The DML remains under discussion with the MMO.
Schedule 13 (Protective Provisions), Part 5 (for the protection of the harbour authority)	<p>Part 5 of the protective provisions (for the protection of ABP as harbour authority) have been amended to reflect some of the discussions at the hearing.</p> <p>The amendments also include an update to the indemnity offered to ABP. These amendments provide for an indemnity to provide for events or losses that derive from <u>operation</u> (or failure of the operating mechanisms) of the bridge. However, and as discussed at the Hearing, it does not provide and SCC cannot agree to provide an indemnity for issues arising from the <u>existence, and the use by highway users</u>, of the bridge.</p>
Schedule 14 (documents to be certified)	The list of Documents to be certified has been updated to reflect the latest set of drawings and other documents submitted at Deadline 5.