

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

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Lake Lothing  
**THIRD  
CROSSING**

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### **Document SCC/LLTC/EX/115a: Statement of Reasons (tracked)**

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**Planning Act 2008**

**Infrastructure Planning**

**The Infrastructure Planning (Examination Procedure) Rules 2010**

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## Abbreviations

<b>ABP</b>	Associated British Ports (Statutory harbour authority in respect of Lowestoft Harbour)
<b>BRBR</b>	British Rail Board (Residuary) Limited
<b>BTDB</b>	British Transport Docks Board
<b>CWS</b>	County Wildlife Site
<b>DCLG</b>	Department for Communities and Local Government (as was) (now the Ministry of Housing, Communities and Local Government)
<b>DCO</b>	Development Consent Order
<b>DfT</b>	Department for Transport
<b>DML</b>	Deemed Marine Licence
<b>DR</b>	Design Report
<b>ES</b>	Environmental Statement
<b>HAT</b>	Highest Astronomical Tide
<b>HCA</b>	Homes and Communities Agency (trading as Homes England)
<b>HEHRE</b>	Highways England Historical Railways Estate
<b>LIQs</b>	Land Interest Questionnaires
<b>LLTC</b>	Lake Lothing Third Crossing
<b>LoDs</b>	Limits of Deviation
<b>MMO</b>	Marine Management Organisation
<b>MPS</b>	Marine Policy Statement
<b>NNNPS</b>	National Policy Statement for National Networks
<b>NPPF</b>	National Planning Policy Statement
<b>NSIP</b>	Nationally Significant Infrastructure Project

<b>PNPS</b>	National Policy Statement for Ports
<b>SCC</b>	Suffolk County Council
<b>SoS</b>	Secretary of State
<b>SRN</b>	Strategic Road Network
<b>UKPN</b>	UK Power Networks Limited
<b>WDC</b>	Waveney District Council

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## Executive Summary

### S.1 The Statement of Reasons

**S.1.1** This Statement of Reasons relates to an application ("the Application") by Suffolk County Council ("SCC"/"the Applicant") to the Secretary of State (through the Planning Inspectorate) under the Planning Act 2008 (as amended) ("the Act") for powers, including powers to acquire land compulsorily and to use land temporarily, to build and operate the Lake Lothing Third Crossing, in Lowestoft ("the Scheme") and associated works, and to undertake all other necessary measures pursuant to a Development Consent Order ("DCO").

**S.1.2** This Statement has been prepared in accordance with the requirements of section 37(3)(d) of the Act and regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ("the APFP Regulations").

### S.2 Scheme description

**S.2.1** The Scheme comprises the construction of a new multi-span lifting bridge to provide a new highway crossing of Lake Lothing in Lowestoft, connecting Riverside Road to the south of Lake Lothing with Peto Way to the north of Lake Lothing; and with associated connections into the existing highway network and the provision of new local access roads in the vicinity.

**S.2.2** The Scheme is needed to solve various issues of congestion and severance within the town.

### S.3 The land affected by the Scheme

**S.3.1** The land affected by the Scheme lies in the administrative areas of Waveney District Council and Suffolk County Council. The Scheme would cross the East Suffolk railway line and Lowestoft Harbour and would tie into the existing local highway network on both the north and south sides of Lake Lothing. In the vicinity of the Scheme, the existing land uses are primarily urban, comprising transport, commercial, industrial and residential uses.

### S.4 Powers sought in the DCO

**S.4.1** This Statement of Reasons is required because the DCO, if made, will include powers to:

- acquire land compulsorily;
- create and acquire compulsorily new rights over land;
- extinguish or override existing rights over land; and
- use and possess land temporarily.

for the purposes of the Scheme.



**S.4.2** The powers authorising the acquisition of land, or of interests in and/or rights over land, are principally contained in articles 22 (compulsory acquisition of land) and 25 (compulsory acquisition of rights) of the DCO, but there are a number of other DCO articles which also contain powers affecting land.

**S.4.3** If the DCO were made and development consent granted, these powers would authorise the compulsory acquisition of land (article 22), the acquisition of subsoil and airspace only (article 26), the temporary use of land (article 32), for example for construction, and they would permit the Applicant to create and acquire new rights over land (article 25).

**S.4.4** The DCO would also confer on the Applicant other rights and powers the exercise of which may result in interference with property rights and private interests in land.

**S.4.5** Where these powers of compulsory acquisition are exercised, owners of the relevant land or rights in land may be entitled to compensation under the Compensation Code, where a valid claim is made out. Any dispute in respect of the compensation payable would be referred to and determined by the Lands Chamber of the Upper Tribunal.

## **S.5 Diligent inquiry/ land referencing**

**S.5.1** As required in accordance with the Act, the Applicant undertook “diligent inquiry” through a land referencing process to identify parties within Categories 1, 2 and 3, as defined in sections 44 and 57 of the Act. These include owners, lessees, tenants and occupiers of the land within the Order limits. Category 2 includes parties that are interested in the land or have the power to sell, convey or release the land within the Order limits.

**S.5.2** The Land Referencing Limits were set to include the following:

- all land within the Order limits required for the Scheme;
- all properties within a 300m buffer zone extending from and beyond the centreline of the Scheme alignment; and
- all properties adjacent to Lake Lothing, between the A47 bascule bridge and Mutford Bridge.

**S.5.3** The Book of Reference (Document Reference 4.3) sets out the results of the land referencing.

## **S.6 Engagement with landowners**

**S.6.1** The Applicant has been in discussion for a considerable length of time with many of the landowners affected by proposals for the Scheme, with the continuing aim of negotiating to acquire by agreed private treaty the land and rights needed to construct and operate the Scheme.

**S.6.2** The current position in relation to the Applicant's engagement and negotiations with landowners affected by the Scheme is explained in the Applicant's Compulsory Acquisition Negotiations Tracker (document

reference 4.4). Detailed discussions are ongoing with landowners and occupiers in order to ensure that their concerns are taken into account and are accommodated wherever possible.

## **S.7 Justification for seeking powers**

**S.7.1** The specific purposes for which the Applicant requires each parcel of land within the Order limits is set out in Appendix A to this Statement of Reasons. The Secretary of State must be satisfied before making the DCO that the land identified within the Order limits is needed for the development to be authorised, and that no more land is proposed to be taken than is reasonably required to enable the delivery of the Scheme.

**S.7.2** Due to the nature of the design process and the timing of the consenting process, the Applicant requires a degree of flexibility as to where the Scheme can be constructed within the defined limits of deviation which are provided for in the draft Order.

**S.7.3** At this stage, all the land included in the Order land is considered to be necessary to enable the delivery of the Scheme. However, should it transpire that any part of the Order land is not required, for instance as a result of the detailed design process in due course or because a parcel of land has been acquired by agreement as a result of successful negotiations, in those circumstances compulsory acquisition powers would not be exercised in respect of such land because such exercise would not be necessary or justified.

**S.7.4** The Applicant's approach, which combines genuine attempts to acquire land by agreement with the planning, in parallel, of a compulsory acquisition timetable as a contingency measure, and with taking action to initiate formal compulsory acquisition procedures, is in accordance with the 2013 DCLG Guidance.

**S.7.5** For the reasons set out in detail in this Statement of Reasons, the Applicant considers that there is a compelling case in the public interest which would justify the use of powers of compulsory acquisition, such that the relevant statutory tests in section 122 of the Act are met.

## **S.8 Options assessment**

**S.8.1** A detailed options assessment process was carried out which considered a broad range of potential crossing options. This process is explained in detail in the Case for the Scheme (document reference 7.1) and the Design Report (document reference 7.4). A detailed assessment process was undertaken to identify the land and rights needed to implement the Scheme. A number of engineering and design alternatives were considered and landowner negotiations were ongoing and influenced the process.

## **S.9 Funding**

**S.9.1** The Funding Statement for the Scheme (document reference 4.2) sets out, in accordance with the recommendation in the 2013 DCLG Guidance (at

paragraph 9), that there is a "reasonable prospect of the requisite funds for acquisition becoming available". It explains how the Scheme, and the compulsory acquisition of land required to enable its delivery, are proposed to be funded, and how the requisite funding would be made available within a reasonable timescale.

## **S.10 Statutory undertakers**

**S.10.1** The Scheme affects land owned by statutory undertakers for the purposes of their undertaking. Chapter 6 to this Statement of Reasons identifies the undertakers affected (including ABP and Network Rail, as well as those undertakers listed in Appendix B to this Statement of Reasons as being of statutory undertakers and other similar bodies which have, or which may have, a right to keep equipment (in connection with their undertaking) on, in or over the land required for the Scheme). A series of Tables in Chapter 6 of this Statement identifies the plots of land owned by statutory undertakers that are proposed to be acquired, or over which rights are proposed to be acquired, in connection with the Scheme.

## **S.11 Special Category land – Crown land**

**S.11.1** The Applicant's proposed Order limits include an area of land which is understood to be Crown land. As Crown land is protected from compulsory acquisition, the Applicant has sought the consent of the appropriate Crown authority (in this case the Secretary of State for Transport) to include the Crown land in the DCO. The response of the Crown authority is awaited.

## **S.12 Human Rights**

**S.12.1** This Statement considers the impact of the Scheme on the human rights of those affected by it. It concludes that whilst there would, as a consequence of the Scheme, be interference with such rights, the interference would be entirely lawful, proportionate and justifiable in the circumstances.

## **S.13 Conclusion**

**S.13.1** The Applicant considers that there is a compelling case in the public interest for the making of the DCO and for the inclusion in the DCO of powers of compulsory acquisition and temporary possession, so as to secure the necessary land and property interests required to construct, operate and maintain the Scheme.

## Foreword

This Statement of Reasons relates to an application (“the Application”) submitted by Suffolk County Council (“the Applicant”) to the Secretary of State (through the Planning Inspectorate) for a Development Consent Order (“the DCO”) made under the Planning Act 2008.

If made by the Secretary of State, the DCO would grant development consent for the Applicant to construct, operate and maintain a new bascule bridge highway crossing, which would link the areas north and south of Lake Lothing in Lowestoft, and which is referred to in the Application as the Lake Lothing Third Crossing (or “the Scheme”).

This Statement of Reasons has been prepared in accordance with the requirements of section 37(3)(d) of the Planning Act 2008 and regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“the APFP Regulations”), and in compliance with relevant guidance as a document which the Applicant considers necessary to support the Application.

This Statement of Reasons sets out the Applicant’s case in support of the need for the powers of compulsory acquisition and temporary possession which are sought in the draft Development Consent Order and which are required by the Applicant to ensure the delivery of the Scheme within a reasonable timescale.

The objective of this Statement of Reasons is to explain why – in both wider strategic terms and in relation to each individual plot of land affected by the Scheme – powers of compulsory acquisition and temporary possession are needed, notwithstanding the Applicant’s genuine and sustained efforts to secure the land needed for the Scheme by agreement.

# 1 Introduction

## 1.1 Introduction to the Statement of Reasons

- 1.1.1 This Statement of Reasons relates to an application ("the Application") submitted by Suffolk County Council ("the Applicant") to the Secretary of State for Transport (through the Planning Inspectorate) under the Planning Act 2008 (as amended) ("the Act") for powers, including powers to acquire land compulsorily, to enable the Applicant to construct, operate and maintain the Lake Lothing Third Crossing ("the Scheme") and associated works, and to undertake all other necessary measures pursuant to a development consent order ("DCO").
- 1.1.2 The Scheme comprises the construction of a new multi-span lifting bridge to provide a new highway crossing of Lake Lothing in Lowestoft, connecting Riverside Road to the south of Lake Lothing with Peto Way to the north of Lake Lothing; and with associated connections into the existing highway network and the provision of new local access roads in the vicinity.
- 1.1.3 In March 2016 the Secretary of State for Transport gave a direction under section 35 of the Act conveying his decision that the Scheme was nationally significant and should, accordingly, be treated as development for which development consent (under the Act) is required. As such, the Scheme may only be authorised by means of a DCO made by the Secretary of State under the Act.
- 1.1.4 This Statement has been prepared in compliance with the requirements of section 37(3)(d) of the Act and regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ("the APFP Regulations"), and in accordance with guidance issued by the Department for Communities and Local Government in September 2013, Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land ("the 2013 DCLG Guidance") and in October 2015, Guidance on Compulsory Purchase Process and the Crichel Down Rules ("the 2015 DCLG Guidance").
- 1.1.5 Under Regulation 5(2)(h) of the APFP Regulations, this Statement is required because the Application seeks development consent for the Scheme through the making of the proposed Lake Lothing (Lowestoft) Third Crossing Order, which, if made by the Secretary of State in the form applied for by the Applicant for the purposes of delivering the Scheme, would include powers:
- to acquire land compulsorily;
  - to create and acquire compulsorily new rights over land; and
  - to extinguish or override existing rights over land.

- 1.1.6 This Statement forms part of the suite of documents comprising the Application, submitted in accordance with section 55 of the Act and Regulation 5 of the APFP Regulations. Other application documents which inform this Statement of Reasons, and which should be read alongside it, are, in particular, the Land Plans (document reference 2.3), the Book of Reference (document reference 4.3), the Compulsory Acquisition Negotiations Tracker (document reference 4.4), the Works Plans (document reference 2.4), the Rights of Way and Access Plans (document reference 2.5), the Funding Statement (document reference 4.2) and the draft Development Consent Order (document reference 3.1).
- 1.1.7 It is necessary for the Secretary of State, as the decision-maker in respect of the Application, to be satisfied that there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the Order for the purposes of the Scheme.
- 1.1.8 The Applicant considers that there is a compelling case in the public interest for the making of the DCO and for the inclusion in the DCO of powers of compulsory acquisition so as to secure the interests in land necessary for the construction, operation and maintenance of the Scheme. The essential purpose of this Statement is to set out that compelling case in the public interest.
- 1.1.9 The following chapters of this Statement (the content of which is outlined at paragraph 1.2 below) therefore seek to set the scene within which powers of compulsory acquisition are sought (see chapters 2-4) and the reasons why they are needed (see chapter 5), together with an explanation of how the Applicant has had regard to and addressed the various statutory tests and policy requirements which must be met (see chapters 6-11) in order to demonstrate a compelling case in the public interest which justifies the use of compulsory acquisition powers (see chapter 12).
- 1.1.10 Land which is proposed to be acquired, together with land over which new rights are proposed to be created and acquired, is defined in the Applicant's draft DCO as "the Order land". That definition is also adopted in this Statement. The Order land is described in Chapter 4 of this Statement.

## 1.2 Structure of the Statement of Reasons

- 1.2.1 The structure of the Statement of Reasons is as follows:
- **Chapter 2** describes the Scheme and why it is needed.
  - **Chapter 3** identifies the land which would be affected by the construction and operation of the Scheme.
  - **Chapter 4** explains the scope and source of the statutory powers sought in the Applicant's draft DCO for the compulsory acquisition of land and

rights over land and for the temporary possession of land (together, "the land use powers").

- **Chapter 5** explains the purposes for which the Applicant seeks the land use powers.
- **Chapter 6** explains how the Applicant has sought to engage with landowners and to negotiate to acquire land and rights over land by agreement, having compulsory acquisition powers in contemplation only as a tool of last resort.
- **Chapter 7** sets out the impacts of the Scheme on statutory undertakers and examines how those impacts can be managed without detriment to the relevant statutory undertaking.
- **Chapter 8** outlines relevant planning policy and its application to the Scheme.
- **Chapter 9** identifies special considerations affecting the Order land and explains how any related statutory requirements will be met.
- **Chapter 10** identifies other consents which are required to be granted, alongside the DCO, in relation to the Scheme.
- **Chapter 11** explains the Applicant's compliance with human rights legislation relevant to the determination of the DCO application.
- **Chapter 12** sets out the Applicant's justification for seeking the land use powers.

### 1.3 Guide to the DCO documentation

1.3.1 The following paragraphs provide a **step by step guide** to enable a person with an interest in land affected by the Scheme to use the DCO documentation to find out how the Applicant's proposals may affect the land in which they have an interest.

1.3.2 **Step 1:** Look at the **Land Plans** (document reference 2.3) and find the area ('plot(s)') of land in which you have an interest.

1.3.3 **Step 2:** On the Land Plans, note the colour of the plot and the number of the plot.

- The **colour of the plot** will give you an initial indication of the purpose for which the land in that plot is required:
  - **pink plots** – for compulsory acquisition of land;
  - **blue plots** – for compulsory acquisition of new rights over land or for the imposition of restrictive covenants to manage the future use of land;

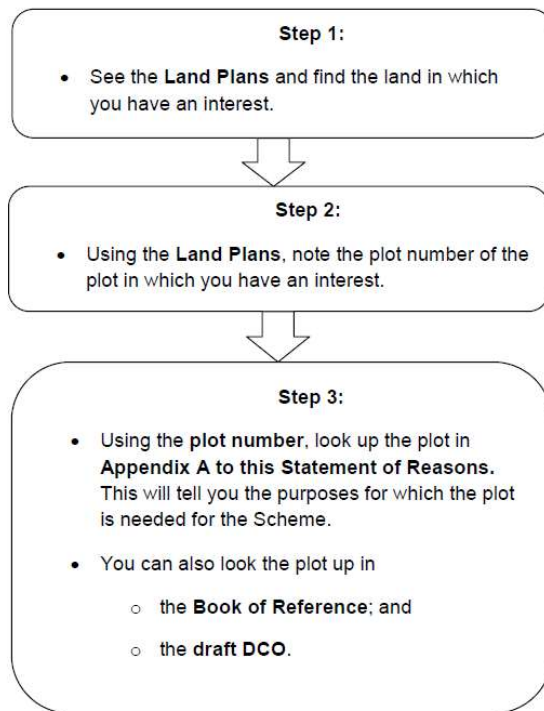
- **plots hatched pink and blue** – for compulsory acquisition of airspace, together with compulsory acquisition of new rights over land and/or the imposition of restrictive covenants below that airspace; and
- **green plots** – for temporary possession and use of land.
- Note the **plot number** – this will enable you to identify and track the land where it is referred to in other DCO documents. See Step 3 below.

**1.3.4 Step 3:** Use the plot number(s) to find references to the land in other DCO documents, such as:

- the **Book of Reference** (document reference 4.3) – this provides a brief description of each plot (including an approximate area measurement in square metres) and the names and addresses of persons who own, lease, or otherwise occupy or have an interest in the land;
- the **Compulsory Acquisition Negotiations Tracker** (document reference 4.4) – this reports the Applicant's progress in seeking to engage with landowners and other affected parties to secure, by negotiated private treaty agreement, the land and rights over land which are required for the Scheme, with the aim of minimising as far as possible the need to resort to using powers of compulsory acquisition;
- the **Statement of Reasons – Appendix A** of this document:
  - explains the purpose(s) for which each plot of land is needed for the Scheme and how each plot is proposed to be used;
  - provides cross-references to the numbered Works shown on the **Works Plans** (document reference 2.4) and described in **Schedule 1 to the draft DCO** (document reference 3.1);
- the **draft Development Consent Order** ("DCO") (document reference 3.1), where plot numbers are referred to in some of the Schedules to the DCO, namely:
  - **DCO Schedule 6** – which lists the plots of land in which only new rights (including, where specified, restrictive covenants) may be acquired;
  - **DCO Schedule 8** – which lists the plots of land in which only airspace and new rights may be acquired; and
  - **DCO Schedule 9** – which lists the plots of land of which only temporary possession may be taken.



1.3.5 Here is a condensed version of the step by step guide:



## 2 Introduction to the Scheme

### 2.1 Scheme description

- 2.1.1 The scheme involves the construction, operation and maintenance of a new bascule bridge highway crossing linking the areas north and south of Lake Lothing in Lowestoft, hereafter referred to as the Lake Lothing Third Crossing ("the Scheme").
- 2.1.2 The Scheme would provide a new single-carriageway road crossing of Lake Lothing, consisting of a multi-span bridge with associated approach roads, and would comprise:
- an opening bascule bridge over the Port of Lowestoft, in Lake Lothing;
  - on the north side of Lake Lothing, a bridge over Network Rail's East Suffolk Line, and a reinforced earth embankment joining that bridge, via a new roundabout junction, to the C970 Peto Way, between Rotterdam Road and Barnards Way; and
  - on the south side of Lake Lothing, a bridge over the northern end of Riverside Road including the existing access to commercial property (Nexen Lift Trucks) and a reinforced earth embankment (following the alignment of Riverside Road) joining this bridge to a new roundabout junction with the B1531 Waveney Drive.
- 2.1.3 The Scheme would be approximately 1 kilometre long and would be able to accommodate all types of vehicular traffic as well as non-motorised users, such as cyclists and pedestrians.
- 2.1.4 The opening bascule bridge design would allow large vessels to continue to use the Port of Lowestoft.
- 2.1.5 A new control tower building would be located immediately to the south of Lake Lothing, on the west side of the new highway crossing, to facilitate the operation of the opening section of the new bascule bridge.
- 2.1.6 The Scheme would also entail:
- the following changes to the existing highway network:
    - the closure of Durban Road to vehicular traffic at its junction with Waveney Drive;
    - the closure of Canning Road at its junction with Riverside Road, and the construction of a replacement road between Riverside Road and Canning Road to the west of the Registry Office; and
    - a new access road from Waveney Drive west of Riverside Road, to provide access to property at Riverside Business Park;
    - improvements to Kimberley Road at its junction with Kirkley Run; and
    - part-signalisation of the junction of the B1531 Victoria Road / B1531 Waveney Drive with Kirkley Run;

- the provision of a pontoon for use by recreational vessels, located to the east of the new highway crossing, within the Inner Harbour of Lake Lothing; and
- works to facilitate the construction, operation and maintenance of the Scheme, including the installation of road drainage systems; landscaping and lighting; accommodation works for accesses to premises; the diversion and installation of utility services; and temporary construction sites and access routes.

2.1.7 The works required for the delivery of the Scheme are set out in Schedule 1 to the draft DCO (document reference 3.1), where they are referred to as "the authorised development", with their key component parts being allocated reference numbers, which correspond to the layout of the numbered works as shown on the Works Plans (document reference 2.4). The General Arrangement Plans (document reference 2.2) illustrate the key features of the Scheme.

2.1.8 The figure below provides a diagrammatic representation of the Scheme:

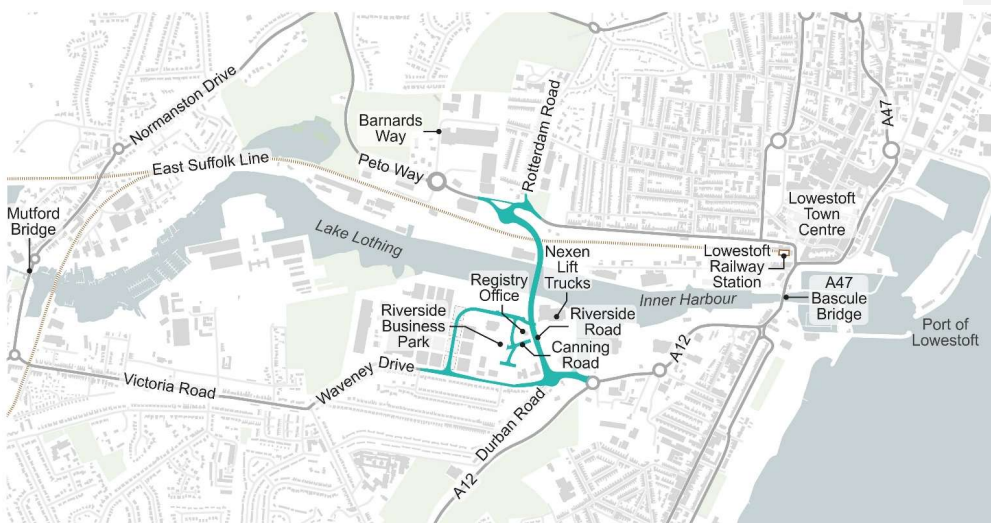


Figure 1: Location of the Scheme in Lowestoft

### *Location of the Scheme*

- 2.1.9 Lake Lothing is a large salt-water lake, which, as noted in Chapter 2 (above) divides the town of Lowestoft into two parts: a northern part and a southern part.
- 2.1.10 Between these two parts of the town lies the Port of Lowestoft, owned and operated by ABP in its capacity as the statutory harbour authority (a statutory undertaker in the context of the Act). The Port of Lowestoft is divided into two sections – the outer harbour lies to the east of the existing A47 Bascule Bridge; the inner harbour to its west, where it spans Lake Lothing and lies between the two existing lake crossings: Mutford Bridge and the A47 Bascule Bridge. The inner harbour is formed by Lake Lothing, whilst the outer harbour is constructed from breakwaters.
- 2.1.11 There is a long standing need in Lowestoft to solve various issues of congestion and severance within the town by means of providing an additional crossing over Lake Lothing. This east-west stretch of water, which includes the Port of Lowestoft, connects the country's most easterly port to The Broads National Park, and divides the coastal town of Lowestoft into two parts, geographically.
- 2.1.12 The Applicant's Case for the Scheme (document reference 7.1) sets out the urgent transport and regeneration need for the Scheme and provides an overview of the options and alternatives considered in order to determine the reference design for which development consent is sought. An overarching assessment of the Scheme against the relevant national and local planning policy is provided as well as a detailed assessment of how the Scheme complies with the NNNPS, which is set out in Appendix A to the Case for the Scheme.
- 2.1.13 In the proposed vicinity of the Scheme, Lake Lothing comprises quays to the north and south, and a central navigation channel, which is used by ABP and other maritime users. The quays to the south side of the Lake are not currently used for operational port activities due in part to the poor condition of the quay wall; however the quays on the north side of Lake Lothing are in regular use and form a working part of ABP's operational port.
- 2.1.14 Following a comprehensive options assessment process, the concept of a preferred scheme was established in a central location between the two existing bridges which cross Lake Lothing at its eastern and western ends respectively: Mutford Bridge and the A47 Bascule Bridge. The Scheme for which the Applicant seeks development consent would therefore provide a third north to south crossing over Lake Lothing in Lowestoft, located centrally within the Lake and the town, and traversing both the operational Port of Lowestoft and the operational East Suffolk railway line.
- 2.1.15 The options assessment process which arrived at this central solution is described in detail in the Case for the Scheme (document reference 7.1) –

see in particular chapter 5: *scheme evolution, assessment of options and how the scheme meets the need case.*

#### *Features of the Scheme*

- 2.1.16 The Scheme would be a lifting/opening bridge (to ensure maintenance of vessel access through the inner harbour to the Port of Lowestoft) and would be accessible to all vehicles and non-motorised users. It would include new roundabouts to connect the new bridge approaches into the existing highway network on both the north and south sides of Lake Lothing.
- 2.1.17 The crossing itself would consist of a carriageway with a single lane in each direction, with footways and cycleways, inclining from the new northern and southern roundabouts to provide a 12 metre clearance or air-draft below the crossing (in its closed position) above the navigable channel in the river (i.e. 12 metres above the level of the Highest Astronomical Tide ("HAT")).
- 2.1.18 Within the water, the crossing would provide for a clear span between the new bridge piers of 35 metres, with a clear width of 32 metres between the fenders protecting those piers.
- 2.1.19 The opening section of the bridge would allow vessels taller than 12 metres to pass through when required, through the deployment of a rolling bascule mechanism. In accordance with advice from ABP that the new bridge would require a continually staffed control tower to regulate the opening of the new bridge, the Scheme also includes a control tower building to house operations relating to the bridge-opening.
- 2.1.20 It is envisaged that the control tower will incorporate a bridge control room (and associated welfare facilities); access to the bridge deck from ground level via a gantry to the embankment; a bridge plant room; and a sub-station.
- 2.1.21 The concept design for the bridge has taken inspiration from the growing role of Lowestoft in the energy sector and the term 'marine tech' was identified to reflect this. This has resulted in a contemporary yet functional crossing with a single leaf lifting deck. In terms of its operation, the bridge structure forms the counterweight which enables the bridge opening and closing to occur.
- 2.1.22 To accommodate any waiting for recreational vessels between the A47 Bascule Bridge and the Scheme bridge, should a vessel be unable to transit the inner harbour, a pontoon has been incorporated within the Scheme that would allow recreational vessels to moor safely outside of the navigation channel. Mooring at the pontoon would only be permissible temporarily whilst a recreational vessel was waiting for one or other of the two bascule bridges to open.

#### *Operation and maintenance of the Scheme*

- 2.1.23 The 12 metre clearance air draft of the crossing, together with its location to the west of some of the docks and west of the ship turning-circle within the Port of Lowestoft, is aimed at ensuring that the lifting bridge section would need to open less frequently than the existing A47 Bascule Bridge at the

harbour entrance. The opening regime for the new bridge crossing will be informed by a vessel survey and further discussion with Associated British Ports ("ABP"), as the statutory Harbour Authority and operator of the Port of Lowestoft, and in consultation with the Navigation Working Group, set up by the Applicant.

- 2.1.24 Whilst the Scheme would be an asset held by the Applicant, it is envisaged that the bridge opening mechanism would be operated by ABP, in its capacity as Harbour Authority, on a similar basis to the arrangements which are in place for the existing A47 Bascule Bridge, which is owned by Highways England but operated by ABP. The draft DCO envisages that the new bridge opening regime will be set out in a 'Scheme of Operation' which the Applicant will prepare through collaborative discussion with ABP and other relevant stakeholders.

#### *Northern tie-in*

- 2.1.25 On the northern side of the Scheme a new roundabout is proposed to be located slightly to the west of the current Denmark Road / Rotterdam Road / Peto Way roundabout, to connect the Scheme into the existing road network.
- 2.1.26 Heading southwards from this roundabout towards Lake Lothing, the new road layout would link into a new embankment which would incline to connect with the elevated section of the bridge crossing, passing above the existing East Suffolk railway line and ABP's operational Port area, to span across Lake Lothing, which is also part of ABP's operational Port area, prior to connecting into the new road layout on the southern side of the Scheme.
- 2.1.27 On the northern side of the Scheme, the landscape and public realm have been designed to soften the connection between the Scheme and the surrounding local area. The northern approach area includes public space and planted drainage ponds to capture surface run-off and increase biodiversity. The area of public space features terraced steps built onto a structural embankment which provides access and allows for informal seating. A pedestrian and cycle path provides links with proposed crossing points. These crossing points reflect key desire lines for pedestrians and cyclists, enabling access from the proposed new bridge towards the town centre, Lowestoft North Quay Retail Park, the existing play park, and nearby bus stops.

#### *Southern tie-in*

- 2.1.28 On the southern side of the Scheme, the new crossing would meet with and then broadly follow the alignment of the existing Riverside Road, initially at a high level (on piers and then on an embankment), before descending to a new roundabout junction located at the intersection of Riverside Road and Waveney Drive, to the west of the MotorLings car showroom. Local roads which currently connect directly into Riverside Road would be served, in the main, from a new road connection to Waveney Drive (east of the existing

Canning Road, which would be closed at its junction with Riverside Road) linking Riverside Road with Waveney Drive.

2.1.29 The Scheme includes the closure of vehicular (but not non-motorised user) access to Durban Road at its northern end, where it currently connects with the existing Riverside Road / Waveney Drive junction. Durban Road would become a cul-de-sac, with a new turning head provided at the northernmost end, and with vehicular access from its southern end, where it meets existing local roads (Kimberley Road and Notley Road). In order to accommodate the changes to Durban Road, new traffic regulation measures to control parking in the surrounding streets (Notley Road, Kimberley Road, Kirkley Run and Durban Road) would be introduced as part of the Scheme.

2.1.30 The opportunity to accommodate landscaping and public realm design on the southern approach is limited due to the surrounding land uses and lack of space. Trees are proposed in the area of the Durban Road closure and along the new access road through the former Jeld-Wen site on the north side of Waveney Drive. These measures would improve the appearance of this gateway area into Lowestoft.

#### *Access to properties*

2.1.31 A new, non-signalised T-junction would be introduced on Waveney Drive, providing a new access road into the remaining section of Riverside Road, which passes the northern access to the Waveney District Council ("WDC")/SCC Offices.

2.1.32 The new connection to Canning Road would involve the relocation of the current southern access into the existing SCC and WDC car park.

2.1.33 Access to the existing Nexen site would be re-provided from the remaining length of Riverside Road, which would pass beneath the new southern approach to the proposed crossing, by way of an underpass.

2.1.34 Access to MotorLings would be re-provided by way of a new 'left in, left out' junction arrangement on Waveney Drive, near the Tom Crisp Way roundabout. The two existing accesses to MotorLings' premises off Riverside Road would not be practicable with the Scheme in place and would therefore be stopped up.

#### *Further details*

2.1.35 A more detailed description of the Scheme is set out in Chapter 6 of the Environmental Statement (document reference 6.1) ("the ES") and in Chapter 8 of the Design Report ("the DR") (document reference 7.4) which illustrates the reference design of the Scheme through the presentation of images derived from a digital 3D model of the Scheme.

## 3 Identification of land and rights in land affected by and in the vicinity of the Scheme

### 3.1 Introduction

- 3.1.1 This chapter primarily describes the land which is proposed to be subject to the compulsory acquisition powers that are sought in the draft DCO. The relevant land is defined in the draft DCO as "the Order land".
- 3.1.2 The Order land is shown on the Land Plans (document reference 2.3) where it is shaded pink (acquisition of land) and blue (acquisition of rights over land).
- 3.1.3 The location and layout of the works for which the Order land is required are represented on the Works Plans (document reference 2.4).
- 3.1.4 Short textual descriptions of each numbered plot shown on the Land Plans, together with details of its ownership, are set out in the Book of Reference at Part 1 (document reference 4.3).

### 3.2 Location

- 3.2.1 The Order land is wholly located within the administrative areas of WDC and SCC. The Scheme's location in relation to the town of Lowestoft and to Lake Lothing in particular, is explained in the preceding chapter (Chapter 2) to this Statement of Reasons.

### 3.3 Land and property affected by the Scheme

#### *North side*

- 3.3.1 On its north side, the Scheme would connect, by way of a new roundabout junction, into Peto Way, to the east of the Lowestoft North Quay Retail Park. The land on which the new roundabout would be located is currently vacant hardstanding (lying immediately to the south of Peto Way), and was recently acquired by agreement by the Applicant for the purpose of delivering the Scheme.
- 3.3.2 Heading in a southerly direction towards Lake Lothing, the Scheme would cross the East Suffolk railway line, which is owned by Network Rail Infrastructure Limited ("Network Rail"), a statutory undertaker in the context of the Act.
- 3.3.3 The East Suffolk line runs almost in parallel with the northern edge of Lake Lothing and Denmark Road, and connects Lowestoft railway station to Ipswich and Norwich.



- 3.3.4 In terms of land owned by Network Rail for the purposes of its undertaking, the Applicant seeks powers to acquire land (for a bridge pier), airspace (for the bridge deck) and rights (including a power to impose restrictive covenants) over land for the future protection and maintenance of the Scheme. For more detail see chapter 6 below, together with the Land Plans, the Book of Reference and Appendix A to this Statement of Reasons.

#### *Lake Lothing*

- 3.3.5 Continuing in a generally southerly direction, the Scheme would then traverse the Port of Lowestoft (owned by ABP), where land is needed for the Scheme both on the north quay of the Port and then within the operational Port area in the Lake itself. Again, the Applicant seeks powers to acquire land (for bridge piers), airspace (for the bridge deck) and rights (including a power to impose restrictive covenants) over land for the future protection and maintenance of the Scheme. For more detail see chapter 6 below.

- 3.3.6 As the Scheme would be required to cross operational railway land owned by Network Rail and operational port land owned by ABP, Chapter 6 of this Statement of Reasons explains the Applicant's approach to its proposals to acquire (or use) land owned by statutory undertakers for the purposes of their undertaking, and sets out how the requirements imposed by sections 127 and 138 of the Planning Act 2008 are proposed to be met in the context of the Scheme.

#### *South side*

- 3.3.7 Land on the south side of Lake Lothing is occupied by a number of commercial and municipal buildings, in the vicinity of which the Applicant will need to acquire land and new rights over land (and use land temporarily) within the Order limits as drawn on the Land Plans and the Works Plans.
- 3.3.8 Nexen, a manufacturer of fork-lift trucks, operates from a building to the east of the site identified for the Scheme.
- 3.3.9 Whilst the majority of the Nexen site would remain unaffected by the Scheme, a small area of the Nexen site is proposed to be acquired and/or subject to new rights, and the access to the site would need to be re-provided by way of an underpass beneath the improved Riverside Road, which would be at an elevated level, rising on an embankment and then passing the Nexen site on piers.
- 3.3.10 MotorLings, a car sales business, owns and occupies land between Nexen's site and the current alignment of Waveney Drive (to the west of Kirkley Ham and the Asda superstore). Again, although the majority of the MotorLings site would remain unaffected by the Scheme, a small area of the MotorLings site is proposed to be acquired and/or subject to new rights, and the access to the site would need to be re-provided by way of new private means of access on the north side of Waveney Drive, to the west of Kirkley Ham. MotorLings' existing access off Riverside Road would not be retained, due to

the level differences described above, which would render the existing accesses impracticable.

- 3.3.11** Further south, a small number of residential dwellings and a small privately run beauty salon business, Bellablue, lie within or partially within, the Order limits, mainly around the southern side of the existing junctions of Riverside Road and Durban Road with Waveney Drive.
- 3.3.12** The Applicant seeks land use powers in the draft DCO which would affect all of the above-mentioned premises. This Statement explains why the Applicant considers that such interference with private rights in land is justified in the context of delivering the Scheme (see chapters 10-12 below).

#### *Highway land*

- 3.3.13** On both the northern and southern sides of the Scheme, the Order limits include some existing highway, for the purposes of incorporating it into the Scheme and regularising the ownership position, where the relevant land is not already owned by the Applicant.

### **3.4 Adjacent land uses**

- 3.4.1** In the areas adjacent to and beyond the Order limits, the existing land uses are primarily urban, comprising transport, residential, commercial and industrial uses, but being broadly characterised by a mixture of commercial and residential properties which flank both the north and south sides of the Lake.
- 3.4.2** The main transport links in the area include the A146 which links Lowestoft to Norwich, the A47 which runs towards Great Yarmouth to the north, and the A12 which runs southwards towards Ipswich and Felixstowe. Running almost in parallel to the northern edge of the Lake and Denmark Road, the East Suffolk Railway Line serves Lowestoft Railway Station. The railway crosses Lake Lothing at its western end, adjacent to the A1177 at Mutford Bridge.

#### *North side*

- 3.4.3** On the north side of Lake Lothing lies Normanston Park, which provides facilities for football and cricket; and Leathes Ham, a Local Nature Reserve, lies to the north-west.
- 3.4.4** Outside the Order limits and to the north of the new northern roundabout, and the existing roundabout at the junction of Peto Way / Rotterdam Road / Denmark Road (which would be slightly realigned to accommodate the Scheme) there are residential properties, industrial and commercial properties, and an outdoor play area.
- 3.4.5** The port operations of ABP are predominant on the north side of the Scheme, where they occupy an area of approximately 40 hectares (much of

which lies outside the Order limits), alongside the operational port area within the Lake itself. An existing grain silo, the height of which is approximately 50 metres, marking it out as a local landmark, is located to the east of the Scheme.

- 3.4.6 A range of activities take place at the Port, including the handling of dry bulks (including grain and cement) and the handling of general cargo (e.g. forest products, steel and general cargo). The Port is also understood to be the operation and maintenance base for the Greater Gabbard Offshore windfarm and the East Anglia ONE windfarm.

#### *South side*

- 3.4.7 On the south side of Lake Lothing, lying to the north of Waveney Drive, there are areas of vacant, disused industrial land. There is also a County Wildlife Site ("CWS"), known as the Jeld-Wen Mosaic CWS. Further west on the south side of Lake Lothing is the Lowestoft Haven Marina which provides berthing facilities and a boat hoist. North of Lake Lothing in this location are other marinas including Lowestoft Yacht Services.
- 3.4.8 To the west of the site identified for the Scheme, the land is owned and occupied by WDC and houses administrative buildings (including the Lowestoft Register Office) and buildings occupied by the Applicant.
- 3.4.9 West of the existing Riverside Road alignment, and to the north of Waveney Drive, there are commercial buildings owned and occupied by Northumbrian Water Limited (trading locally as Essex and Suffolk Water), NWES Property Services Limited and Arrow Group. There is also an area of land managed for the purposes of biodiversity, also owned by Northumbrian Water Limited.
- 3.4.10 Of particular note on the north side of Lake Lothing, are Normanston Park and the adjacent small fresh-water lake known as Leathes Ham – a Local Nature Reserve; further west lie the Lake Lothing marina, and then Oulton Broad, which provides a gateway to the River Waveney and the Norfolk Broads National Park.
- 3.4.11 Further afield, approximately 1.5km to the west of the Order Limits, lie The Broads, administered by the Broads Authority (which holds a similar role to that of National Park Authorities, but having additional purposes relating to navigation, agriculture and forestry).

### **3.5 Public Rights of Way and Private Means of Access**

- 3.5.1 As noted above, the Scheme will affect existing highways (which are public rights of way) and accesses (including private means of accesses) to some premises. A detailed account of how such public rights of way and private means of access are expected to be affected by the Scheme is provided through the Rights of Way and Access Plans (document reference 2.5),

together with the corresponding Schedule to the draft DCO (i.e. DCO Schedule 4, within document reference 3.1).

- 3.5.2 Appendix C** to this Statement of Reasons provides a detailed explanation of the anticipated effects of the Scheme on public rights of way and private means of access, and also sets out details of the Applicant's proposals to provide new highway and new (or replacement) private means of access as part of the Scheme.

### **3.6 Services/Utilities**

- 3.6.1** A number of existing utility services (including those within an existing UK Power Networks (UKPN) tunnel which runs beneath the bed of Lake Lothing) lie in the vicinity of, and/or within the area of land which is required for the Scheme and some of these services would be affected by the authorised works in that they would be required to be diverted or re-aligned within the Order limits to accommodate the Scheme. More detail on the nature of the necessary diversions is provided below, in Chapter 6 of this Statement of Reasons (which provides information about the impacts of the Scheme on statutory undertakers' land, rights over land and apparatus).
- 3.6.2** In some cases, such diversions or realignments may not be wholly accommodated within the corridor of land which is proposed to be acquired for the Scheme (i.e. within land shaded pink on the Land Plans (document reference 2.3)), or within existing highway, and therefore, in such cases, the Applicant seeks powers to acquire compulsorily new rights over land (such land being shaded blue on the Land Plans), for the benefit of the utility company, together with powers of temporary possession (over land within the Order limits, i.e. land shaded pink, blue or green) to enable the requisite diversion works to be undertaken.
- 3.6.3** The Scheme may also affect existing minor private utility supplies and also services and utilities such as telecommunications cables within the existing highway. Where necessary to facilitate their continued operation, such supplies and services will be diverted and realigned by the Applicant as necessary. The Applicant seeks appropriate powers in the DCO to facilitate such utility diversion works and is currently in the process of agreeing all such works with the relevant statutory undertakers.

### **3.7 Diligent inquiry process/methodology**

- 3.7.1** As required in accordance with the Act, the Applicant was required to identify individuals in one or more of the categories set out in sections 44 and 57 of the Act. This included undertaking "diligent inquiry" to identify parties within Categories 1, 2 and 3, as defined in sections 44 and 57 of the Act, where:

- Category 1 includes owners, lessees, tenants and occupiers of the land within the Order limits.
- Category 2 includes parties that are interested in the land or have the power to sell, convey or release the land within the Order limits.
- Category 3 includes parties who the Applicant thinks would or might, if the Order sought by the application were made and fully implemented, be entitled to make a relevant claim for compensation under section 10 of the Compulsory Purchase Act 1965 and/or Part 1 of the Land Compensation Act 1973 and/or section 152(3) of the Act.

3.7.2 A professional land referencing firm was employed to undertake diligent inquiry to identify these land interests. The following processes were undertaken as part of the methodology to identify and consult with those with an interest in affected land.

*Setting the land referencing limits*

3.7.3 The land referencing limits were set to include the following:

- all land within the Order limits required for the Scheme;
- all properties within a 300 metre 'buffer zone' extending from and beyond the centre line of the Scheme alignment; and
- all properties adjacent to Lake Lothing, between the A47 bascule bridge and Mutford Bridge.

3.7.4 For the purposes of the Applicant's pre-application consultation, the land referencing limits were then adjusted to include all of any building partially included within the above-mentioned land referencing limits.

*Identification of Category 3 persons*

3.7.5 Before preliminary noise and air quality modelling data became available, the Applicant carried out pre-application consultation on the basis of the 300 metre buffer zone, which was carefully selected on the basis that it would be sufficiently wide as to encompass any potential Category 3 persons.

3.7.6 Subsequently, noise and air quality modelling data became available and analysis of this data highlighted properties that may experience a material change in baseline conditions and therefore may have a "relevant claim" as a Category 3 interest.

3.7.7 Updated and refined noise and air quality modelling outputs were also subsequently considered, once available, and, as the impacts of noise were those with the widest geographical reach (encompassing air quality impacts) comparisons were made between noise levels without the Scheme in place in the opening year (2022) and noise levels with the Scheme in place in the opening year (2022) and the future year (2037).

3.7.8 For the purposes of the Book of Reference, the comparative analysis outlined above was used to identify residential properties expected to

experience an increase in noise levels of 3 decibels or greater in the short term (2022) and longer term (2037).

3.7.9 On the basis that noise impacts typically have a wider geographical reach than any of the other qualifying factors identified in Part 1 of the Land Compensation Act 1973 (i.e. vibration, smell, fumes, smoke, artificial lighting and the discharge of any solid or liquid substance), it was assumed that the geographical location of any impacts arising from those other factors would already have been identified, in that it would have come within the area identified by the results of the noise modelling data.

3.7.10 As a consequence of this analysis, the land referencing limits were reduced where appropriate from the full 300 metre preliminary buffer zone (on the basis of which the pre-application consultation was carried out) to include only those properties in relation to which the Applicant believed, on the basis of the analysis outlined above, that an affected person would or might be entitled to make a "relevant claim" as defined by section 57 of the Act.

#### *Desktop referencing – HM Land Registry*

3.7.11 Land Registry data was received in the form of a digital shape file (a GIS layer) and digital copies of the Official Copy Registers and Title Plans. All relevant freehold, leasehold, mortgagee, beneficiary, other charges and restrictive covenant information was extracted and stored in a land referencing database.

3.7.12 From this data, landownership parcels were created. The landownership parcels were drawn to reflect unique ownership information and stored spatially on a GIS application.

3.7.13 Where land was not registered, additional parcels to complete these gaps were created based on OS mapping and site data. As a result all land within the identified land referencing limits was parcelled and each parcel was given a unique reference number.

3.7.14 Periodic updates were provided by HM Land Registry and this ensured that any changes that occurred to title were captured. Whilst, generally such updates would be obtained bi-annually, they were specifically timed to occur prior to, and so as to inform, key milestones, such as the Applicant's section 42 consultation, and prior to the submission of the Book of Reference (document reference 4.3) as part of the Application documentation.

#### *Direct enquiries*

3.7.15 Information about land interests was requested from all identified landowners and occupiers, including local authorities, statutory utilities and other landowners with multiple land ownerships.

3.7.16 Requests to the Applicant and to WDC were also made, to access the councils' land ownership data for: information regarding public highways and private roads; information about special category land (including open space, commons, fuel and field garden allotments); and any information relating to

extant planning permissions which may alter the ownership of a land parcel; and known future public and privately funded developments, where relevant. Information was received in a variety of formats and entered into the Applicant's GIS application as appropriate. Where necessary, further enquiries were made to address any changes, anomalies or gaps.

**3.7.17** Statutory utilities undertakers who were believed to have a possible interest in the area were contacted to identify their interests (and their preferred diversion routes). Information received in response to these enquiries was factored into the Applicant's proposals for statutory land use powers, as set out in the draft DCO (document reference 3.1) and the Land Plans (document reference 2.3).

**3.7.18** In addition, any existing information or stakeholder data obtained by the Applicant as a result of negotiations with affected landowners and occupiers, or through carrying out pre-application consultation in accordance with the Act, was incorporated into the Applicant's diligent inquiry records accordingly.

#### *Other land referencing activities*

**3.7.19** Desktop studies, including publicly available online mapping, were used in order to check for open spaces and rights of way within the land referencing limits and further research was carried out to identify ownership in relation to such interests. The information obtained through this diligent inquiry was incorporated into the Applicant's land referencing database and GIS application.

**3.7.20** Additional desktop research and checks were undertaken to confirm information received through direct site inquiries and from HM Land Registry. For instance, Companies House searches were undertaken to ensure registered companies' details were verified and updated where necessary, ensuring appropriate addresses for service of statutory notices and other correspondence.

#### *Land interest questionnaires*

**3.7.21** Information obtained through desktop research was supplemented and verified through the Applicant's use of 'land interest questionnaires' ("LIQs"), which included requests for information about a recipient's own interests, associated third party interests and the spatial extent of land or property. Where LIQs were returned to the Applicant with updated information regarding an owner, tenant/lessee, occupier or other party, the information provided was used to update the land referencing database and GIS application. Where returns to LIQs were not provided (despite having been requested), follow-up site visits were made. A minimum of three separate site visits were conducted in an attempt to make direct contact with the owner or occupier of a property, where it had not previously been possible to establish or verify the identity of that owner or occupier through other means of diligent inquiry.

#### *Observational site visits*

- 3.7.22 Observational site visits were also made as part of the land referencing process, to inform the Applicant's understanding of the nature and current use of the land within the Order limits. All information obtained was recorded in the land referencing database and GIS application.

#### *Erection of on-site notices*

- 3.7.23 Where land ownership could not be ascertained through desktop or site referencing methods, the land referencing team erected notices on site, requesting information about the ownership of the land to which the notices were affixed. The notices showed the land ownership boundary in question and provided details of how to contact the land referencing team with any relevant information. Any information received was added to the land referencing database and GIS application.

#### *Updating the land ownership information*

- 3.7.24 In addition to the updating processes outlined above, the Applicant also carried out further diligent inquiry (based on the methodology described in this section) when, as a result of changes made to the scheme during the pre-application consultation process, the proposed Order limits were revised, such that additional consultation was required (see the Consultation Report (document reference 5.1) for further detail).
- 3.7.25 In addition, the Applicant's land referencing agent issued 'Request for Confirmation Questionnaires' shortly before the submission of the Application. The questionnaires featured a schedule setting out information reflecting the Applicant's understanding of the identity of the persons having an interest in the land required for the Scheme. Recipients of the questionnaires were asked to verify the information held about them and others with an interest in the relevant land or property, and to confirm the extent to which it was correct and/or amend it to provide updates where appropriate (e.g. in the event of any discrepancies).

#### *Discharge of duty of diligent inquiry*

- 3.7.26 The Applicant considers that it has rigorously observed its duty to carry out diligent inquiry to inform and support its Application for development consent for the Scheme. However, the Applicant also considers that diligent inquiry is an ongoing process in which the information obtained to date will need to be kept under review and refreshed at appropriate milestones as the Applicant continues to progress its promotion and delivery of the Scheme.



## 4 Scope and source of powers sought in the DCO to enable the compulsory acquisition of land and rights over land, and temporary possession of land

### 4.1 Scope of powers sought

- 4.1.1 This Chapter of the Statement of Reasons sets out the powers being sought in the draft DCO to enable the permanent acquisition of land, and of rights over, under and above land, needed for the construction, operation, access to and maintenance of the Scheme. It also sets out the powers sought to enable the possession, occupation and use of land on a temporary basis, in order to facilitate the construction of the Scheme.
- 4.1.2 If development consent for the Scheme is granted and the DCO is made by the Secretary of State (in the form applied for by the Applicant), it will include powers which would affect land on both a permanent and a temporary basis. These powers are necessary to enable the Applicant to construct the works authorised by the DCO (these works are defined in the draft DCO as “the authorised development”); the powers are also necessary to enable the Applicant subsequently to maintain and operate the Scheme. The powers would also enable the Applicant to protect the authorised development, to mitigate the impacts of the authorised development where necessary, and to ensure that access can be taken as necessary to facilitate the construction, operation and maintenance of the Scheme.
- 4.1.3 In addition, the DCO (if made in the form applied for) would confer other rights and powers on the Applicant, allowing the Applicant to interfere with and extinguish property rights and private interests in land.
- 4.1.4 As the justification for the exercise of all powers which would or may interfere with property rights and interests in land raises the same issues as apply to the acquisition of land and rights, this Statement of Reasons explains how the powers sought in the draft DCO would affect each area of land within the Order limits, the reasons why such powers are necessary and how their exercise would be justified. Therefore, where the context requires, the expressions ‘compulsory acquisition powers’ or ‘land use powers’ are used in this Statement of Reasons to refer to the additional powers described below, notwithstanding the fact that not all of those powers amount to a power to acquire land compulsorily, and notwithstanding the fact that the temporary possession of land is not a form of compulsory acquisition.

## 4.2 Powers to acquire land compulsorily

4.2.1 The main powers authorising the compulsory acquisition of land, or of interests in and rights over land, are contained in article 22 (Compulsory acquisition of land) and article 25 (Compulsory acquisition of rights) of the draft DCO. Other compulsory acquisition powers are sought in the draft DCO and these similarly relate to land and may interfere with property rights and interests. The scope of these powers is set out below.

4.2.2 The land permanently required by the Applicant for the purposes of the Scheme comprises a combination of:

- land at ground level – referred to as **"land"** or **"surface land"**, and which may also include the subsoil below and the airspace above that surface land;
- airspace above the ground at surface level – referred to as **"airspace"**; and
- subterranean land (i.e. land lying beneath land at ground level, or beneath the lakebed) – referred to as **"subsoil"**.

4.2.3 The Applicant also requires powers to acquire rights (including the right to impose restrictive covenants for the protection of the Scheme) over land, subsoil and/or airspace.

4.2.4 The nature of the Scheme is such that some elements of it, such as the roundabout junctions and highway improvements on the northern and southern banks of Lake Lothing, will require the acquisition of surface land, whilst other elements, such as the bridge piers and bridge deck, will require the acquisition of, and the acquisition of rights over, subsoil and airspace respectively, in addition to surface land.

4.2.5 Where the exercise of these powers is justified, and duly authorised, the owner(s) and occupier(s) of the affected land may, where a valid claim is made out, be entitled to compensation under the Compensation Code. Any dispute in respect of the amount of compensation payable would be referred to, and determined by, the Lands Chamber of the Upper Tribunal.

### *Article 22 – compulsory acquisition of land*

4.2.6 This article, which reflects the terms of the source of the compulsory acquisition powers in section 122 of the Act, would provide the Applicant with the power to acquire compulsorily so much of the Order land as is required to construct, operate and maintain the Scheme (i.e. the authorised development). This would include power to acquire such interests in or rights over land as are required to facilitate the authorised development or which are incidental to the authorised development.

4.2.7 The draft DCO is drafted in terms which enable the Applicant to exercise a 'lesser' power (for instance a power to acquire rights over land or to use land

temporarily) where such lesser power is deemed an appropriate alternative to compulsory acquisition. This drafting provides a degree of flexibility, the objective of which is to enable the Applicant, in due course (once the Scheme design has completed the detailed design stage) to take a proportionate approach to the acquisition of land, and rights over land, within the Order limits.

*Article 26 – acquisition of subsoil and airspace only*

- 4.2.8 This article would permit the Applicant to acquire only the subsoil under or the airspace over any land over which it has powers of compulsory acquisition pursuant to article 22 (compulsory acquisition of land). In exercising this power to acquire subsoil and/or airspace only, the acquisition of the subsoil or airspace would be for the same purposes for which the Applicant would be authorised to acquire the whole of the land under article 22. Article 26 (acquisition of subsoil and airspace only) also provides that only the acquisition of subsoil or airspace is authorised in respect of certain identified plots (as listed in Schedule 8 to the draft DCO), although in relation to such plots, rights may still be acquired in respect of the surface of the land (by exercise of the power in article 25 (see below).

*Article 23 – incorporation of the mineral code*

- 4.2.9 This article would exempt from compulsory acquisition any existing rights in mines or minerals, such that the Applicant would not be obliged to acquire those rights when acquiring the land beneath which the mines or minerals were located. The article also provides for a procedure to allow the original owner of the relevant land to work those mines or extract those minerals, should they wish to do so notwithstanding the compulsory acquisition of the land by the Applicant.

*Article 31 – acquisition of part of certain properties*

- 4.2.10 This article (Modification of Part 1 of the Compulsory Purchase Act 1965) applies the provisions in the Compulsory Purchase Act 1965 which permit the acquisition of only part of certain properties.

*Article 27 – private rights over land*

- 4.2.11 This article provides for the extinguishment of private rights over land in the following circumstances:
- where land is subject to powers of compulsory acquisition (where the land and all interests in it are acquired either compulsorily or by agreement) (article 27(1));
  - where land is subject to the compulsory acquisition of rights over (or in or under) it, or is made subject to the imposition of restrictive covenants, to the extent that continuing the existing rights would be inconsistent with the right acquired or the restrictive covenant imposed (article 27(2));

- with regard to land over which the Applicant is authorised to take temporary possession (see below for more detail) under the draft DCO, article 27(3) provides that all private rights over that land would be suspended and unenforceable for as long as the Applicant was in possession of such land.

#### *Pink land on Land Plans*

- 4.2.12 On the Land Plans (document reference 2.3), land which is proposed to be subject to powers of compulsory acquisition is shaded pink.

### **4.3 Powers to acquire permanent rights over land**

#### *Article 25 – compulsory acquisition of rights*

- 4.3.1 This article would permit the applicant to create and acquire new rights over land. Such rights would be exercisable on a permanent basis. This article would also give the Applicant the power to impose restrictive covenants on land. The rights and/or restrictive covenants could be acquired and/or imposed, as required by the Applicant, for any purpose related to the purpose for which land was acquired under article 22.
- 4.3.2 In respect of certain plots, which are identified in Schedule 6 to the draft DCO and which are shaded blue on the Land Plans (document reference 2.3), Article 25 provides that *only* rights (including the power to impose restrictive covenants), and not any greater interest (such as, for example, the freehold interest) may be acquired by the Applicant.

#### *Article 29 – rights over or under streets*

- 4.3.3 This article would permit the Applicant to use the subsoil beneath and/or the airspace above any street, where such use was required to facilitate the construction of the authorised works. The power conferred by this article would not extend to a subway or an underground building, or to cellars or similar structures forming part of a building fronting the street (article 29(3)), but its exercise would nevertheless constitute an interference with property rights, which would be compensatable.

#### *Blue land on Land Plans*

- 4.3.4 On the Land Plans (document reference 2.3), land which is proposed to be subject to powers to create and acquire new rights only, is shaded blue and is identified in Schedule 6 to the draft DCO.

#### *Land hatched blue and pink on Land Plans*

- 4.3.5 On the Land Plans (document reference 2.3), some plots of land are shown hatched (striped) pink and blue. These are plots in which the Applicant seeks a power to acquire airspace (for the bridge deck) (i.e. pink land) and rights below that airspace (for the protection and maintenance of the bridge) (i.e. blue land).

- 4.3.6 The plots hatched pink and blue are listed in Schedule 8 to the draft DCO (land in which only airspace and new rights may be acquired). The height at which the airspace begins is defined by reference to the height of the airspace above Ordnance Datum. Further explanation of this (including a definition of Ordnance Datum) is provided in article 26 (acquisition of subsoil and airspace only) of the draft DCO.
- 4.3.7 Figures 11-1 to 11-3 below (in chapter 11 of this Statement) provide a diagrammatic representation of where airspace is proposed to be acquired (to accommodate the bridge deck), whilst rights are proposed to be acquired below that airspace (in order to provide protection for, and an ability for the Applicant to maintain, the Scheme).

#### 4.4 Powers to use and possess land temporarily

##### *Article 32 – temporary use of land for carrying out the authorised development*

- 4.4.1 This article would enable the Applicant to take temporary possession of the land specified in Schedule 9 to the draft DCO and shaded green on the Land Plans (document reference 2.3). The article would also enable the Applicant to take temporary possession of any other land within the Order limits (i.e. land to which powers of compulsory acquisition, or powers to acquire rights, apply, and which is shaded pink and blue, respectively, on the Land Plans), provided that the Applicant had not already made a declaration to vest the land in itself or entered the land following service of a notice of entry in advance of acquisition.
- 4.4.2 Whilst using and possessing land temporarily pursuant to article 32, articles 32(1)(b) to (d) would enable the Applicant to:
- remove buildings and vegetation from the land (article 32(1)(b));
  - construct temporary works (including accesses) and buildings on the land (article 32(1)(c)); and
  - construct permanent works – the authorised works, as specified in Schedule 1 to the draft DCO (article 32(1)(d)).
- 4.4.3 In respect of the land identified in Schedule 9 for temporary possession only, the purposes for which such land is proposed to be possessed and used temporarily are set out in column 3 of Schedule 9.
- 4.4.4 The period for temporary possession would be subject to time limits under article 24(2). Unless the owner of the land agreed, the Applicant would not be permitted to remain in possession:
- as regards any land specified in Schedule 9 to the draft DCO, for more than a year after completing the part of the authorised development specified in relation to that land in column (4) of Schedule 9; and

- as regards any other land within the Order limits, for more than a year after completing the work for which temporary possession was taken (unless before the end of that period the Applicant has made a general vesting declaration or served notice of entry).

4.4.5 The effect of article 32(4) is to ensure that before giving up possession of any land used temporarily, the Applicant would be obliged to remove all temporary works and to restore the land to the owner's reasonable satisfaction. This restoration obligation would not, however, require the replacement of a building or structure removed under this article, nor would it require the restoration of land on which permanent works had been constructed (where the land was possessed temporarily in the first instance) or the removal of any ground strengthening works or the removal of any measures installed over or around statutory undertakers' apparatus for the protection of that apparatus.

4.4.6 The DCO (if made in the form applied for) would also authorise the Applicant to use land temporarily for purposes connected with the authorised development where powers to acquire land or to acquire new rights over land applied (for instance, over land within the Order limits but not specified in Schedule 9).

#### *Green land on Land Plans*

4.4.7 On the Land Plans (document reference 2.3), land which is proposed to be subject to powers of temporary possession only, is shaded green and identified in Schedule 9 to the draft DCO.

#### *Article 33 – temporary use of land for maintaining the authorised development*

4.4.8 This article would enable the Applicant to take temporary possession of any land within the Order limits which is reasonably required for the purpose of maintaining the authorised development at any time during the maintenance period (i.e. a period of five years from the date on which that part of the authorised development was first opened for public or operational use (as applicable)).

4.4.9 Article 34(1)(c) would permit the Applicant to construct temporary works and buildings on the land, in so far as it was reasonably necessary to do so for the purposes of carrying out maintenance works.

4.4.10 The power in article 34 would not enable the Applicant to take temporary possession of a house, or a garden belonging to a house, or any other occupied building (article 34(2)).

4.4.11 The Applicant would only be authorised to remain in possession of land under article 34 for so long as was reasonably necessary to carry out the maintenance of the part of the authorised works for which temporary possession of land was taken (article 34(4)).

- 4.4.12 Before surrendering possession of the land and returning it to its owner, the Applicant would be required to remove all temporary works on the land and to restore the land to the owner's reasonable satisfaction (article 34(5)).

#### 4.5 Other rights and powers

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- 4.5.1 The DCO (if made in the form applied for) would also confer on the Applicant other rights and powers the exercise of which may result in interference with property rights and private interests in land.
- 4.5.2 Where these powers of compulsory acquisition (and other powers resulting in interference with property rights) are exercised, owners of the relevant land or rights in land may be entitled to compensation under the Compensation Code, where a valid claim is made out. Any dispute in respect of the compensation payable would be referred to and determined by the Lands Chamber of the Upper Tribunal.

## 5 Communications and negotiations with owners of interests in land

### 5.1 Consultation

- 5.1.1 As noted in the Consultation Report (document reference 5.1), all parties consulted pursuant to section 42 of the Act were identified through diligent inquiry (as explained in Chapter 3 of this Statement of Reasons), and are included in the Book of Reference (document reference 4.3). They include all owners, occupiers and other persons with an interest (including mortgagees) in any land affected by the Scheme.

### 5.2 Current position in relation to engagement and negotiations

#### *Efforts to acquire land by agreement*

- 5.2.1 The Applicant is aware of the requirement (which is noted in the 2013 DCLG Guidance, at paragraph 25) to seek to acquire land by negotiation wherever practicable, and understands that powers to acquire land compulsorily should only be exercised if reasonable attempts to acquire by agreement fail.

#### *Compulsory acquisition as a contingency measure*

- 5.2.2 However, the Applicant notes that the 2013 DCLG Guidance (again, at paragraph 25), also recognises that where proposals for long linear schemes would entail the compulsory acquisition of many separate plots of land, it may not always be practicable to acquire each plot of land by negotiated agreement. As the 2013 DCLG Guidance states, "Where this is the case, it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset."

- 5.2.3 The Scheme is a linear one (as opposed to a single compound site scheme, such as, for example, a power station) and affects a number of different land interests; accordingly, the Applicant considers it prudent to plan for the potential use of compulsory acquisition powers as a contingency measure, should it not prove practicable to acquire each plot of land by negotiated agreement.

#### *Applicant's engagement with affected landowners*

- 5.2.4 The Applicant has informed all those with an interest in the land affected by the Scheme, of its willingness to negotiate to acquire the land by agreement, and to invite dialogue along those lines. As a result, the Applicant is in the process of engaging with all landowners affected by the Scheme with regard to the acquisition of their land / interests in land by agreement; and negotiations with this objective in mind will be continuing throughout the DCO application and examination processes.



- 5.2.5 Detailed discussions are ongoing with landowners and occupiers in order to ensure that their concerns are taken into account and accommodated wherever possible.

*Compulsory Acquisition Negotiations Tracker (document reference 4.4)*

- 5.2.6 The current position in relation to the Applicant's engagement and negotiations with each land owner affected by the Scheme is explained in the Applicant's Compulsory Acquisition Negotiations Tracker (document reference 4.4).

*Further information on Applicant's engagement with statutory undertakers*

- 5.2.7 In addition to the summary of negotiations provided in the Compulsory Acquisition Negotiations Tracker, the Applicant has set out in this Statement of Reasons, in chapter 6 (following), more detailed information in relation to its engagement with statutory undertakers – in particular with ABP and Network Rail, over whose operational land the new highway crossing is proposed to pass.

*Applicant's approach to acquisition by agreement*

- 5.2.8 The Applicant acknowledges that it has a duty to acquire land at best value but also that it is in the public interest for the Scheme to be delivered within a reasonable timeframe, both to bring forward the public benefits of the Scheme without undue delay, but also to minimise as far as possible the duration of any uncertainty for landowners and occupiers affected by the Applicant's proposals.
- 5.2.9 The Applicant therefore accepts that acquisition by agreement may not be achievable in all cases within a reasonable timeframe, or, in any event, within the timescales necessary to ensure that the programme for the construction of the Scheme would be met.
- 5.2.10 In addition to the owners, lessees, tenants and occupiers mentioned in the Applicant's Compulsory Acquisition Negotiations Tracker, other parties including mortgagees and those with known rights in relation to the Order land (e.g. beneficiaries of agreements), have also been identified as being potentially affected by the Scheme. Such parties are identified in the Book of Reference submitted in support of the Application for the DCO for the Scheme, and were included in the statutory pre-application consultation on the Scheme.
- 5.2.11 However, in general, no negotiations have been held with such parties to date, as it is the Applicant's intention to deal with such interests, as appropriate, during the legal process for acquiring the freehold interest in, or the new rights over, the relevant plots of land.
- 5.2.12 Land already owned by the Applicant (including highway land) is included in the Order limits in order to ensure that no known or unknown third party rights subsisting over such land can remain and impede the proper implementation of the Scheme.

- 5.2.13 There are also cases where, notwithstanding the diligent inquiry process carried out by the Applicant (as described in chapter 3 above), the ownership of land is unknown, and in such instances it would therefore not be feasible to seek to acquire the interest other than by way of compulsory acquisition.

## 6 Impacts on statutory undertakers

### 6.1 Statutory undertakers affected by the scheme

#### *Land owned by statutory undertakers*

- 6.1.1 As explained earlier in this Statement (chapters 2 and 5) the Scheme affects land owned by statutory undertakers, primarily in that the new crossing would traverse both operational railway land owned by Network Rail and operational Port land owned by ABP.
- 6.1.2 In addition, the Scheme affects other statutory undertakers (and other similar bodies) which have, or which may have, a right to keep equipment (in connection with their undertaking) on, in or over the land required for the Scheme and included in the Order limits. **Appendix B** to this Statement of Reasons comprises a list of statutory undertakers (and other similar bodies) whose apparatus may be affected by the Scheme.
- 6.1.3 The interest held by each statutory undertaker is identified in the Book of Reference (document reference 4.3).

#### *Protection from compulsory acquisition – protective provisions*

- 6.1.4 The Applicant understands that statutory undertakers' land, which is owned and used for the purposes of the undertaker's statutory undertaking, enjoys a degree of protection from compulsory acquisition.
- 6.1.5 It is in this context that the Applicant is in the process of negotiating and agreeing draft protective provisions for inclusion in the draft DCO and, where necessary, the Applicant intends to enter into side agreements which will sit alongside the DCO.
- 6.1.6 The aim of the protective provisions and side agreements will be to ensure bespoke protection relevant to the statutory undertaker in question. The Applicant is keen to work with statutory undertakers to agree solutions which seek to accommodate the needs of both the undertaker and the Applicant.
- 6.1.7 The Applicant is currently working with both ABP and Network Rail, and other statutory undertakers (as listed in Appendix B to this Statement), to agree protective provisions for inclusion in the draft DCO.
- 6.1.8 The current position, in terms of the Applicant's progress towards agreeing the terms of bespoke protective provisions, is as set out in Table 6-1 below, where: column 1 of the Table identifies the statutory undertaker in question; column 2 identifies the relevant Part of Schedule 13 to the draft DCO (where the protective provisions are set out); column 3 provides commentary on the focus of, and progress with, negotiations; and column 4 offers a snapshot of the current status of negotiations.
- 6.1.9 More detailed information in relation to Network Rail and ABP is provided later in this chapter – (see sections 6.1 – 6.6).

*Table 6- 1 Current position on negotiations relating to protective provisions*

Statutory undertaker	Relevant Part in Schedule 13 to draft DCO	Commentary on draft protective provisions ("PPs")	Status of negotiations
Anglian Water Services Limited ("AW")	Part 6	Draft PPs were initially discussed in November 2017 and have recently been agreed between the parties: AW has confirmed it is content with the terms of the PPs as now set out in Part 6 of Schedule 13 to the draft DCO (submitted as part of the Application).	Concluded
Associated British Ports ("ABP")	Part 5	SCC and ABP have been negotiating the terms of draft PPs for the benefit of ABP, with an early draft of the DCO, including PPs, being provided to ABP in October 2017. Whilst a number of points have been progressed and agreed, the PPs are the subject of continuing negotiations. Consideration is also being given to the scope of a side agreement.	Ongoing
Cadent Gas Limited ("Cadent")	Part 1, pending bespoke PPs in new Part of Schedule 13	Part 1 of Schedule 13 contains PPs for the benefit of gas undertakers. It is, however, expected that SCC and Cadent will reach agreement on a separate, bespoke set of protective provisions for Cadent, on which negotiations have been ongoing since November 2017.	Ongoing

Statutory undertaker	Relevant Part in Schedule 13 to draft DCO	Commentary on draft protective provisions ("PPs")	Status of negotiations
Environment Agency ("EA")	Part 3	Part 3 of Schedule 13 confers protection for the Environment Agency in a form that SCC considers to be acceptable; negotiations on the detailed drafting commenced in May 2018 and are ongoing.	Ongoing
Essex and Suffolk Water Limited ("E&SW") (c/o Northumbrian Water Limited)	Part 1 (for electricity, gas, water & sewerage undertakers)	Draft PPs were initially discussed in November 2017 and have been agreed between the parties: E&SW has confirmed it is content with the terms of the PPs as now set out in Part 1 of Schedule 13 to the draft DCO (submitted as part of the Application).	Concluded
Network Rail Infrastructure Limited ("NR")	Part 4	Draft PPs are currently being negotiated (alongside a draft overarching interface agreement which will provide a framework for other agreements (e.g. an overbridge agreement)). Negotiations are progressing well and it is SCC's belief that there are no significant points of principle which remain to be agreed between the parties.	Ongoing
Openreach (British Telecommunications)	Part 2 (for operators of electronic communications)	BT Openreach have confirmed in principle their acceptance of the standard terms in which the PPs in	Approval in principle given; formal sign-off

Statutory undertaker	Relevant Part in Schedule 13 to draft DCO	Commentary on draft protective provisions ("PPs")	Status of negotiations
tions) ("BT Openreach")	code networks)	Part 2 of Schedule 13 are drafted (which are as set out in the draft DCO submitted with the Application).	pending.
UK Power Networks Limited ("UKPN")	Part 1	Part 1 of Schedule 13 contains PPs which confer protection for electricity undertakers. It is, however, expected that SCC will reach agreement with UKPN on a bespoke set of protective provisions for UKPN.	Ongoing
Virgin Media Limited ("Virgin")	Part 2 (for operators of electronic communications code networks)	In January 2018, Virgin confirmed their acceptance of the standard terms in which the PPs in Part 2 of Schedule 13 are drafted (which are as set out in the draft DCO submitted with the Application).	Concluded.

#### *Impacts on statutory undertakers*

- 6.1.10** The Environmental Statement (document reference 6.1) ("the ES") sets out the Applicant's assessment of the impacts of the Scheme on statutory undertakers – see in particular, Chapter 15 (Private Assets) of the ES.
- 6.1.11** Chapter 15 of the ES identifies the impacts of the Scheme on persons (or bodies) with private assets affected by the Scheme. The assessment includes consideration of the potential impacts on ABP's and Network Rail's undertakings and assets in both the construction and operational phases of the Scheme. This assessment is set out in detail in ES Chapter 15, and includes an analysis of proposed measures aimed at mitigating those impacts. In relation to ABP and Network Rail, the findings of the assessment are summarised below.

*Impacts on ABP*

6.1.12 By way of summary, the ES identifies the following impacts of the Scheme on ABP; these impacts result in an overall finding of 'slight adverse':

- 6.1.12.1 During the construction phase, the contractor will be required to maintain the navigation channel at all times except when the possession of the entire channel or a restriction on navigation is required to facilitate construction. Such occasions will be notified in advance to ABP.
- 6.1.12.2 In terms of the operational phase, the Scheme introduces a new structure into Lake Lothing and the clear span of 32m between fenders, which is greater than the width of the existing A47 Bascule Bridge, will allow all existing vessels that enter Lake Lothing to navigate west of the Scheme. An infinite air-draft will also not constrain a vessel of any height that wants to navigate west of the Scheme bascule bridge.
- 6.1.12.3 A Vessel Simulation Report, (Appendix 15A of the ES, document reference 6.2) has demonstrated that the Scheme will not have a significant effect on the navigation of vessels within the Port.
- 6.1.12.1 A Preliminary Navigational Risk Assessment (document reference 6.7) has also been prepared to assess the risks to vessels during transit of the Scheme Bascule Bridge. A number of recommendations are included within the Preliminary Navigational Risk Assessment and compliance with this document is secured through the DCO. It concludes that the risks created between the bridge and vessels navigating through and around it are as low as reasonably practicable.
- 6.1.12.2 During the construction phase, berth, quay and land impacts are likely to be as follows:
  - Loss of quay side storage and berth due to the requirement for a contractor compound on the north quay, to facilitate construction of the bridge and the bridge over the East Suffolk line. The contractor will be required to maintain access for port operations which will be secured pursuant to the harbour authority's protective provisions in the DCO.
  - The effects of the closure of the navigational channel and the need to berth to the east of the Scheme and possibly transport cargo through the Port during this period.
  - During operation of the Scheme, berth, quay and land impacts on the Port primarily relate to the loss of quay space which has the potential to permanently impact port operations through the loss of operational port land and berthing space. The ES notes that the loss of berthing space resulting from the Scheme is unlikely to be greater than 60m (out of 2,100m available) but would require three berths to be redefined (i.e. changed in length).

- Land-side, the clearance provided underneath the Scheme as it crosses ABP's operational port is a minimum of 5.3m which will allow all road-licenced vehicles to be able to pass underneath. As stated in paragraph 15.5.36 of the ES, the area beneath the Scheme is used as an access for commercial vehicles, road transportable cranes and project cargo items.

#### *Impacts on Network Rail*

6.1.13 By way of summary, the ES identifies the following impacts of the Scheme on Network Rail; these impacts result in an overall finding of 'slight adverse' during the construction phase, and 'negligible' during the operational phase of the Scheme:

- 6.1.13.1 In terms of provision for the operational phase of the Scheme, the Applicant has committed to provide a minimum clearance of 4.98 metres over the East Suffolk line, as requested by Network Rail.
- 6.1.13.2 It is assumed that temporary possession of land may result in some limited periods of disruption to rail operations; however the Applicant is committed to working with Network Rail to ensure that any disruption is minimised.

#### *Section 127 – avoidance of serious detriment*

6.1.14 In the context of section 127 of the Act (detailed below – see paragraph 6.2) the Applicant aims to progress negotiations with both ABP and Network Rail to the point where mitigation for the impacts identified in the ES is agreed between the Applicant and each of those two parties to be sufficient, such that the Secretary of State may be duly satisfied that with the Scheme in place, those impacts will not cause serious detriment to the carrying on of the undertaking.

#### *Network Rail – East Suffolk Line*

- 6.1.15 At the time of writing this Statement of Reasons, the Applicant is of the view that good progress is being made in negotiations with Network Rail, where a collaborative and constructive approach has led to the statutory duties and associated operational needs of both parties being able to be satisfactorily accommodated in the evolving Scheme design.
- 6.1.16 As noted in Table 6-1 above, draft protective provisions are currently being negotiated for inclusion in the draft DCO, whilst the terms of a draft overarching interface agreement are also under discussion, with the objective of providing a framework for other agreements (e.g. an overbridge agreement)). Negotiations are progressing well and it is SCC's belief that there are no significant points of principle which remain to be agreed between the parties.



*ABP – Lowestoft Harbour / Port of Lowestoft*

- 6.1.17 The Applicant has sought to engage with ABP in order to understand ABP's view of the impacts of the Scheme on its land and on the carrying out, on that land, of its statutory undertaking.
- 6.1.18 ABP opposes the Scheme on the basis of its location and is of the view that if delivered, the Scheme would cause serious detriment both to the Port of Lowestoft, in terms of the impact on its current and future operations, and to ABP itself, in relation to its ability to carry out its duties as a statutory harbour authority and its ability to maintain or expand its commercial undertakings as the owner and operator of the Port of Lowestoft.
- 6.1.19 In light of this, the Applicant has asked ABP to provide information which would help it to assess those impacts and to devise appropriate measures to mitigate them. However, in the absence of any substantive information which would evidence the issues which ABP asserts would arise if the Scheme were implemented, the Applicant has instead been obliged to proceed on the basis of information that it has been able to ascertain through its own diligent inquiry and investigation.

*The Applicant's understanding of ABP's statutory undertaking*

- 6.1.20 The Applicant's research adduces that ABP was established by the Transport Act 1981 and came into being on 31 December 1982, as a result of the privatisation of the British Transport Docks Board ("BTDB"), which was reconstituted as ABP.<sup>1</sup>
- 6.1.21 ABP has been described as an entity "*which, constitutionally, is unique*" and unlike any other harbour authority.<sup>2</sup> ABP is a body corporate, which is a wholly owned subsidiary of the holding company, ABP plc.<sup>3</sup> ABP's governance arrangements are set out in Schedule 2 to the Transport Act 1981: it has a board of directors, but no share capital. It is answerable to its holding company, ABP plc. The Government has no holding in ABP plc (in contrast to the position with ABP's predecessor, the BTDB); on its constitution, ABP retained the assets of the BTDB, which included Lowestoft Harbour.<sup>4</sup>
- 6.1.22 ABP's general duties are set out in section 9 of the Transport Act 1981:

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<sup>1</sup> Pursuant to sections 5(2) and 7(1) of the Transport Act 1981.

<sup>2</sup> See Halsbury's Laws of England, fifth edition (2012), Vol.85, paragraph 22.

<sup>3</sup> Ibid, note 1

<sup>4</sup> See section 14(3), section 14(5) and paragraph 12 of Schedule 3 to the Transport Act 1981; see also the Explanatory Note to the Harbour Directions (Designation of Harbour Authorities) (No. 2) Order 2015 (SI 2015/1656).

**"9.— General duties of Associated British Ports.**

(1) *It is the duty of Associated British Ports to provide port facilities at its harbours to such extent as it may think expedient.*

(2) *Associated British Ports shall have due regard to efficiency, economy and safety of operation as respects the services and facilities provided by it and its subsidiaries.*

(3) *In the performance of its functions Associated British Ports shall have regard to the interests in general of its employees and the employees of its subsidiaries.*

(4) *This section does not impose any form of duty or liability enforceable, either directly or indirectly, by proceedings before any court."*

6.1.23 Despite the provisions in section 9 being termed as "*duties*", the consequence of section 9(4) (above) is that those duties are not enforceable (either directly or indirectly) by the Courts. In effect, section 9 sets out what ABP is authorised to do, rather than what it is legally obliged to do.

6.1.24 Nevertheless, in the case of *R –v- Coventry Airport ex parte Phoenix Aviation* (in which *R-v- ABP ex parte Plymouth City Council* was a linked case) <sup>5</sup> it was held that section 9(4) of the Transport Act 1981 does not have the effect of releasing ABP from the duty separately imposed on it by section 33 of the Harbours, Docks and Piers Clauses Act 1847, which, as the Court of Appeal held in the case of *British Trawlers Federation Limited -v- London & North Eastern Railway Company*<sup>6</sup>, requires Lowestoft Harbour (including its dock and pier) to be kept "*open to all persons for the shipping and unshipping of goods, and the embarking and landing of passengers*", provided that the due harbour fees and charges are paid.

6.1.25 In the *British Trawlers* case it was also held that for "*as long as they [i.e. ABP's predecessors] carry on the port they must carry it on subject to the public rights created by section 33 of the Harbours, Docks and Piers Clauses Act 1847...*"

6.1.26 Under section 9(1) of the Transport Act 1981, ABP has a "*duty ... to provide port facilities at its harbours*". "*Port facilities*" are defined<sup>7</sup> as meaning:

*"(a) the constructing, improving, maintaining, regulating, managing, marking or lighting of a harbour or any part thereof;*

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<sup>5</sup> [1995] CLC 757 at 774

<sup>6</sup> [1933] 2 KB 14

<sup>7</sup> In section 14(3) of the Transport Act 1981

- (b) the berthing, towing, moving or dry-docking of a ship which is in, or is about to enter, or has recently left, a harbour;
- (c) the loading or unloading of goods, or embarking or disembarking of passengers, in or from any such ship;
- (d) the lighterage or the sorting, weighing, warehousing or handling of goods in a harbour; and
- (e) the movement of goods within a harbour."

6.1.27 ABP therefore has statutory authority (even if not any enforceable duty) under section 9(1) of the Transport Act 1981 to undertake or regulate all or any of these activities in Lowestoft Harbour, should it consider it "*expedient*" to do so.

6.1.28 Schedule 3 to the Transport Act 1981 sets out ABP's powers, which are summarised in Table 6-2 below. Paragraph 1 of Schedule 3 provides that these powers are additional to any other powers ABP may have under any other enactments (e.g. the Harbours, Docks and Piers Clauses Act 1847).

Table 6- 2 Powers of ABP under the Transport Act 1981

Schedule 3, para no.	Power conferred on ABP by the Transport Act 1981
2	A general power for ABP to " <i>operate its harbours and to provide port facilities at them</i> ".
3	Enables ABP to consign or carry goods in specified circumstances.
4	Allows ABP to act as a ship's agent at its harbours.
5	Enables ABP to " <i>provide facilities for the storage of goods</i> ".
6	Allows ABP to develop its land.
7	Authorises ABP to construct and operate pipelines.
8	Enables the provision of ancillary facilities such as facilities for the purchase of food and drink for those using its services and facilities, and car parking.
9	A general power for ABP to " <i>carry on any business which in its opinion can advantageously be carried on by reason of the fact that the business</i> " uses plant and machinery associated with the operation of its harbours or requires skills which its employers

Schedule 3, para no.	Power conferred on ABP by the Transport Act 1981
	have in connection with the operation of its harbours.
10	Allows ABP to make, repair, and sell anything that can advantageously be made or repaired as a result of its existing activities.
11	Enables ABP to provide technical advice and assistance.
12	Allows ABP to maintain and operate harbours beyond those which it owns or manages pursuant to Part II of the Transport Act 1981.
13	A general power to sell any surplus undertaking or property.
14	Allows ABP both to promote and to oppose draft legislation.
15	Relates to training and education.
16	Allows the provision of ancillary accommodation to house ABP employees.
17	Relates to pensions.
18	Allows land acquisition and disposal.
19	Provides a power of compulsory acquisition for port purposes.
20	Authorises ABP to make reasonable charges, as it sees fit, for its services and facilities (with some limitations).
21	Provides a power to borrow.
22	Allows ABP's holding company to impose restrictions on ABP's financial arrangements.
23	Allows ABP to buy, make, or repair anything required for the purposes of its business.
24	Authorises ABP to acquire other undertakings if their assets are required for its business.
25	Allows the purchase of shares.
26	Enables ABP to lend money.
27	Provides a power to invest surpluses.

Schedule 3, para no.	Power conferred on ABP by the Transport Act 1981
28	A general power for ABP to do " <i>all other things which in its opinion are necessary or expedient to facilitate the proper carrying on of its business</i> ".
29	Allows ABP to form other companies for the power of carrying on its activities.
30	A power to make agreements.
31	Allows ABP to enter into agreements with public transport bodies (such as the British Railways Board, British Waterways Board, Canal & River Trust and Transport for London).

**6.1.29** As the summary in Table 6-2 shows, the powers available to ABP are wide-ranging, and no particular distinction is drawn between the powers available to ABP for the purposes of regulating activities taking place within its ports and harbours and the powers available to it for the purposes of making profitable use of its port facilities.

**6.1.30** In consequence of its having statutory authority to establish, maintain and improve the provision of port facilities, ABP is a statutory undertaker. As such it benefits from the protection given by section 127 of the Planning Act 2008, in the context of compulsory acquisition, where it is shown that such acquisition would cause "*significant detriment to the carrying on of the undertaking*".

## **6.2 Application of section 127 of the Planning Act 2008 – acquisition of land owned by statutory undertakers for the purposes of their undertaking**

### *Restrictions on power of compulsory acquisition – "serious detriment" test*

**6.2.1** Section 127 of the Planning Act 2008 applies to land<sup>8</sup> acquired by statutory undertakers for the purposes of their undertaking, and places restrictions on the compulsory acquisition of such land, where a representation is made by a statutory undertaker in relation to a DCO application and is not withdrawn by the close of the examination of that application.

<sup>8</sup> In this context, the definition of 'land' includes rights in land, such as rights to keep apparatus installed in, on, under or over land.

6.2.2 The draft DCO for the Scheme includes provision to authorise the compulsory acquisition of land and rights held by statutory undertakers for the purposes of their undertaking.

*"Serious detriment" test in relation to acquisition of land*

6.2.3 Section 127(2) provides that a DCO may include provisions authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State is satisfied of the matters set out in subsection 127(3), which are that the nature and situation of the statutory undertaker's land is such that:

- it can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- if purchased, it can be replaced by other land belonging to, or available for acquisition by, the undertakers, without serious detriment to the carrying on of the undertaking.

*"Serious detriment" test in relation to acquisition of rights over land*

6.2.4 Section 127(5) provides that a DCO may include provisions authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the Secretary of State is satisfied of the matters set out in subsection 127(6), which are that the nature and situation of the land are such that:

- the right can be purchased without serious detriment to the carrying on of the undertaking, or
- any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to, or available for acquisition by, them.

*"Serious detriment" test in the context of the Scheme*

6.2.5 The Applicant recognises that where section 127 applies to land or rights which are required to be acquired to enable the delivery of the Scheme, and the statutory undertaker which owns such land or right(s) makes a representation to the Secretary of State in relation to the draft DCO and does not withdraw that representation before the completion of the examination into the application, the Secretary of State would need to be satisfied of the matters set out in subsections 127(3) and 127(6) before making the DCO.

*No ability to invoke Special Parliamentary Procedure*

6.2.6 The Applicant notes that statutory undertakers to whom section 127 applies have no ability to invoke Special Parliamentary Procedure ("SPP") under the Act, since section 128, which provided a limited right to invoke SPP in certain circumstances, was repealed by section 24 of the Growth and Infrastructure Act 2013. Furthermore, even before the repeal of section 128 of the Act, the right of a statutory undertaker to invoke SPP would not have been available in relation to the Scheme because the Applicant is a local

authority and the exception in section 129 of the Act, which has now been repealed, would therefore have applied, such that the right to invoke SPP would not have been available.

*Applicant's approach to statutory undertakers*

- 6.2.7 The Applicant is engaging with each of the statutory undertakers identified in the paragraphs below, and aims to reach agreement with them (regarding the effects of the Scheme on their land and/or apparatus, and the need for and terms of any protective provisions) prior to the close of the examination of the Application.
- 6.2.8 For the purposes of the Scheme, the Applicant proposes to acquire land, and to create and acquire new rights over land, which has previously been acquired by statutory undertakers for the purposes of their undertaking. The Applicant notes that in the context of section 127 of the Act, the definition of 'land' includes rights in land, such as rights to keep apparatus installed in, on, under or over land.
- 6.2.9 As mentioned above, the Book of Reference (document reference 4.3) includes details of all statutory undertakers' interests in land required for or affected by the Scheme.
- 6.2.10 However, for the purposes of this Statement of Reasons, Tables 6-2, 6-3 and 6-4 below set out information extracted from the Book of Reference to highlight plots of land which, the Applicant understands, are owned outright by statutory undertakers (as a Category 1 person<sup>9</sup>) for the purposes of their undertaking, but which are also required by the Applicant to enable the Scheme to come forward.
- 6.2.11 Many of the plots listed in Tables 6-3, 6-4 and 6-5 are also subject to interests owned by statutory undertakers who are Category 2 persons for the purposes of their undertaking; however, those interests, which are numerous and which are fully identified in the Book of Reference, are not referenced in Tables 6-3 to 6-5.
- 6.2.12 Paragraph 6.4 and Table 6-3 list the plots which the Applicant proposes to acquire, whilst paragraph 6.5 and Table 6-4 list the plots over which the Applicant proposes to create and acquire new rights.
- 6.2.13 Paragraph 6.6 and Table 6-5 list the plots in which the Applicant proposes to acquire airspace (to accommodate the new bridge deck) and rights below that airspace (to protect and maintain the new bridge). By virtue of their location and the nature of the Scheme, the plots in Table 6-5 are owned either by Network Rail or by ABP.

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<sup>9</sup> The Book of Reference includes information about all plots in which statutory undertakers have an interest either as a Category 1 person or as a Category 2 person.

6.2.14 Tables 6-3 and 6-4 also include land in which the Homes and Communities Agency ("HCA") has an interest. Under section 9(6) and paragraph 1(2) of Schedule 2 to the Housing and Regeneration Act 2008, the HCA is deemed, for the purposes of the Acquisition of Land Act 1981, to be a statutory undertaker. The definition of 'statutory undertakers' in section 127(8) of the Planning Act 2008 includes "undertakers which are deemed to be statutory undertakers for the purposes of the Acquisition of Land Act 1981, by virtue of another enactment". Therefore, for the purposes of section 127 of the Planning Act 2008, the HCA is a statutory undertaker.

### 6.3 The Applicant's position with regard to the matters set out in sections 127(3) and 127(6) of the Act, being matters on which the Secretary of State must be satisfied

6.3.1 As noted above, the Applicant's on-going negotiations with statutory undertakers provide a basis for the inclusion in the draft DCO of bespoke protective provisions and, where required, side agreements (outside the DCO). Accordingly, where it is considered necessary by the relevant parties, adequate protection for statutory undertakers' interests will be included within the protective provisions in the draft DCO and/or in asset protection agreements between the Applicant and statutory undertaker(s).

#### *The "serious detriment" test*

6.3.2 It is the Applicant's aim to ensure that the statutory undertakers affected by the Scheme will not suffer serious detriment to the carrying on of their undertaking as a result of the compulsory acquisition of land or rights over land, or as a consequence of the exercise of powers of temporary possession.

6.3.3 As such, and on the basis of negotiations to date, the Applicant expects to achieve an agreed and satisfactory position with the vast majority of the below-mentioned statutory undertakers (with any exceptions as noted above) prior to the close of the examination period.

6.3.4 It is in this context that the Applicant aims to be able to satisfy the Secretary of State in due course, of the matters set out in sections 127(3) and 127(6) of the Act.

6.3.5 Whether or not the Secretary of State is satisfied of those matters will turn on the question of whether, in the case of each of the statutory undertakers affected by the Scheme, their undertaking will, or will not, suffer "serious detriment" in the event that the Applicant acquires land, or rights over land, owned by them.

6.3.6 There is no statutory definition of "serious detriment" either in the Planning Act 2008 or in other legislation. It is generally acknowledged that what amounts to serious detriment will vary from case to case, and will be determined by the facts and circumstances in any particular case. However,



a relatively recent interpretation of "serious detriment" suggests that it is the "risk of, or actual, serious harm".<sup>10</sup>

*ABP and the "serious detriment" test*

- 6.3.7 The Applicant has considered the question what might amount to serious detriment in the context of the Scheme, in particular in response to assertions made by ABP that the Scheme will cause serious detriment to its undertaking in Lowestoft Harbour.
- 6.3.8 ABP is, of course, as accepted at paragraphs 6.1.21 to 6.1.31 above, a statutory undertaker entitled to benefit from the protection afforded by section 127 of the Act. Also, as the Applicant has acknowledged in the ES (at Chapter 15 – private assets, in particular), the Scheme would have impacts on ABP resulting in an overall finding of "slight adverse".
- 6.3.9 Clearly, not every adverse impact would amount to "serious detriment". However, in applying the serious detriment test, the Applicant has considered how the construction, and the subsequent operation and use of the Scheme would be likely to affect ABP's ability to provide port facilities, in line with section 14 of the Transport Act 1981, that were "open" to public use, in accordance with section 33 of the Harbour, Docks and Piers Clauses Act 1847.
- 6.3.10 In this context, if the Scheme was to have the practical effect of excluding particular types of port traffic (or vessels) from being able to use the port facilities in Lowestoft Harbour, this would be a matter of concern, both to ABP and to the Applicant. The Applicant therefore aims to minimise the circumstances in which such a scenario might arise – in particular in relation to the construction phase of the Scheme.

*Distinguishing the Applicant's Scheme from the M4 Relief Road scheme in Newport*

- 6.3.11 The Applicant is aware of ABP's engagement with the Welsh Government in relation to the impacts of the M4 Relief Road scheme on ABP's operations at Newport Docks. The Applicant also notes the extensive package of mitigation measures offered to ABP at the end of last year (2017), including the creation of a new quay and refurbishment of existing quays, the provision of a moveable bridge to facilitate mobile harbour cranes, other port equipment and infrastructure; and the relocation of ABP and its tenants to replacement land and premises, in order to alleviate the "serious detriment" arising from the M4 scheme.
- 6.3.12 The Applicant is willing to collaborate with ABP to ensure that "serious detriment" to ABP's undertaking in Lowestoft is avoided; however, the

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<sup>10</sup> This interpretation of "serious detriment" was offered by the HCA in its Consumer Regulation Review for 2013/2014.

Applicant notes that there are material differences between its proposals for a new crossing of Lake Lothing in Lowestoft and the Welsh Government's proposals for the M4 Relief Road in Newport. Aside from the obvious difference of scale in the respective size of the ports and the size of the road schemes, the Applicant's Scheme is incontestably distinguishable from the M4 scheme on the basis of bridge design: whereas the M4 bridge proposal features (necessarily for a motorway) a fixed deck bridge, thereby imposing a height restriction within the Port of Newport, the Applicant's proposal is for an opening bascule bridge, which by its nature does not impose an absolute height restriction on any port traffic in terms of navigation within Lowestoft Harbour.

- 6.3.13 In addition, the statutory consenting routes being used for the two projects are different. The M4 scheme is proceeding via a number of draft orders made under the Highways Act 1980, whereas the Applicant's Scheme is being promoted as a NSIP under the Planning Act 2008.
- 6.3.14 This difference has implications for the applicable statutory tests and for the protections available to ABP as a statutory undertaker. In particular, under section 107 of the Highways Act 1980 (which applies to the M4 scheme but does not apply to the Applicant's Scheme) the Minister is required to consider, prior to confirming an order which would authorise the construction of a bridge over navigable waters, "*the reasonable requirements of navigation*" and, if there is an objection to any such order by a navigation authority (such as ABP in relation to its harbours or docks) on the basis either that the order will impede the performance of its statutory functions or will interfere with the reasonable requirements of navigation, the order will be subject to Special Parliamentary Procedure, unless the objection is withdrawn.
- 6.3.15 This procedural constraint does not apply in relation to the Scheme. Firstly, section 120(4) of the Act and paragraphs 1 and 2 of Schedule 5 to the Act allow a DCO to include the compulsory acquisition or extinguishment of, or interference with, "*rights of navigation over water*" and there is no specific procedural protection for those rights. Secondly, whilst statutory undertakers do have some protection from compulsory acquisition under sections 127(2) and 127(3) of the Act, if the compulsory acquisition of land, or of rights over land, used for the carrying on of their undertaking would result in "serious detriment", they do not, as noted above (in paragraph 6.2.6) have any ability to invoke SPP.
- 6.3.16 Nevertheless, the Applicant is mindful of the relevance of the effect of the Scheme on ABP's undertaking in Lowestoft Harbour to the Applicant's case for compulsory acquisition in support of the Scheme.

*Application of the "serious detriment" test to ABP's undertaking in Lowestoft Harbour*

- 6.3.17 In terms of the operation of the Scheme, as noted above, the Scheme features a lifting/opening bascule bridge which will not preclude tall vessels from entering the Inner Harbour at Lowestoft. Furthermore, the Applicant has committed to deliver a bridge design which, when in the 'closed' position, guarantees a minimum air-draft of 12 metres above HAT, which means that the frequency with which the new bridge needs to open to allow vessels to pass will be less than that of the existing A47 bascule bridge to the east of the Scheme at the Outer Harbour, where the air-draft is 2.16 metres.
- 6.3.18 The frequency with which the new bridge will open will be set out in a Scheme of Operation, to be prepared in collaboration with ABP and secured through the DCO. As the Scheme of Operation will need to address the needs of both ABP and the Applicant, in their respective capacities as statutory harbour authority and local highway authority, the Applicant does not envisage that the new bridge opening regime will cause serious detriment to ABP and/or its undertaking.
- 6.3.19 Currently, all vessels entering the Inner Harbour in the Port of Lowestoft must necessarily pass through (or under) the existing A47 bascule bridge. The width of the navigable channel at this bridge is 22 metres; evidently, this constrains the size of vessels which can enter the Inner Harbour. With the Scheme in place, this position would not change and ABP would suffer no further detriment or constraint in terms of the size of vessels able to enter the Inner Harbour. In delivering the new bridge, the Applicant has committed to provide a navigable channel width of 32 metres, which is significantly wider than the 22 metre channel available via the A47 bascule bridge. As such, the Scheme would not present any new or additional constraints on the size or capacity of vessels entering the Inner Harbour.
- 6.3.20 In terms of ABP's land-based operations on the north quay of Lowestoft Harbour, the Applicant acknowledges that the Scheme will have an impact, but has sought to mitigate this as far as possible by committing to provide a minimum clearance height of 5.3 metres where the new bridge will span the quayside. The 5.3 metre headroom is equivalent to that of standard road bridges on the highway network and will ensure that HGVs manoeuvring within the Port can pass under the new crossing. If it were demonstrated that vehicles taller than HGVs are required to traverse the quayside, then the Applicant would be willing to discuss potential mitigation measures with ABP.
- 6.3.21 The Applicant recognises that there would be temporary disruption or inconvenience to ABP and other Port users during the construction of the Scheme (see Chapter 15 of the ES) in particular. However, the Applicant believes that such impacts can be mitigated such that serious detriment need not be caused.

**6.3.22** Indeed, the Applicant's ES includes a preliminary Navigation Risk Assessment (document reference 6.7) (proposed to be secured through the DCO) which includes provisions for framework of measures aimed at addressing and managing the interface between use of the Port and the construction and subsequent operation of the Scheme.

**6.3.23** The Applicant remains willing to engage with ABP and to seek solutions that accommodate both parties' positions optimally and which avoid causing serious detriment to ABP's statutory undertaking.

#### **6.4 Plots in which statutory undertakers have an interest and which are proposed to be acquired for the Scheme**

**6.4.1** Table 6-3 below provides a list of plots of land owned by statutory undertakers (who are Category 1 persons), where that land is proposed to be acquired in connection with the Scheme.

*Table 6- 3 Land to be acquired*

Plot	Description	Statutory Undertaker	Nature of Category 1 Interest	Land use power sought	Purpose for which land is needed
1-01	Land comprising public road, roundabout, footway, cycleway, bus stop, verge and traffic islands (Peto Way, Lowestoft)	Associated British Ports	Freehold owner* (in respect of subsoil beneath highway)	Permanent acquisition of land	Improvement of Peto Way in connection with provision of the northern approach to the new A12 Lake Lothing Third Crossing and to regularise the title position in respect of highway land
1-03	Land comprising footway, cycleway and bus stop (Peto Way, Lowestoft)	Associated British Ports	Freehold owner* (in respect of subsoil beneath highway)	Permanent acquisition of land	

Plot	Description	Statutory Undertaker	Nature of Category 1 Interest	Land use power sought	Purpose for which land is needed
2-01	Land comprising part of public road, traffic island, footway, cycleway and grass verge (Peto Way, Lowestoft)	Associated British Ports	Freehold owner* (in respect of subsoil beneath highway)	Permanent acquisition of land	Acquisition of land for the construction, operation and maintenance of a new approach road to the new A12 Lake Lothing Third Crossing and new northern roundabout and associated landscaping and drainage
2-03	Land comprising public footway and verge, Denmark Road Lowestoft	Anglian Water Services Limited	Owner (in respect of part of registered title)	Permanent acquisition of land	Acquisition of land for the improvement of the Peto Way/Rotterdam Road/Denmark Way roundabout, to facilitate the integration of the new A12 Lake Lothing Third Crossing and the new northern roundabout into the existing highway network
2-09	Land comprising shrubbery (adjacent to railway track, East Suffolk Line, Lowestoft)	Network Rail Infrastructure Limited	Freehold owner and occupier (in respect of railway)	Permanent acquisition of land	Acquisition of land for the construction, operation and maintenance of a new approach road to the new A12 Lake Lothing Third Crossing including

Plot	Description	Statutory Undertaker	Nature of Category 1 Interest	Land use power sought	Purpose for which land is needed
2-12	Land comprising shrubbery and grassed area (adjacent to railway track, East Suffolk Line, Lowestoft)	Network Rail Infrastructure Limited	Freehold owner (in respect of railway)**	Permanent acquisition of land	a new northern roundabout and associated landscaping and drainage
2-18	Land comprising works yard, grassed area and shrubbery (south of railway track, East Suffolk Line, Lowestoft)	Network Rail Infrastructure Limited	Freehold owner and occupier	Permanent acquisition of land	Acquisition of land for the construction, operation and maintenance of the new A12 Lake Lothing Third Crossing
2-23	Land comprising part of hardstanding (on the south side of private road, Port of Lowestoft)	Associated British Ports	Freehold owner and occupier	Permanent acquisition of land	
3-04	Land comprising part of lake (Lake Lothing), including lakebed	Associated British Ports	Freehold owner and occupier	Permanent acquisition of land	

Plot	Description	Statutory Undertaker	Nature of Category 1 Interest	Land use power sought	Purpose for which land is needed
3-05	Land comprising part of lake (Lake Lothing), including lakebed	Associated British Ports	Freehold owner and occupier	Permanent acquisition of land	
3-27	Land comprising part of grass verge on the west side of Riverside Road, Lowestoft	Homes and Communities Agency***	Freehold owner	Permanent acquisition of land	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach
3-46	Land comprising public road, footways and hardstanding (Canning Road, Lowestoft)	Homes and Communities Agency***	Freehold owner*	Permanent acquisition of land	Acquisition of land for the improvement of the existing Canning Road
3-48	Land comprising grassed area and shrubbery (Riverside Road, Lowestoft)	Northumbrian Water Limited	Freehold owner and occupier	Permanent acquisition of land	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach

Plot	Description	Statutory Undertaker	Nature of Category 1 Interest	Land use power sought	Purpose for which land is needed
3-52	Land comprising part of lake (Lake Lothing), including lakebed	Associated British Ports	Freehold owner and occupier	Permanent acquisition of land	Acquisition of land for the construction, operation and maintenance of a new mooring in connection with the new A12 Lake Lothing Third Crossing
4-06	Land comprising public road and footway (Canning Road, Lowestoft)	Homes and Communities Agency***	Freehold owner*	Permanent acquisition of land	Acquisition of land for the improvement of the existing Canning Road
5-01	Land comprising public road and footway (Canning Road, Lowestoft)	Homes and Communities Agency***	Freehold owner*	Permanent acquisition of land	Acquisition of land for the improvement of the existing Canning Road
5-04	Land comprising part of grassed area and shrubbery (on the west side of Riverside Road, Lowestoft)	Northumbrian Water Limited	Freehold owner and occupier	Permanent acquisition of land	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach



Plot	Description	Statutory Undertaker	Nature of Category 1 Interest	Land use power sought	Purpose for which land is needed
5-12	Land comprising part of public footway (on the east side of Riverside Road, Lowestoft)	Homes and Communities Agency***	Freehold owner*	Permanent acquisition of land	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout

\* Also owned/reputedly owned by Suffolk County Council as freeholder occupier (in respect of public highway).

\*\* Also owned/reputedly owned by Highways England Historical Railways Estate as freeholder (in respect of land previously in the ownership of BRB Residuary Limited).

\*\*\*See paragraph 6.2.9 above for an explanation of the HCA's status as a statutory undertaker.

## 6.5 Plots in which statutory undertakers have an interest and over which new rights are proposed to be acquired for the Scheme

6.5.1 Table 6-4 below provides a list of plots of land owned by statutory undertakers (who are Category 1 persons) over which rights are proposed to be acquired in connection with the Scheme.

*Table 6- 4 New rights over land*

Plot No.	Description of land	Statutory undertaker	Nature of Category 1 interest	Land use power sought	Purpose for which rights are needed
2-14	Land comprising operational railway track (East Suffolk Line, south of Denmark Road, Lowestoft)	Network Rail Infrastructure Limited	Freehold owner and occupier (in respect of railway)	Permanent acquisition of rights over land (including the imposition of restrictive covenants)	For constructing, protecting, accessing and maintaining the new A12 Lake Lothing Third Crossing
2-17	Land comprising works yard, grassed area and shrubbery (south of operational railway track, East Suffolk Line, Lowestoft)	Network Rail Infrastructure Limited	Freehold owner and occupier	Permanent acquisition of rights over land	
2-21	Land comprising part of private road, footway and hardstanding (west of Commercial Road, Lowestoft)	Associated British Ports	Freehold owner and occupier		
2-27	Land comprising operational railway track (East Suffolk Line, south of Denmark Road, Lowestoft)	Network Rail Infrastructure Limited	Freehold owner and	Permanent acquisition of rights over land (including the imposition	For constructing, protecting, accessing and maintaining the new A12

Plot No.	Description of land	Statutory undertaker	Nature of Category 1 interest	Land use power sought	Purpose for which rights are needed
2-30	Land comprising works yard, grassed area and shrubbery (south of operational railway track, East Suffolk Line, Lowestoft)	Network Rail Infrastructure Limited	Freehold owner and occupier	of restrictive covenants) Permanent acquisition of rights over land	Lake Lothing Third Crossing
2-34	Land comprising part of private road and hardstanding including quay wall (Port of Lowestoft)	Associated British Ports	Freehold owner and occupier	Permanent acquisition of rights over land (including the imposition of restrictive covenants)	For constructing, protecting, accessing and maintaining the new bridge, including a right of access along Commercial Road (from the point where it ceases to be public highway to the location of the new bridge)
3-03	Land comprising part of lake (Lake Lothing), including lakebed and quay wall	Associated British Ports	Freehold owner and occupier	Permanent acquisition of rights over land (including the	For constructing, protecting, accessing and maintaining

Plot No.	Description of land	Statutory undertaker	Nature of Category 1 interest	Land use power sought	Purpose for which rights are needed
3-11	Land comprising part of lake (Lake Lothing), including lakebed and quay wall	Associated British Ports Homes and Communities Agency***	Freehold owner and occupier	imposition of restrictive covenants)	the new A12 Lake Lothing Third Crossing
3-36	Land comprising part of lake (Lake Lothing), including lakebed and quay wall	Associated British Ports	Freehold owner and occupier		
3-47	Land comprising grassed area and shrubbery (on the west side of Riverside Road, Lowestoft)	Northumbrian Water Limited	Freehold owner and occupier	Permanent acquisition of rights over land (including the imposition of restrictive covenants)	For constructing, protecting, accessing and maintaining the new bridge southern approach
3-55	Land comprising part of lake (Lake Lothing) including lake bed	Associated British Ports	Freehold owner and occupier	Permanent acquisition of rights over land (including the imposition of restrictive covenants)	For constructing, protecting, accessing and maintaining the new A12 Lake Lothing Third Crossing
4-08	Land comprising public footway and shrubbery (to the north of Waveney Drive, Lowestoft)	Northumbrian Water Limited	Freehold owner (in respect of part of the registered title)	Permanent acquisition of rights over land (including restrictive	For the diversion, protection and maintenance of and access

Plot No.	Description of land	Statutory undertaker	Nature of Category 1 interest	Land use power sought	Purpose for which rights are needed
4-09	Land comprising public footway (to the north of Waveney Drive, Lowestoft)	Homes and Communities Agency***	Freehold owner (in respect of part of the registered title)	covenants)	to statutory undertakers' apparatus
5-03	Land comprising part of grassed area (on the west side of Riverside Road, Lowestoft)	Northumbrian Water Limited	Freehold owner	Permanent acquisition of rights over land (including the imposition of restrictive covenants)	For constructing, protecting, accessing and maintaining the new bridge southern approach and in connection with the diversion, protection and maintenance of and access to statutory undertakers' apparatus

## 6.6 Plots in which statutory undertakers have an interest and which are proposed to be subject to a power to acquire airspace, and rights below that airspace, for the purposes of the Scheme

6.6.1 Table 6-5 below provides a list of plots of land owned by statutory undertakers (who are Category 1 persons) which are proposed to be subject to a power to acquire airspace and new rights below that airspace, for the purposes of the Scheme.

*Table 6- 5 Airspace and new rights*

Plot No.	Description of land	Statutory Undertaker	Nature of Category 1 Interest	Land use power sought	Purpose for which land & rights are needed
2-26	Land comprising operational railway track (East Suffolk Line, south of Denmark Road, Lowestoft)	Network Rail Infrastructure Limited	Freehold owner and occupier (in respect of railway)	Permanent acquisition of airspace and rights (including restrictive covenants) over land	Land for the construction and operation of, together with rights for the protection and maintenance of the new A12 Lake Lothing Third Crossing
2-28	Land comprising works yard, grassed area and shrubbery (south of railway track, East Suffolk Line, Lowestoft)	Network Rail Infrastructure Limited	Freehold owner and occupier		
2-29	Land comprising works yard, grassed area and shrubbery (south of railway track, East Suffolk Line, Lowestoft)	Network Rail Infrastructure Limited	Freehold owner and occupier		

Plot No.	Description of land	Statutory Undertaker	Nature of Category 1 Interest	Land use power sought	Purpose for which land & rights are needed
2-32	Land comprising part of private road, footway, shrubbery and hardstanding (on the south side of private road, Port of Lowestoft)	Associated British Ports	Freehold owner and occupier	Permanent acquisition of airspace and rights (including restrictive covenants) over land	Land for the construction and operation of, together with rights for the protection and maintenance of the new A12 Lake Lothing Third Crossing
2-33	Land comprising part of hardstanding including quay wall (on the south side of private road, Port of Lowestoft)	Associated British Ports	Freehold owner and occupier		
3-33	Land comprising part of lake (Lake Lothing), including lakebed and quay wall	Associated British Ports	Freehold owner and occupier		
3-34	Land comprising part of lake (Lake Lothing), including lakebed	Associated British Ports	Freehold owner and occupier		
3-35	Land comprising part of lake (Lake Lothing), including lakebed	Associated British Ports	Freehold owner and occupier		

Plot No.	Description of land	Statutory Undertaker	Nature of Category 1 Interest	Land use power sought	Purpose for which land & rights are needed
3-37	Land comprising part of lake (Lake Lothing), including lakebed	Associated British Ports	Freehold owner and occupier		

## 6.7 Application of section 138 of the Planning Act 2008 – interference with apparatus owned by statutory undertakers for the purposes of their undertaking

6.7.1 Section 138 of the Planning Act 2008 applies where a DCO authorises the acquisition of land (compulsorily or by agreement) and there subsists over the land a relevant right, or there is relevant apparatus on, under or over the land.

6.7.2 For the purposes of section 138:

- a **'relevant right'** means a right of way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land which is vested in or belongs to statutory undertakers for the purpose of carrying on their undertaking, or which is conferred on a telecommunications code operator; and
- **'relevant apparatus'** means apparatus vested in or belonging to statutory undertakers for the purpose of the carrying out of their undertaking, or electronic communications apparatus kept installed for the purposes of an electronic communications code network.

6.7.3 A DCO may only include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates (section 138(4)).

6.7.4 The draft DCO for the Scheme includes provision to authorise interference by the Applicant with the apparatus of statutory undertakers, in connection with the delivery of the Scheme as detailed in paragraphs 6.7.9 to 6.7.11 below.

6.7.5 The utilities listed in paragraphs 6.7.9 to 6.7.11 are affected by the Scheme in that their services would be required to be diverted or re-aligned.

6.7.6 The Scheme may also affect existing private utility supplies or services, such as telecommunications cables which it is anticipated may need to be diverted within the highway boundary, or potentially within land owned by the



Applicant or by affected third parties.

- 6.7.7 For the avoidance of repetition in Schedule 1 (authorised development) to the draft DCO (document reference 3.1), utility diversion works are not referenced within the text which describes the numbered Works comprising the authorised development. Instead, utility diversion works are included in the 'catch all' provisions which are also set out in Schedule 1 (following the numbered works descriptions), and which provide for works which are required to facilitate, deliver or accommodate the numbered works. Together, the numbered works and the 'catch all' works comprise the authorised development.
- 6.7.8 The utility diversions outlined in the paragraphs below are anticipated to be necessary in order to deliver the Scheme.
- 6.7.9 The implementation of Work No. 3 as shown on Sheet 1 of the Works Plans would require:
- 6.7.9.1 the permanent utility diversion of Essex and Suffolk Water trunk main and distribution potable water apparatus which runs beneath the Rotterdam Road / Denmark Road roundabout – this apparatus would be realigned to the east of its existing location to accommodate the proposed improvements to the roundabout;
  - 6.7.9.2 the permanent utility diversion of Virgin Media apparatus which runs beneath Peto Way – this apparatus would be realigned to a shallower depth if necessary to ensure that a chamber depth of 1.2 metres is not exceeded; and
  - 6.7.9.3 Work No. 1 as shown on Sheet 1 of the Works Plans would involve the permanent utility diversion of BT Openreach overhead telecommunications apparatus which runs to the south of Peto Way and Denmark Road connecting to the existing car showroom on Denmark Road. This apparatus would be removed with a replacement connection to the premises constructed from Denmark Road.
- 6.7.10 The implementation of Work No. 1 as shown on Sheet 2 of the Works Plans would require:
- 6.7.10.1 the permanent utility diversion of Virgin Media communications apparatus which runs along Riverside Road and north to the existing UK Power Networks ("UKPN") tunnel – this apparatus would be realigned to the east of its existing location to accommodate the section of highway which is proposed to be constructed on a new embankment broadly on the alignment of the existing Riverside Road;
  - 6.7.10.2 the permanent utility diversion of UKPN High Voltage apparatus which runs along Riverside Road and north to the existing UKPN tunnel – this apparatus would be realigned to the east of its existing location to accommodate the section of highway which is proposed to be to be

constructed on a new embankment broadly on the alignment of the existing Riverside Road;

- 6.7.10.3 the permanent utility diversion of UKPN Low Voltage apparatus which runs along Riverside Road and north to the existing UKPN tunnel – this apparatus would be realigned to the west of its existing location to run along Work No. 5 and Work No. 4, and along the eastern side of Work No.1, to connect into the existing network. This diversion is required to accommodate the section of highway which is proposed to be constructed on a new embankment broadly on the alignment of the existing Riverside Road;
- 6.7.10.4 the permanent relocation of the UKPN substation which is located to the north of Riverside Road – the substation would be relocated to the north-west of its current location; this relocation is required to accommodate the section of highway which is proposed to be constructed on a new embankment broadly on the alignment of the existing Riverside Road;
- 6.7.10.5 the permanent utility diversion of Essex and Suffolk Water potable water apparatus which runs along Riverside Road and connects into Canning Road – this apparatus would be realigned to the west of its existing location to run along Work No. 5 and Work No. 4 to connect into the existing network; this diversion is required to accommodate the section of highway which is proposed to be constructed on a new embankment broadly on the alignment of the existing Riverside Road;
- 6.7.10.6 the permanent utility diversion of Anglian Water foul water apparatus which runs along Riverside Road – this apparatus would be realigned to the west of its existing location; this diversion is required to accommodate the section of highway which is proposed to be constructed on a new embankment broadly on the alignment of the existing Riverside Road;
- 6.7.10.7 the permanent utility diversion of Anglian Water surface water apparatus which runs along Riverside Road – this apparatus would be realigned to the west of its existing location; this diversion is required to accommodate the section of highway which is proposed to be constructed on a new embankment broadly on the alignment of the existing Riverside Road;
- 6.7.10.8 the permanent utility diversion of Cadent gas apparatus which runs along Riverside Road – this apparatus would be realigned to the west of the existing location to run along Work No. 5 and Work No. 4 to connect into the existing network, and also to the east of its current alignment along the eastern side of Work No. 1; this diversion is required to accommodate the section of highway which is proposed to be constructed on a new embankment broadly on the alignment of the existing Riverside Road; and

6.7.10.9 the permanent utility diversion of BT Openreach telecoms apparatus which runs along Riverside Road – this apparatus would be realigned to the west of its existing location to run along Work No. 4 and the eastern end of Work No. 5 to connect into the existing network via a new route running south from Canning Road to Waveney Drive. This diversion is required to accommodate the section of highway which is proposed to be constructed on a new embankment broadly on the alignment of the existing Riverside Road.

6.7.11 The implementation of Work No. 2 as shown on Sheet 2 of the Works Plans would require:

6.7.11.1 the permanent utility diversion of Essex and Suffolk Water potable water apparatus which runs along Waveney Drive – this apparatus would be relocated parallel to its existing alignment, to the north and south of its existing location; this diversion is required to accommodate the proposed new roundabout on Waveney Drive;

6.7.11.2 the permanent utility diversion of Virgin Media communications apparatus which runs south-west from Riverside Road and north from Durban Road into Riverside Road – this apparatus would be realigned to the east of its existing location; this diversion is required to accommodate the proposed new roundabout on Waveney Drive;

6.7.11.3 the permanent utility diversion of Cadent gas apparatus which runs along Waveney Drive – this apparatus would be realigned to the north of its existing location; this diversion is required to accommodate the proposed new roundabout on Waveney Drive;

6.7.11.4 the permanent utility diversion of BT Telecoms apparatus which runs along Waveney Drive. This apparatus would be realigned to the north of its existing location. This diversion is required to accommodate the proposed new roundabout on Waveney Drive;

6.7.11.5 the permanent utility diversion of UKPN Low Voltage apparatus which runs along Waveney Drive. This apparatus would be realigned to the north and south of its existing location. This diversion is required to accommodate the proposed new roundabout on Waveney Drive; and

6.7.11.6 the permanent utility diversion of UKPN High Voltage apparatus which runs from Durban Road into Waveney Drive. This apparatus would be realigned to the north and south of its existing location. This diversion is required to accommodate the proposed new roundabout on Waveney Drive.

6.7.12 In addition to the above-mentioned diversions of statutory undertakers' apparatus, the following works to remove apparatus are also proposed to be carried out in connection with the Scheme:

6.7.12.1 In relation to Work Nos. 1 and 3 on Sheet 1 of the Works Plans, the removal (without replacement) of a section of Low Pressure gas

pipeline which runs south from Rotterdam Road into the area of hardstanding between Peto Way and the East Suffolk railway line (and which comprises land purchased by the Applicant for the purposes of the Scheme). It is the Applicant's understanding, from Cadent Gas Limited in its capacity as the statutory undertaker responsible for the pipeline, that this section of the pipeline is redundant. Accordingly, and by agreement with Cadent, the Applicant proposes to cap the pipeline at the southern end of Rotterdam Road and to remove the redundant section from beneath the area of hardstanding.

6.7.12.2 In relation to Work No.2 on Sheet 2 of the Works Plans, the removal (without replacement) of a section of Intermediate Pressure gas pipeline, which currently runs from the northern end of Durban Road northwards into Riverside Road and continues up Riverside Road as far as the junction with Canning Road, at which point it is capped. The Applicant understands that this pipeline used to serve a food-canning factory which was previously located in Canning Road (and which gave Canning Road its name). Due to the disuse and subsequent demolition of the canning factory, this section of the pipeline is redundant. The Applicant therefore proposes, by agreement with Cadent Gas Limited in its capacity as the statutory undertaker responsible for this pipeline, to remove the redundant section of pipeline north of Durban Road and to cap the pipeline in Durban Road at a point around 20 metres south of the junction of Durban Road with Waveney Drive.

6.7.13 The above-mentioned removal of statutory undertakers' apparatus has been agreed with the relevant statutory undertaker and the apparatus has been confirmed as being redundant; furthermore, as the apparatus is not required, either by the relevant statutory undertaker, or by the Applicant for the purposes of the Scheme, the Applicant is of the view that the Secretary of State may be satisfied of the matters set out in section 138(4) of the Act.

## **6.8 The Applicant's position with regard to the matters set out in section 138(4) of the Act, being matters on which the Secretary of State must be satisfied**

6.8.1 The Applicant's negotiations with statutory undertakers are on-going and, where required, side agreements (outside the DCO) will be pursued to ensure that adequate protection for statutory undertakers' interests will be included within the protective provisions in the draft DCO.

6.8.2 As such, the Applicant expects to achieve an agreed and satisfactory position with each of the above-mentioned statutory undertakers prior to the close of the examination period.

- 6.8.3 Furthermore, and in the context of section 138 of the Act, the Applicant has set out in paragraphs 6.7.9 to 6.7.11 above the purposes for which the diversions noted are necessary for the purpose of carrying out the development to which the draft DCO relates, and it is in this context that the Applicant anticipates that the Secretary of State may be fully and properly satisfied of the matters set out in section 138(4) of the Act.

## 7 The planning policy position including the view of the Government

### 7.1 Planning Context

#### *Section 35 Direction and decision-making under the Planning Act 2008*

- 7.1.1 The Lake Lothing Third Crossing Scheme is supported by Government policy. On 22 March 2016, by a Direction given by the Secretary of State for Transport under section 35 of the Planning Act 2008, the Scheme was designated a project of national significance for which development consent under the Planning Act 2008 is required.<sup>11</sup> It is in this context that the Applicant refers to the Scheme, in its DCO application documentation, as a Nationally Significant Infrastructure Project ("NSIP").

### 7.2 National policy and marine policy documents

#### *National Policy Statements*

- 7.2.1 Accordingly, under section 104 of the Planning Act 2008, in determining the application for development consent for the Scheme, the Secretary of State must have regard to the relevant national policy statement (NPS).

#### *National Networks National Policy Statement*

- 7.2.2 For highways schemes, the relevant NPS is the National Networks National Policy Statement (December 2014) ("NNNPS"). The Secretary of State will use the NNNPS as the primary basis for making his decision on the Applicant's DCO application; and, in evaluating the merits of the Scheme, the Secretary of State must have regard to the NNNPS.
- 7.2.3 The Applicant's Case for the Scheme (document reference 7.1) provides a detailed analysis of the Scheme against relevant planning policy, including, at its Appendix A, an assessment of the Scheme against the detailed requirements of the NNNPS. The Case for the Scheme sets out how the Scheme meets the tests of need for the development of national networks set out at the start of Chapter 2 of the NNNPS, such as providing transport network capacity, connectivity and resilience; and explains how the Scheme has been developed in accordance with the NNNPS.
- 7.2.4 For the avoidance of duplication and unnecessary repetition between Application documents, the above-mentioned analysis of the Scheme

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<sup>11</sup> Technically a project which is the subject of a section 35 direction is a "project of national significance" but there is no material difference in substantive or procedural terms between a DCO for such a project and a DCO for a nationally significant infrastructure project ("NSIP") thus for convenience the Scheme will be referred to as an NSIP.

against the NNNPS requirements is not reproduced in this Statement of Reasons; and this Statement of Reasons should be read in conjunction with the Case for the Scheme.

#### *National Policy Statement for Ports*

- 7.2.5 The Applicant has also had regard to the National Policy Statement for Ports ("PNPS"). Clearly, the development for which the Applicant seeks development consent is a highways scheme and is therefore plainly not 'port development', in that (notwithstanding the fact that the Scheme includes provision for a new pontoon for recreational vessel users) it does not constitute "the construction or alteration of harbour facilities" under section 14(1)(j) of the Planning Act 2008, and nor does it come within the criteria for harbour facilities which are set out in section 24 of the Act. Accordingly, there is no requirement for the Application to be determined in accordance with the PNPS.
- 7.2.6 However, given the nature and location of the Scheme, the Applicant is of the view that it is appropriate to have regard to relevant aspects of the PNPS. Such aspects include, for example, consideration of "the essential role of ports in the UK economy" and the Government's "policy for ports", insofar as it aims to encourage sustainable port development to support long-term economic growth and prosperity.
- 7.2.7 The Applicant's perspective, in having regard to such aspects of the PNPS, is that in the context of the country's overall need for infrastructure provision to be cohesive, complementary, well-planned and well-coordinated, it is important not to consider schemes in isolation from their existing and potential economic, social and environmental circumstances, but rather to see them as a component part of a multi-faceted and integrated infrastructure system. It is in this context of this principle that the Applicant has had regard to both the NNNPS and the PNPS.
- 7.2.8 The Applicant's consideration of the policy basis in both the NNNPS and the PNPS is set out in the Case for the Scheme and is not repeated in this Statement of Reasons, which should be read in conjunction with the Case for the Scheme.

#### *Marine Policy Documents*

- 7.2.9 Under section 104, the Secretary of State must also have regard to appropriate marine policy documents. Marine policy documents with relevance to the Scheme (the UK Marine Policy Statement; the East Inshore Marine Plan) are identified and considered in the Applicant's Case for the Scheme and the related assessment is not reproduced in this Statement of Reasons.

### 7.3 Other national and local planning policy

#### *National Planning Policy Framework*

- 7.3.1 The National Planning Policy Framework ("NPPF") does not contain specific policies for NSIPs; however, the requirement in section 104 of the Act for the Secretary of State to have regard not only to the relevant NPS, but also (under section 104(2)(d)) to "*any other matters which the Secretary of State thinks are both important and relevant*", may include the NPPF, as paragraph 1.18 of the NNNPS suggests, when it says, "*The NPPF is also likely to be an important and relevant consideration in decisions on nationally significant infrastructure projects ... to the extent relevant to [a particular] project*".
- 7.3.2 The Applicant's Case for the Scheme therefore includes analysis of NPPF policies, to the extent that they are of relevance to the Scheme. That analysis is not reproduced in this Statement of Reasons, which should be read in conjunction with the Applicant's Case for the Scheme.

#### *Local Planning Policy*

- 7.3.3 The Case for the Scheme identifies in detail how the local planning policy framework also provides support for the Scheme, through policies comprised in the extant Waveney Development Plan and the new Local Plan for the District (which is currently in preparation).

#### *Multi-level planning policy support for the Scheme*

- 7.3.4 As the Planning Policy chapter of the Case for the Scheme sets out, the Scheme has planning policy support at national and local authority levels in terms of both transport and land use planning.

### 7.4 Summary of the Policy Position

- 7.4.1 The Case for the Scheme sets out an assessment of the NNNPS and PNPS as well as the relevant Marine Plan and Marine Policy Statement ("MPS").
- 7.4.2 In respect of the Scheme, the primary policy statement is the NNNPS, as this specifically relates to infrastructure projects concerning the national road network (which includes highway schemes proceeding under a section 35 direction). A full assessment of the NNNPS generic impacts is set out in Appendix A to the Case for the Scheme.
- 7.4.3 The PNPS has been considered due to the Scheme's proximity to the Port of Lowestoft. The PNPS, the MPS and the Marine Plan, have been considered to the degree to which they are relevant to the Scheme.
- 7.4.4 The Case for the Scheme explains that the Scheme is in compliance with each of these policy documents and their assessments.



## 8 Special considerations affecting the Order land

### 8.1 Protection for Special Category Land

- 8.1.1 The following paragraphs identify elements within the Order land that require special consideration in the context of the proposed exercise of powers of compulsory acquisition, where, for certain types – or ‘special categories’ – of land, the Act provides a degree of protection from such powers.

#### *Special Category Land – Open Space*

- 8.1.2 No open space (being land used for the purposes of public recreation, or being laid out as a public garden, or being a disused burial ground), common land, fuel or field garden allotment is included in or affected by the Order land.

#### *Special Category Land – National Trust Land*

- 8.1.3 No land held inalienably by the National Trust is included in or affected by the Order land.

#### *Special Category Land – owned by statutory undertakers for their undertaking*

- 8.1.4 The Order land does include land which is owned by statutory undertakers for the purposes of their statutory undertaking. Details of the statutory undertakers and their affected land are set out in Chapter 6 above.

- 8.1.5 Chapter 6 also includes an explanation of the statutory protections afforded to those statutory undertakers by sections 127 and 138 of the Act.

- 8.1.6 Chapter 6 also sets out the Applicant’s position as regards the extent to which the Secretary of State may be satisfied of the matters referred to in sections 127 and 138 of the Act.

#### *Special Parliamentary Procedure*

- 8.1.7 A development consent order which includes proposals to acquire special category land compulsorily may be subject to Special Parliamentary Procedure, if the special category land is open space or is land held inalienably by the National Trust.

- 8.1.8 As noted above (in paragraphs 8.1.2 and 8.1.3) the Order land does not include or affect any open space land or land held inalienably by the National Trust.

- 8.1.9 Accordingly, the Applicant does not expect the draft DCO to be subject to Special Parliamentary Procedure, because there is no need for the application of the protections provided in sections 130 to 132 of the Act for these special categories of land.

## 8.2 Protection for Crown land

### *Crown land within the Order limits*

- 8.2.1 Part of the land which is required for the Scheme comes within the definition of Crown land in section 227 of the Act. Crown land is defined in section 227 for the purposes of the protections afforded to such land by section 135 of the Act.
- 8.2.2 The Applicant is aware of the general principle that Crown land cannot be acquired compulsorily. However, the Applicant is seeking to include Crown land in the draft DCO as shown on the Crown Land Plan (document reference 2.11) – see plots numbered 2-08, 2-10, 2-12 and 2-25 – and as presented in Part 4 of the Book of Reference (document reference 4.3) ("the Crown land").
- 8.2.3 The Crown land is understood, by the Applicant as a result of its diligent inquiry, to be owned by the Secretary of State for Transport and managed on the Secretary of State's behalf by Highways England Historical Railways Estate ("HEHRE"), by virtue of the fact that it was previously owned by the British Railways Board (Residuary) Limited ("BRBR"), which formerly owned residual railway land arising from rail privatisation. The Crown land forms a strip, lying between land owned by Network Rail Infrastructure Limited (to the south) and land owned by Suffolk County Council (to the north).
- 8.2.4 By way of background, BRBR was abolished with effect from 30 September 2013, and its interests in the historical railways estate (formerly known as the Burdensome Estate, which includes legacy bridges, abutments, tunnels, cuttings, viaducts and similar properties associated with closed railway lines and sales of railway assets) were transferred to the Highways Agency Historical Railways Estate, which, at that time, was an executive agency of the Department for Transport. Accordingly, this land was, in effect, owned by the Department for Transport.
- 8.2.5 When the Highways Agency (as was) became Highways England (a government-owned strategic highways company, appointed by the Secretary of State for Transport under the Infrastructure Act 2015) the Secretary of State for Transport, made, on 30 March 2015, under section 15 of the Infrastructure Act 2015, a scheme for the transfer of property, rights and liabilities to its appointed strategic highways company ("the Transfer Scheme").
- 8.2.6 The effect of the Transfer Scheme was to transfer to Highways England all land previously held by the Secretary of State for Transport for the purposes of the Secretary of State's functions as the highway authority responsible for the strategic road network in England.
- 8.2.7 However, the ownership of the land held by the Highways Agency Historical Railways Estate did not pass to Highways England under the Transfer

Scheme and, as such, the land is still in effect owned by the Department for Transport.

*Crown land in the context of the Planning Act 2008*

- 8.2.8 Section 227(2) of the Act defines "Crown land" as land in which there is a "Crown interest" (or a "Duchy interest"). The definition in section 227(3)(b) of a "Crown interest" provides that "an interest belonging to a government department" is a Crown interest. In the context of the Scheme, the Crown land is managed by HEHRE on behalf of the Secretary of State for Transport, who, in his role as the Minister responsible for the Department for Transport, owns the Crown land in question. Therefore, the land is "an interest belonging to a government department", as a consequence of which it is Crown land.

*Applicant's approach to the inclusion of Crown land within the Order limits*

- 8.2.9 Crown land is protected from powers of compulsory acquisition; if the Secretary of State's interest in the land is to be acquired, such acquisition would need to be effected by agreement.
- 8.2.10 However, section 135(1) of the Act enables development consent orders to include authorisation for the compulsory acquisition of an interest in Crown land where that interest is held by a party other than the Crown. Where provisions to compulsorily acquire such interests are included in a draft development consent order, then the consent of the appropriate Crown authority is needed before the development consent order can be made by the Secretary of State.
- 8.2.11 As the Crown land within the Order limits is managed by HEHRE on behalf of the Secretary of State for Transport, and as there also is precedent in the form of made DCOs in relation to which HEHRE has previously granted Crown land consent, the Applicant approached HEHRE to request that Crown land consent be granted by HEHRE on behalf of the Secretary of State for Transport. However, HEHRE confirmed that the appropriate Crown authority in this case would be the Secretary of State for Transport.
- 8.2.12 Accordingly, the Applicant's request for Crown land consent to the inclusion, in the draft DCO, of the Crown land owned by the Secretary of State for Transport, has been passed by HEHRE to the Department for Transport.
- 8.2.13 The Applicant currently awaits the Secretary of State's response to the request for Crown land consent, and should such consent be granted, the Applicant will submit a copy of the consent to the Planning Inspectorate, in support of the Applicant's application for development consent for the Scheme.

### 8.3 Effect of the scheme on environmental and statutory designations

- 8.3.1** The Environmental Statement (“ES”) (document reference 6.1) submitted in support of the application for development consent for the Scheme includes details of land subject to statutory designations, where such land is within the study area for the environmental impact assessment carried out in relation to the Scheme.
- 8.3.2** Full details are provided in the ES, however in summary, the Order limits do not include any national or local environmentally designated sites (as is made clear in Table 8-1 below).
- 8.3.3** However, a number of designated sites are present in the wider area (beyond the Order limits) and a summary of the position in that regard is provided in the Case for the Scheme (document reference 7.1), in chapter 3 of that document (see paragraph 3.7 in particular, which also provides relevant cross-references to the ES).

*Table 8- 1 Special considerations affecting land affected by the Scheme*

Special Considerations affecting the Order land	Affected by the Scheme?
Land within conservation areas	No
Land which includes any listed buildings/structures	No
Land which is subject to regional and local environmental designations (Sites of Special Scientific Interest, Local Nature Reserves and County Wildlife Sites)	No
Land which is within archaeological priority areas/zones	No
Consecrated land	No
Renewal areas	No
Ancient monuments	No

## 9 Other consents required in relation to the scheme

### 9.1 Introduction

#### *Consents included within the Development Consent Order*

- 9.1.1 A DCO is being sought for the Scheme and the majority of consents required to permit the Scheme to come forward will be included, or addressed, within the draft DCO, as permitted by various provisions of the Planning Act 2008.
- 9.1.2 Whilst discussions in respect of some of these consents are continuing with the principal stakeholders, the consents which are expected to be incorporated within the DCO fall broadly into the following categories:
- 9.1.2.1 the authorisation of all permanent and temporary works (equivalent of planning permission);
  - 9.1.2.2 the compulsory acquisition of land (including airspace and subsoil) and of rights over land such as easements, restrictive covenants and mineral extraction rights, and the temporary possession of land;
  - 9.1.2.3 consent to carry out street works and to stop up highways permanently or temporarily;
  - 9.1.2.4 highway matters (such as classifying or re-classifying parts of the highway network (under the Highways Act 1980));
  - 9.1.2.5 traffic regulation matters (such as the imposition of speed limits, restrictions on use and the revocation or variation of existing Traffic Regulation Orders (under the Road Traffic Regulation Act 1984));
  - 9.1.2.6 consent to stop up and divert or replace (where necessary) public and private rights of way and private means of access, and public rights of navigation;
  - 9.1.2.7 consent to carry out any required diversions of statutory undertakers' apparatus;
  - 9.1.2.8 consent to undertake 'flood risk' activities;
  - 9.1.2.9 consent to abstract water;
  - 9.1.2.10 consent to obstruct ordinary watercourses;
  - 9.1.2.11 consent to discharge into an available watercourse;
  - 9.1.2.12 consent or approval for the carrying out of the works required under any relevant byelaws made under the Water Resources Act 1991;
  - 9.1.2.13 consent to carry out tree works, including works affecting trees subject to Tree Preservation Orders (under the Town and Country Planning Act 1990 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012);

- 9.1.2.14 a deemed marine licence under the Marine and Coastal Access Act 2009 – a draft deemed marine licence ("DML") is included in the draft DCO (pursuant to section 149A of the Planning Act 2008) for the authorisation of works within the Port of Lowestoft. The terms of the draft DML (at Schedule 12 to the draft DCO) are subject to ongoing discussions with the Marine Management Organisation ("MMO") but those discussions have, to date, made good progress;
- 9.1.2.15 disapplication of any relevant local legislation or byelaws (or the relevant parts thereof) where the effect of such byelaws would not be compatible with the construction, operation or maintenance of the authorised development – for example, article 45 of the draft DCO provides a power to make Byelaws, and Schedule 10 to the draft DCO sets out Byelaws proposed in relation to the Scheme; in addition article 45 includes amendments which are proposed to be made, through the DCO, to existing Byelaws relating to Lowestoft Harbour – the terms of the proposed new Byelaws and the existing Byelaws are currently the subject of discussion between the Applicant and Associated British Ports in its capacity as the statutory harbour authority.

#### *Consents not included in the Development Consent Order*

- 9.1.3 There are a number of other consents required for the Scheme which either the draft DCO does not cover, or in respect of which there is the option for the DCO to be used to dis-apply under sections 120 and 150 of the Act.
- 9.1.4 In the case of consents to which section 150 applies, these can only be dis-applied at the absolute discretion of the relevant consenting body and usually only after agreement over protective provisions for the benefit of that body to be included in the DCO is reached.
- 9.1.5 Discussions between the Applicant and these consenting bodies are ongoing, and the Applicant is confident that the necessary agreements will be obtained before or during the examination of its application, in exchange for the Applicant including in the DCO appropriate protective provisions.

## **9.2 Additional consents**

- 9.2.1 If required in relation to the Scheme, the following additional consents will be sought separately from the DCO:

#### *Environmental permits*

- Consent and an environmental permit for 'flood risk activities' to erect structures in, over or under tidal waters, pursuant to the Environmental Permitting (England and Wales) Regulations 2016 – the Applicant is seeking disapplication through the DCO subject to the agreement of the Environment Agency. From a flood risk perspective, the DCO includes a disapplication for the need for a flood risk activity permit; however, the

Environment Agency retains the ability to control the works through the Protective Provisions for their benefit included within the draft DCO.

*Consent to obstruct watercourses (if required)*

- In the draft DCO, the Applicant seeks disapplication of the requirement, under section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991, to obtain consent to obstruct watercourses. Such disapplication would be subject to the agreement of relevant Drainage Boards<sup>12</sup>.

*Consent to abstract water (if required)*

- In the draft DCO, the Applicant seeks disapplication of the requirement, under section 24 (restrictions on abstraction) of the Water Resources Act 1991, to obtain consent to abstract water during the construction of the Scheme. Such disapplication would be subject to the agreement of the Environment Agency and may be addressed through the terms of the protective provisions included in the draft DCO for the protection of the interests of the Environment Agency.

*Disapplication of byelaws (where required)*

- As mentioned above, the Applicant seeks the partial disapplication, through the DCO, of existing byelaws made under section 51 and section 52 of the British Transport Docks Act 1964, in relation to Lowestoft Harbour – the Lowestoft Harbour Byelaws 1993. Article 45 of, and Schedule 10 to, the draft DCO set out which of the existing Byelaws are proposed to be disapplied in relation to the Scheme, on the basis that those particular Byelaws would not be compatible with the procedures necessary to deliver the Scheme.
- In the draft DCO, the Applicant also seeks the partial disapplication of the ABP Port Rules (November 2016), in so far as those Rules (which seek to control behaviour and activities in Lowestoft Harbour) are incompatible with the delivery of the Scheme.
- In the draft DCO, the Applicant would also seek disapplication of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991, where the effect of such byelaws was not compatible with the construction, operation or maintenance of the authorised development.

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<sup>12</sup> Whilst the local Internal Drainage Board is the Waveney, Lower Yare & Lothingland Internal Drainage Board ("the IDB"), Lake Lothing lies outwith the IDB's area of responsibility. The lead local flood authority ("LLFA") is SCC.

*Disapplication of temporary possession provisions (if required)*

- In the draft DCO, the Applicant seeks disapplication of the provisions of the Neighbourhood Planning Act 2017, insofar as they relate to the temporary possession of land under articles 32 and 33 of the Order. This disapplication would only be required to have effect in the event that the temporary possession provisions in the Neighbourhood Planning Act 2017 were brought into force. At the time of the submission of the Application, those provisions are not yet in force.

**9.3 Separate consents****9.3.1** Consents to be sought separately (outwith the DCO) include:*European Protected Species Licences*

- Protected species licences under the Conservation of Habitats and Species Regulations 2010 (if required).

*Environmental Permits*

- Permits under the Environmental Permitting (England and Wales) Regulations 2010, where such permits are required for matters other than flood risk activities (e.g. for discharges or waste).

*Construction Noise Permits*

- Consents in relation to construction noise under section 61 of the Control of Pollution Act 1974.

*Crown Land Consent*

- Consent from the Secretary of State for Transport, in his capacity as the 'appropriate Crown authority' in the context of section 135 of the Planning Act 2008. The position regarding the inclusion of Crown land within the Order limits is set out in Chapter 8 of this Statement of Reasons (special category land).



## 10 Human Rights

### 10.1 Application of the European Convention on Human Rights

10.1.1 The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ('the Convention'). The Convention includes provisions in the form of Articles ('the Convention rights'), the aim of which is to protect the rights of the individual and his possessions.

10.1.2 The following Convention rights are relevant to the Secretary of State's decision as to whether or not there is a compelling case for the DCO to be made in a form that includes powers authorising the compulsory acquisition of land and interests in land:

#### *Article 6*

- entitles those affected by the powers sought in a DCO to a fair and public hearing by an independent and impartial tribunal.

#### *Article 8*

- protects the right of the individual to respect for his private and family life, his home and his correspondence. A public authority cannot interfere with these interests unless such interference is in accordance with the law and is necessary in the interests of, among other things, national security, public safety or the economic wellbeing of the country.

#### *Article 1 of the First Protocol*

- protects the right of everyone to peaceful enjoyment of possessions. No one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws. As with Article 8, any interference with possessions must be proportionate, and, in determining whether a particular measure is proportionate, a fair balance must be struck between the public benefit sought and the interference with the private rights in question.

10.1.3 If made in a form that includes powers of compulsory acquisition, the DCO would enable the Applicant to infringe the human rights of persons with an interest in the land that would be affected by the Scheme. Such infringement is authorised by law provided that:

- the statutory procedures for obtaining the DCO are followed and there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the DCO; and
- any interference with a Convention right is proportionate to the legitimate aim served.

## 10.2 Compliance with the Convention and with the Human Rights Act 1998

10.2.1 The Applicant confirms that, in considering the potential exercise of the land use powers sought in the DCO, it has had regard to article 6 of the Convention, which confers the right to a fair trial and public hearing by an independent and impartial tribunal.

10.2.2 In having regard to article 6 of the Convention, the Applicant notes that the procedures under the Planning Act 2008 are compliant with the Human Rights Act 1998 and in so far as these duties are properly observed by the Applicant, its duties under the Human Rights Act 1998 are discharged.

10.2.3 In the context of compliance with article 6 of the Convention, the Applicant observes that:

- the DCO process provides a series of opportunities for the public to make representations;
- under sections 42 and 44 of the Planning Act 2008, the Applicant consulted:
  - all known owners and occupiers of the land needed for the Scheme;
  - persons who would or might be entitled to claim compensation under:
    - section 10 of the Compulsory Purchase Act 1965; and/or
    - Part 1 of the Land Compensation Act 1973
- beneficiaries of restrictive covenants and other rights overridden may claim compensation under section 10 of the Compulsory Purchase Act 1965;
- the public can make representations in response to notice served under section 56 of the Planning Act 2008 and/or during the examination of the Application (for instance in compulsory acquisition hearings) or in any written representations procedure held by the Examining Authority;
- if a DCO is made by the Secretary of State, a person aggrieved could mount a judicial review challenge in the High Court under section 118 of the Planning Act 2008;
- in the event that entitlement to or quantum of compensation are disputed, there is a right to apply to the Upper Tribunal of the Lands Chamber (an independent tribunal); this right applies in respect of land which is subject to powers of compulsory acquisition and land which is subject to powers of temporary possession (see Part 3 of the draft DCO – Powers of Acquisition and Possession of Land).

- 10.2.4 The Applicant confirms that, in considering the potential exercise of the land use powers sought in the draft DCO, it has also had regard to Article 8 of the Convention and Article 1 of the First Protocol to the Convention.
- 10.2.5 Article 8 confers a right to respect for private and family life and home, and provides that any interference with this right by a public authority must be lawful, proportionate and necessary in the interests of, among other things, national security, public safety or the economic wellbeing of the country.
- 10.2.6 Article 1 of the First Protocol confers a right to peaceful enjoyment of possessions, and provides that any interference with this right by a public authority must be in the public interest, lawful and proportionate.
- 10.2.7 The Applicant understands that in determining whether interference with Convention rights (in Article 8 and in Article 1 to the First Protocol) is proportionate, a fair balance must be struck between the public benefit sought and the interference with affected private rights.
- 10.2.8 In striking to seek that balance, the Applicant has had regard to:
- the need for the Scheme and the public benefits it would bring (see Chapter 2 of this Statement of Reasons and also the Case for the Scheme (document reference 7.1)); and
  - the nature of the Scheme's interference with affected private rights (see Chapter 12 of this Statement of Reasons).
- 10.2.9 The Applicant does not consider that any single affected interest is of such importance as to outweigh the important public benefits which the Scheme is forecast to deliver, in the event that the DCO is made by the Secretary of State and the Scheme is delivered pursuant to that made DCO.
- 10.2.10 Furthermore, the Applicant does not consider that the cumulative private loss (arising on a Scheme-wide basis) is of such magnitude or severity as to outweigh the importance of the public benefits which the Scheme would deliver.
- 10.2.11 The Applicant continues to discuss the impacts of the Scheme with the persons affected by those impacts, with the dual aim of:
- minimising as far as possible the loss suffered by those persons; and
  - ensuring that any loss suffered is properly and fairly compensated.
- 10.2.12 On balance, the Applicant considers that the public benefits which the Scheme would bring would outweigh the private loss which would arise from interference with private rights affected by the Scheme.
- 10.2.13 The Applicant therefore considers that the proposed compulsory acquisition of land and rights over land is legitimate (in that if authorised by the DCO, the delivery of the Scheme would be lawful), necessary (in that there is a need for the Scheme – as discussed in Chapter 2 of this Statement and in the Case for the Scheme) and proportionate (in the context of the balancing

exercise described above).

### 10.3 Consideration of duties under the Equality Act 2010

- 10.3.1 The Applicant is aware of its duties under section 149 of the Equality Act 2010 and of the requirement to have due regard to the need to:
- eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by or under the Equality Act 2010;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 10.3.2 Therefore, in accordance with its relevant internal procedures, the Applicant carried out a screening assessment to ascertain whether a full Equalities Impact Assessment was required to discharge its duties under the Equality Act 2010 in the context of the Application for development consent for the Scheme.
- 10.3.3 The Equality Impact Screening Assessment for the Scheme was considered by the Suffolk County Council Policy Clearing House on 23 November 2017, which confirmed on 18 January 2018 that the screening assessment was sufficient to demonstrate that the potential impacts of the Scheme on the protected characteristics had been considered and that there was no evidence of the need for a full Equalities Impact Assessment to be undertaken.
- 10.3.4 The Applicant's Equalities Impact Screening Assessment is included in the Application documentation (document reference 6.8).

## 11 Purpose for which the compulsory acquisition and temporary possession powers are sought

### 11.1 Statement of the overall purpose of seeking powers of compulsory acquisition and temporary possession

- 11.1.1 In broad terms, the purpose for which compulsory acquisition and temporary possession powers are sought is to enable the Applicant to construct, operate and maintain the Scheme. The need for the Scheme is explained in the Applicant's Case for the Scheme (document reference 7.1). To facilitate the delivery of the Scheme, it is necessary for the DCO to include a range of compulsory acquisition-related powers (see Chapter 4 of this Statement of Reasons).

#### *Land and rights over land vital to delivery of the Scheme*

- 11.1.2 Without the powers to acquire rights and interests in land compulsorily (required as explained on a plot by plot basis in Appendix A to this Statement of Reasons), there would be insufficient certainty about the Applicant's ability to deliver the Scheme within the necessary timescale. The Applicant therefore requires such powers to be included in the DCO, notwithstanding the Applicant's efforts (both historical and on-going) to acquire the necessary interests in land and rights over land by agreement (as explained by reference to landownerships in the Applicant's Compulsory Acquisition Negotiations Tracker (document reference 4.4)).
- 11.1.3 As the Negotiations Tracker makes clear, the Applicant has been in discussion for a considerable length of time with many of the landowners affected by proposals for the Scheme, with the continuing aim of negotiating to acquire by agreed private treaty the land and rights needed to construct, operate and maintain the Scheme.
- 11.1.4 The Applicant is also seeking powers to create new rights for the protection of the structure of the new bridge, where the Applicant has, to date, been unable to secure those rights by agreed private treaty.

#### *Need for flexibility*

- 11.1.5 Due to the nature of the design process and the timing of the consenting process, the Applicant requires a degree of flexibility as to where certain sections of the Scheme may be constructed within the defined limits of deviation which are provided for in the draft DCO.
- 11.1.6 Whilst the Applicant has already carried out survey and investigation works as part of the route selection process and in preparation for the preliminary design work, further investigative works and detailed design work will not be carried out until such time as development consent has been granted (should the application be successful).

- 11.1.7 Therefore, there is a need for a limited degree of flexibility within the Order limits, to ensure that the Scheme can be constructed without impediment, to ensure that the detailed design process is not unduly hampered, and ultimately, so that the development consent, once secured, is deliverable.
- 11.1.8 Accordingly, at this stage in the evolution of the Scheme, all the land included in the Order limits (and within the Order land) is considered to be necessary to enable the delivery of the Scheme. However, should it transpire that any part of the land within the Order limits is not required, for instance as a result of the detailed design process in due course or because a parcel of land has been acquired by agreement as a result of successful negotiations, in those circumstances compulsory acquisition powers would not be exercised in respect of such land because such exercise would not be necessary or justified.
- 11.1.9 The degree of flexibility described above would allow the appointed contractor to carry out the detailed design of the Scheme, taking into account further investigation of, and survey work on, land below the surface (subsoil), including land/subsoil beneath Lake Lothing.

*Need for a variety of land use powers*

- 11.1.10 The Applicant requires powers to acquire land and new rights, and to possess and use land temporarily, at surface level for the parts of the Scheme where new highway would be constructed at grade, or where existing highway would be improved.
- 11.1.11 The Applicant's requirements differ in relation to the parts of the Scheme which comprise the new bridge structure. For the bridge, the Applicant seeks powers to acquire compulsorily subsoil, to the extent necessary to construct, operate and maintain the new bridge structure.

*Protection zone in subsoil*

- 11.1.12 The Applicant therefore requires the subsoil within which the piles, pile caps and piers would be located, together with a 'layer' of additional subsoil around those structures, which is required to form a protective barrier around the structures.
- 11.1.13 This protection zone (surrounding the structures) is illustrated in Figures 11-1 and 11-2 below, where it is labelled as the 'protection zone'. As Figures 11-1 and 11-2 show, the protection zone would extend around the structures for a distance of 5 metres, (beyond the 3 metre limits of deviation applied to the reference design), with the exception of the area directly beneath the piles, where the protection zone would extend downwards for an unlimited distance.

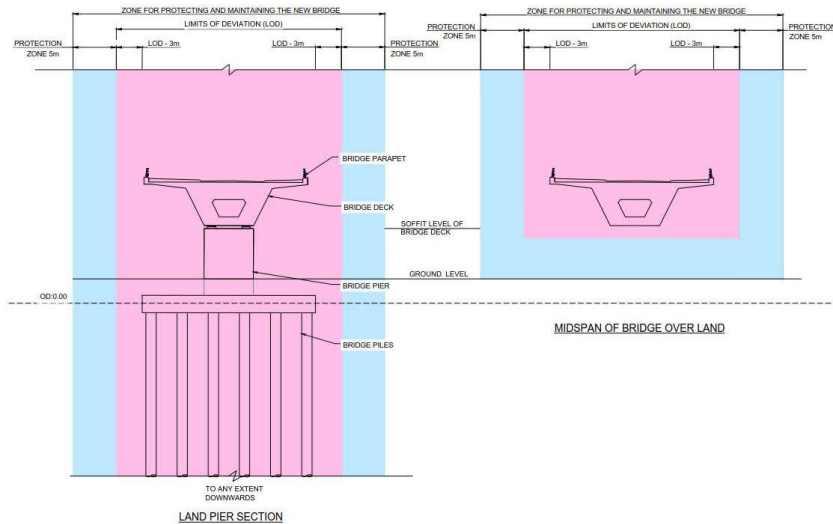
*Acquisition of airspace and new rights (including restrictive covenants) to protect and maintain the bridge structure*

- 11.1.14 Complementing the acquisition of subsoil, the Applicant also seeks a power to acquire airspace, to accommodate the deck of the new bridge. Below that

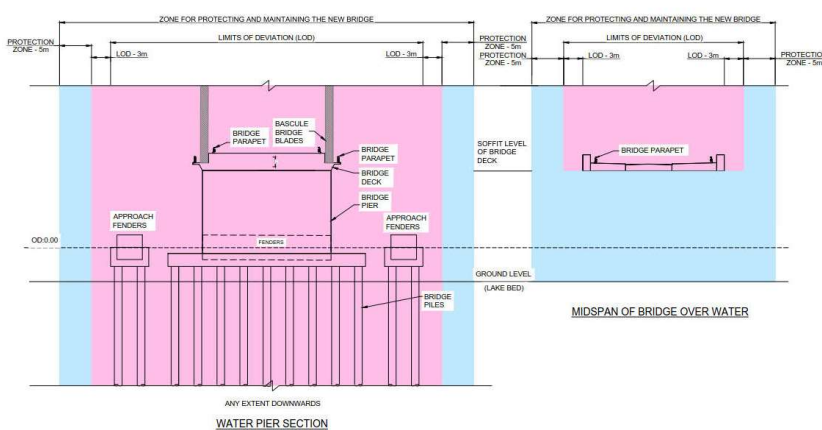
notional 'corridor' of airspace which is proposed to be acquired (and which is shown in Figure 11-3 below), the Applicant seeks powers to acquire compulsorily new rights over the airspace and land beneath the new bridge structure (and its protection zone), down to and including the surface of the land below, and the subsoil beneath that.

- 11.1.15 The purpose for which such new rights are sought is to enable the Applicant to impose restrictive covenants to secure protection of the new bridge structure from any potentially conflicting future activity (including development).
- 11.1.16 The restrictive covenants, which would be imposed upon implementation of the powers of compulsory acquisition (should such powers be included in the made DCO), would require consultation with the Applicant in respect of any third party proposals for development or other potentially conflicting activity within the relevant land (identified in Schedule 8 to the draft DCO), and referred to hereafter as the 'protection zone' (as indicated in Figures 11-1 to 11-3 below).

**Figure 11-1 – Cross-section showing the need for powers to acquire land (including subsoil and airspace) (represented by pink shading) and to acquire new rights (represented by blue shading) where the new bridge would be located on (dry) land**

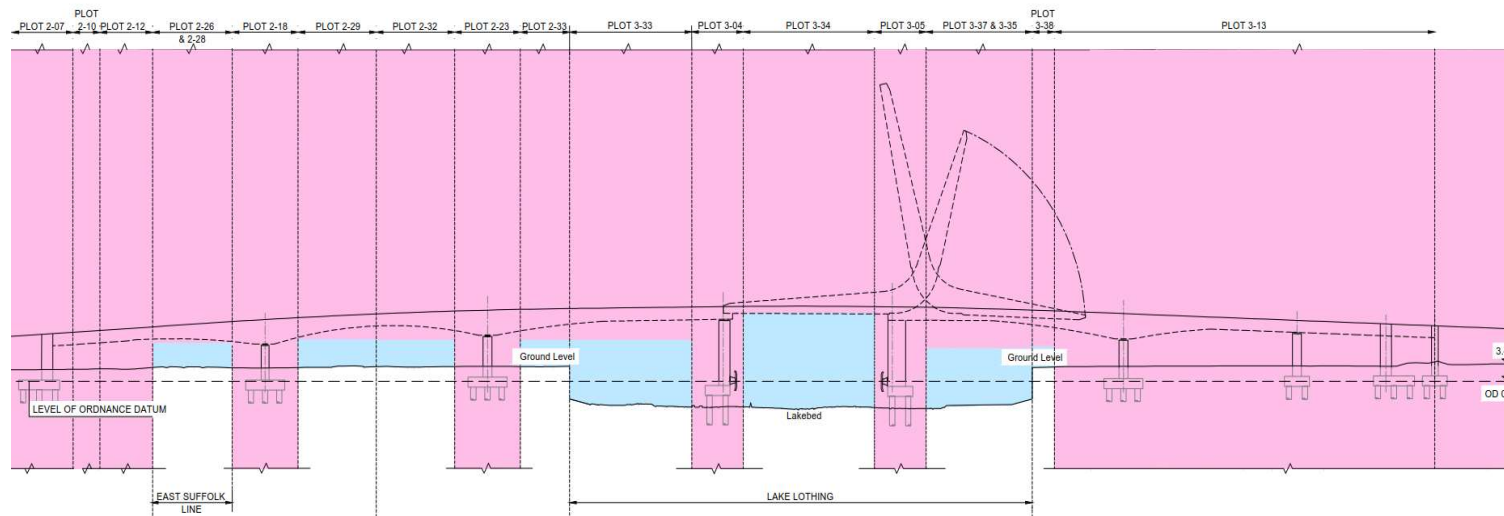


**Figure 11-2 – Cross-section showing the need for powers to acquire land (including subsoil and airspace) (represented by pink shading) and to acquire new rights (represented by blue shading) where the new bridge would be located in Lake Lothing**





**Figure 11-3** – Long section showing the need for powers to acquire land (including subsoil and airspace) and rights for the new bridge: pink shading represents compulsory acquisition of land (including, where necessary, airspace and/or subsoil); blue shading represents compulsory acquisition of rights over land (land includes water)



**Note:** This long section drawing should be read in conjunction with Schedule 8 to the draft DCO. In respect of plots hatched pink and blue on the Land Plans (document reference 2.3), Schedule 8 specifies, by reference to Ordnance Datum, the height at which pink land / acquisition of airspace begins, and below which blue land / new rights are sought. This drawing and Schedule 8 to the DCO should also be read in conjunction with article 26 of the DCO, which provides a power for the compulsory acquisition of airspace and subsoil.

**11.1.17** In addition to the powers to acquire land (subsoil, airspace and surface land) and new rights (including the right to impose restrictive covenants) to deliver the new crossing as outlined above, the Applicant also seeks powers to create and acquire new rights for the purpose of carrying out permanent diversions of statutory undertakers' apparatus, and powers of temporary possession to enable it to carry out temporary diversions and other authorised works (pursuant to Schedule 1 to the draft DCO) during the construction of the Scheme.

**11.1.18** In the context of the land requirements outlined above, it follows that some of the plots of land within the Order limits would be required for a number of different purposes at different levels in, on, under or above the surface of the land; and that, accordingly, the Applicant will ultimately require a combination of powers, to acquire land and new rights compulsorily, and to use and possess land temporarily.

## **11.2 Explanation of the specific purpose(s) for which each parcel of land is required**

**11.2.1** The specific purposes for which the Applicant requires each parcel of land within the Order limits is set out in **Appendix A** to this Statement of Reasons.

### *Scope and content of Appendix A*

**11.2.2** Appendix A is in tabular form. The first column of the table in Appendix A refers to the plot numbers used in the Land Plans (document reference 2.3) and the Book of Reference (document reference 4.3) to identify plots of land within the Order limits.

**11.2.3** The second column in the table identifies and describes, in summary terms, the actual purpose for which each plot of land is proposed to be acquired or used.

**11.2.4** The third column in the table states the relevant Work Number for the purpose of which the plot of land is required. The Work Number ('Work No.') is the identification number (e.g. Work No.1A; or Work No.3; or Work No.5) of a particular element of the proposed development which, if the DCO were made by the Secretary of State, would be authorised - such authorised development being described and numbered in Schedule 1 to the draft DCO (document reference 3.1).

**11.2.5** The table in Appendix A should therefore be read in conjunction with the Land Plans and Book of Reference for an understanding of the plot numbers, and with the Works Plans (document reference 2.4) and Schedule 1 to the draft DCO for an understanding of the Work Numbers and the works which comprise the authorised development.

## 12 Justification for seeking powers of compulsory acquisition and temporary possession

### 12.1 Introduction

#### *Use of compulsory acquisition powers must be justified*

- 12.1.1 This chapter sets out the conditions which must be met for compulsory acquisition powers to be granted under the Act and explains how the Scheme meets these conditions. It sets out the case for constructing, operating and maintaining the Scheme and explains that alternatives were considered as the Scheme which is the subject of the Application evolved. It also confirms the Applicant's proposals for ensuring fair compensation and certainty of funding.

### 12.2 Compulsory acquisition powers subject to the conditions in section 122

#### *The condition in section 122(2)*

- 12.2.1 Section 122 of the Planning Act 2008 provides that an order granting development consent (i.e. a DCO) may only authorise compulsory acquisition if the Secretary of State, in his capacity as decision-maker, is satisfied that two conditions have been met.
- 12.2.2 The first of those two conditions (which is set out in section 122(2)) requires one or more of the following three criteria to be met
- that the land is required for the development to which the development consent relates (section 122(2)(a));
  - that the land is required to facilitate, or is incidental to, that development (section 122(2)(b)); or
  - is replacement land which is to be given in exchange for the order land under section 131 or 132 (section 122(2)(c)).
- 12.2.3 The Applicant confirms that the purposes for which powers of compulsory acquisition are sought in the draft DCO do comply with section 122(2) of PA 2008 because the land which is required to be subject to powers of compulsory acquisition:
- is required for the development to which the development consent, if granted, would relate (s.122(2)(a)); or
  - is required to facilitate, or is incidental to that development (s.122(2)(b))
- 12.2.4 In terms of meeting the conditions in sections 122(2)(a) and 122(2)(b), it is clear from the Applicant's engagement with affected parties in relation to the Scheme (as documented in the Compulsory Acquisition Negotiations

Tracker (document reference 4.4), and from the information set out in this Statement of Reasons, that the Order land (as defined in the draft DCO) is required by the Applicant for the development to which the draft DCO relates (i.e. the Scheme), or is required by the Applicant to facilitate that development, or is required by the Applicant because it is incidental to that development.

- 12.2.5 Furthermore, Appendix A to this Statement of Reasons explains how and why each plot of land (as identified on the Land Plans and the Book of Reference) is required for the development, or is required to facilitate, or is incidental to that development.
- 12.2.6 Article 22(1) of the draft DCO acknowledges that section 122 of PA 2008 is the source of the compulsory acquisition powers sought: the terms of article 22 reflect the wording in sections 122(2)(a) and (b).
- 12.2.7 In the context of the Scheme, section 122(2)(c) does not apply, because no replacement land is proposed to be given in exchange for special category land under section 131 or 132 of PA 2008.
- 12.2.8 For the reasons noted above, the Applicant considers that the conditions in section 122(2) are met.
- The condition in section 122(3)*
- 12.2.9 The second condition (set out in section 122(3)) is that there is a compelling case in the public interest for the land to be acquired compulsorily.
- A compelling case in the public interest*
- 12.2.10 The Applicant has had regard to the requirement in section 122(3) of PA 2008 for there to be a compelling case in the public interest to justify the use of CA powers.
- Public benefits*
- 12.2.11 In this context, the Applicant considers that there is a real need for the project to be delivered (a detailed explanation of the need for the Scheme, is set out in the Applicant's Case for the Scheme (document reference 7.1)); and that it is in the public interest for the project to be delivered.
- 12.2.12 In terms of the requirement for the project to be in the public interest, the Applicant considers that a number of public benefits would arise from the scheme. These public benefits are closely aligned to the scheme objectives (as set out in the Case for the Scheme and the Outline Business Case submitted in support of the Scheme (document reference 7.4)) and to the reasons for which the Secretary of State granted a Section 35 Direction.
- 12.2.13 More specifically, as the Case for the Scheme sets out, the public benefits of the Scheme would flow from the fulfilment of the Scheme objectives, as explained below (where the scheme objectives are noted in bold italic text at the outset of each paragraph describing the related benefits):

- **To open up opportunities for regeneration and development in Lowestoft:** Access to regeneration sites in Lowestoft would be improved by the Scheme since the Scheme would reduce congestion as well as improve journey times and journey time reliability across the highway network, including the Strategic Road Network ("SRN"). This would benefit the sites identified in the Area Action Plan for development and sites included in the Great Yarmouth and Lowestoft Enterprise Zone. Overall, the infrastructure improvements would significantly enhance Lowestoft's growing role in the energy sector.
- **To provide the capacity needed to accommodate planned growth:** The transport modelling undertaken in relation to the Scheme demonstrates that with the Scheme in place, the additional road capacity that would be provided would accommodate planned growth. Furthermore, by reducing existing congestion on the network, future businesses and commuters would be able to reduce their travel time and benefit from improved route choice and general accessibility.
- **To reduce community severance between north and south Lowestoft:** By providing an additional crossing, the Scheme greatly improves connectivity for all modes of transport between communities on either side of Lake Lothing.
- **To reduce congestion and delay on the existing bridges over Lake Lothing:** Traffic modelling for the Scheme demonstrates that with the Scheme in place there would be a reduction in congestion as well as an improvement in journey times and journey time reliability across the highway network, including the SRN. This would deliver benefits to local business, including the Port, the local community and tourists and visitors to Lowestoft.
- **To reduce congestion in the town centre and improve accessibility:** Congestion in the town centre would be reduced as a result of the Scheme and there would be a significant improvement to the operation of the A47 Waveney Road / Station Square / Commercial Road signalised junction which would improve accessibility. Furthermore, improvements to the highway network in Lowestoft through implementation of the Scheme would also bring benefits for the town centre as the reassignment of traffic onto alternative routes would present opportunities to improve the town centre and public realm where traffic volumes were reduced.
- **To encourage more people to walk and cycle, and reduce conflict between cyclists, pedestrians and other traffic:** The Scheme would deliver significant journey time savings for pedestrians and cyclists making north-south journeys.
- **To improve bus journey times and reliability:** The key benefits of the Scheme - i.e. a reduction in congestion, improved journey times and

journey time reliability across the network – benefit all modes, including buses. As explained in Section 5 of the Case for the Scheme (document reference 7.1), improvements to the local road network would provide an opportunity for bus operators to provide additional or alternative bus routes in the future, to take advantage of the increased connectivity between north and south Lowestoft.

- **To reduce accidents:** A COBALT (COst and Benefit to Accidents – Light Touch) assessment has been undertaken in relation to the Scheme, and, with the Scheme in place, it shows a reduction in the number of accidents and the number of casualties over a 60-year period. The economic benefit of the accident savings has been calculated to be £21.930 million over the 60-year appraisal period.

**12.2.14** In addition to the public benefits which would flow directly from the achievement of the Scheme objectives, the Scheme is also expected to deliver other wider benefits, including, as noted in the Case for the Scheme (document reference 7.1, at paragraph 9.2.2):

- An iconic bridge design, developed with a ‘marine tech’ concept which references both Lowestoft’s past as well as its growing role in the energy sector.
- A high quality public realm, additional public space and landscaping.
- Benefits to the Port of Lowestoft, and its customers and supply chain, as a result of a reduction in congestion, improved journey times and journey time reliability, as recognised in the Ports Connectivity study which states that *“if our ports are to continue to thrive then the national, regional and local infrastructure supporting them has to be effective and efficient”*;

and at paragraph 7.9.7, the Case for the Scheme refers to the Transport Assessment (document reference 7.2), which explains that:

- Where benefits arise from the reduced journey times (forecast in connection with the Scheme objective of reducing congestion and delay), such benefits would, in turn, have a beneficial effect on businesses and local residents, boosting the local economy and achieving the aims and objectives of the Scheme.

#### *Private losses*

**12.2.15** In parallel with considering the public benefits to which the Scheme would give rise, the Applicant has also considered the private loss that those affected by powers of compulsory acquisition would or might suffer, in terms of:

- being dispossessed of their land through the Applicant’s exercise of powers of compulsory acquisition;

- the extinguishment of rights over land which was subject to powers of compulsory acquisition;
- the potential restriction on land use through the imposition of restrictive covenants to protect and maintain the Scheme once constructed;
- temporary (though possibly long-term) displacement from land subject to powers of temporary possession.

12.2.16 Chapter 15 (Private Assets) of the ES sets out detailed consideration of the impacts of the Scheme where those impacts amount to private losses.

*Balancing public benefits and private losses*

12.2.17 Having considered the nature and extent of those private losses (as set out in the ES), the Applicant considers that such private losses may be fairly and appropriately compensated through the payment of statutory compensation under the Compensation Code; the Applicant notes that section 125 of the Planning Act 2008 applies the Compulsory Purchase Act 1965 to the draft DCO, which makes provision for the payment of such compensation.

12.2.18 Therefore, having weighed such private losses against the significant public benefits which the scheme would bring, the Applicant is of the view that the public benefits outweigh the private losses, and that accordingly, there is a compelling case in the public interest which would justify the proposed use of powers of compulsory acquisition to ensure delivery of the Scheme in a timely manner.

12.2.19 In light of this, the Applicant considers that there is a compelling case in the public interest for the construction, operation and maintenance of the Scheme, which would justify the compulsory acquisition of land identified in the draft DCO and that as a result, the condition in section 122(3) is met.

### 12.3 Matters of which the Secretary of State must be satisfied

*Compliance with the requirements in DCLG Guidance*

12.3.1 The Department for Communities and Local Government has issued guidance on powers of compulsory acquisition, as follows:

- *Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land*, issued in September 2013 ("the 2013 DCLG guidance"); and
- *Guidance on Compulsory Purchase Process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion*, issued in October 2015 ("the 2015 DCLG Guidance").

12.3.2 Both the 2013 DCLG Guidance and the 2015 DCLG Guidance set out matters on which the Secretary of State must be satisfied, before authorising

the use of powers of compulsory acquisition. Those matters are identified in the paragraphs which follow.

*Applicants should seek to acquire land by negotiation wherever practicable*

- 12.3.3 The 2013 DCLG Guidance (at paragraph 25) and the 2015 DCLG Guidance (at paragraph 2) both declare that efforts ("*reasonable steps*"<sup>13</sup>) should be made to acquire land by negotiation and agreement wherever practicable and that as a general rule, authority to acquire land compulsorily should only be sought if attempts to acquire by agreement fail. The concept of compulsory acquisition as a tool of last resort prevails.
- 12.3.4 However, both the 2013 DCLG Guidance (at paragraph 25) and the 2015 DCLG Guidance (at paragraph 2) acknowledge that it may not always be practicable to acquire land by agreement.
- 12.3.5 The 2013 DCLG Guidance advocates that, "*Where proposals would entail the compulsory acquisition of may separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land*" and that, "*Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset*".
- 12.3.6 The 2013 DCLG Guidance expands on this (at paragraph 26), advising that, "*Applicants should consider at what point the land they are seeking to acquire will be needed and, as a contingency measure, should plan for compulsory acquisition at the same time as conducting negotiations.*"
- 12.3.7 In accordance with this guidance, the Applicant is seeking to acquire by agreement land and rights over land for the purposes of the Scheme, and will continue to seek such acquisitions as the Application for the DCO is progressed.
- 12.3.8 To date, the Applicant has engaged in extensive consultation and negotiations (as explained in the Compulsory Acquisition Negotiations Tracker (document reference 4.4) with all owners and occupiers of the land required for the Scheme, in order to try to avoid the need for compulsory acquisition wherever possible.
- 12.3.9 The Applicant's approach combines genuine attempts to acquire land by agreement with the planning, in parallel, of a compulsory acquisition timetable and with taking action to initiate formal compulsory acquisition procedures, as a contingency measure. The objective of this approach is to enable the delivery of the Scheme within a reasonable timescale and within the allocated budget, in the event that this cannot be achieved through acquisition by agreement. This approach is in accordance with the spirit and terms of the DCLG Guidance.

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<sup>13</sup> 2015 DCLG Guidance (at paragraph 2)



*A clear idea of how the land is to be used*

- 12.3.10 The 2013 DCLG Guidance (at paragraph 9) provides that the Applicant must have *“a clear idea of how they intend to use the land”* which they are proposing to acquire.
- 12.3.11 The Applicant has a clear idea of how the land included within the Order is intended to be used. This is demonstrated by the form and content of Appendix A to this Statement of Reasons. Appendix A sets out (in tabular form) the particular purposes for which each plot of land is proposed to be compulsorily acquired or used temporarily, together with a cross-reference to the relevant numbered authorised work as identified in Schedule 1 (authorised development) to the draft DCO.

*A reasonable prospect of the requisite funds for acquisition becoming available*

- 12.3.12 The 2013 DCLG Guidance (at paragraph 9) also requires the Applicant to *“demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available”*. In the absence of such evidence, the guidance comments, *“it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122”* (see above in relation to the conditions in section 122).
- 12.3.13 Through the preparation and submission of its Funding Statement (document reference 4.2), the Applicant has sought to demonstrate that there is a reasonable prospect that adequate funding will be available, both to assemble the land required for the Scheme, and to deliver the Scheme (in terms of its construction, operation and maintenance) on that land.
- 12.3.14 In the Funding Statement, the Applicant also seeks to explain that the necessary funding would be made available within a reasonable timescale and that no impediments to implementation of the Scheme are anticipated to arise as a result of the funding position in relation to the Scheme.
- 12.3.15 In terms of timescales, the Applicant is aware that the need for advance purchases of land might arise through early acquisition by agreement (as has already happened, in the case of a large parcel of land on the north side of Lake Lothing) or through the service of a valid blight notice (although to date, no valid blight notices have been submitted to the Applicant).

*Legitimate purposes justifying interference with the human rights of those affected*

- 12.3.16 The 2013 DCLG Guidance (at paragraph 10) requires the Applicant to persuade the Secretary of State that *“the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected”*. In addition, the guidance requires the Applicant to have regard to the provisions of Article 1 of the First Protocol to the European

Convention on Human Rights and, in the case of the acquisition of a dwelling, Article 8 of the Convention.

**12.3.17** The Applicant confirms that, in applying for development consent for the Scheme in accordance with the procedure provided for by the Planning Act 2008, it is acting lawfully. If development consent were to be granted by the Secretary of State, the delivery of the Scheme pursuant to that consent would be lawful.

**12.3.18** The Applicant considers that the purposes for which it seeks compulsory acquisition powers do justify the interference with the human rights of those affected that would inevitably arise from the exercise of those compulsory acquisition powers, should they be authorised.

**12.3.19** The Applicant has had regard to the provisions of Article 1 of the First Protocol to, and Article 8 of the European Convention on Human Rights and considers that the purposes for which it would be interfering with those Convention rights are legitimate and do justify that interference. The manner in which the Applicant has considered these issues is set out in Chapter 10 to this Statement of Reasons.

*Order land is needed for development and is no more than is reasonably required*

**12.3.20** The 2013 DCLG Guidance (at paragraph 11) makes it clear that in order for the conditions in section 122(2) to be met, an applicant for development consent should be able to demonstrate to the satisfaction of the Secretary of State that:

- “the land in question is needed for the development for which consent is sought”, and
- “the land to be acquired is no more than is reasonably required for the purposes of the development”.

**12.3.21** The Applicant has included within the Order limits:

- the land that it needs in order to be able to deliver the Scheme;
- no more land than is reasonably required for the purposes of delivering the Scheme.

**12.3.22** Accordingly, the Applicant considers that its proposed use of land, for the purpose of delivering the Scheme, is proportionate and justifiable.

**12.3.23** The 2013 DCLG Guidance also explains (at paragraph 11) that for the criteria in section 122(2)(b) to be met, the Secretary of State would need to be satisfied, for example, that the development “*could only be delivered to a satisfactory standard if the land in question were to be compulsorily acquired*” (assuming it could not be acquired by agreement), and that “*the land to be taken is no more than is reasonably necessary for that purpose, and that it is proportionate*”.

12.3.24 This is indeed the case. Without control of the land identified in the Order, it would not be possible for the Applicant to deliver the Scheme, either to a satisfactory standard, or at all. On that basis, powers of acquisition are vital to the delivery of the Scheme; and, if the Scheme is to be brought forward within the optimum timeframe, then its delivery will ultimately be dependent upon the Applicant's ability to deploy powers of compulsory acquisition.

*Compelling case in the public interest*

12.3.25 The 2013 DCLG Guidance (at paragraph 12) notes that section 122 requires the Secretary of State to be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily.

12.3.26 Evidence of a compelling case will (per paragraph 12 of the 2013 DCLG Guidance) demonstrate that *"the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired"*.

12.3.27 Paragraph 12 reiterates the principle that *"land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss"*.

12.3.28 The Applicant has considered the nature and extent of the public benefits and the private losses that would flow from the implementation of the Scheme and on balance has concluded that the public benefits would outweigh the private losses.

12.3.29 The Applicant's considerations on this point are set out in more detail in Chapter 10 (Human Rights) of this Statement of Reasons.

*Alternatives to compulsory acquisition*

12.3.30 The 2013 DCLG Guidance indicates (at paragraph 8) that *"the applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored."*

12.3.31 The following paragraphs explain the Applicant's approach to alternatives in the context of its request for powers of compulsory acquisition to enable delivery of the Scheme.

## 12.4 Options Assessment

12.4.1 Prior to the Applicant's selection of a solution comprising a lifting bridge crossing located centrally within Lake Lothing, an options assessment process was carried out which considered a broad range of crossing options. The options considered by the Applicant are set out in detail in the Design Report (document reference 7.5), the Environmental Statement (document reference 6.1) and in the Case for the Scheme (document reference 7.1); in outline, however, they included bridges (floating; fixed span; and

lifting/opening options) and tunnels; and eastern, central and western location points within the Lake, as well as non-crossing alternatives, such as junction improvements, 'smarter choices' (reducing reliance on private car travel and encouraging modal shift) and road-pricing options.

- 12.4.2 In addition to the options assessment, a detailed assessment process was undertaken to identify the land and rights needed to deliver the Scheme. A range of engineering and design alternatives were considered, in the context of the constraints affecting those alternatives (as explained in detail in the Case for the Scheme and in the Design Report). Engagement with landowners and occupiers was ongoing and influenced the selection process; a synopsis of that engagement is included in the Applicant's Compulsory Acquisition Negotiations Tracker.
- 12.4.3 Through undertaking the options assessment process, the Applicant ascertained that none of the potential solutions could be delivered without the need for land currently outside the Applicant's control. Notwithstanding its efforts to acquire the necessary land through negotiated private treaty and agreement, the Applicant has accepted that in order to ensure delivery, within a reasonable timescale, of the Scheme and of the public benefits which would flow from the Scheme's delivery, the application for development consent will need to include a request for the authorisation of powers of compulsory acquisition.
- 12.4.4 In terms of land-take, the need for a reasonable degree of flexibility (to ensure a consent capable of implementation) was taken into account by the Applicant, along with the need to reduce the amount of land required for the Scheme as far as possible, in order to minimise its impact on surrounding land uses (e.g. by local businesses and residents) – as such, the Order limits have been drawn as tightly as possible, and with detailed consideration of the layout, boundaries and ownership of land, to avoid any unnecessary interference with or extinguishment of third party rights. The Applicant has sought to balance these two objectives in a manner that is proportionate and justifiable.
- 12.4.5 In order to build further consideration of alternatives – in terms of alternatives to compulsory acquisition – into the process for implementing the Scheme, the draft DCO has been drafted in terms which would enable the Applicant to exercise a 'lesser' power, where such lesser power (for instance a power to acquire rights over land or to use land temporarily) was deemed appropriate as an alternative to compulsory acquisition (see paragraph 4.2.7 above).

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## 12.5 Conclusion

- 12.5.1** Having had regard to all of the considerations set out above, the Applicant is satisfied that its proposed use of compulsory acquisition and temporary possession powers is legitimate, necessary and proportionate and that there is a compelling case in the public interest for the granting and subsequent exercise of powers of compulsory acquisition in furtherance of the Scheme.
- 12.5.2** Furthermore, as the Applicant's negotiations with landowners and occupiers are ongoing and will be continued throughout the process of seeking development consent for the Scheme, the Applicant's intention is that powers of compulsory acquisition would only be used in circumstances where acquisition by agreement proved impossible. As such, compulsory acquisition would, in the spirit of the 2013 DCLG Guidance, be a tool of last resort.
- 12.5.3** In conclusion, the Applicant considers that its application for powers of compulsory acquisition, as included in the Application, meets the conditions set by sections 122(2) and 122(3) of the Act and that there is compelling case in the public interest for powers of compulsory acquisition to be included in the development consent order, in the event that development consent for the Scheme is granted.

## Appendix A – Details of the purpose for which compulsory acquisition and temporary possession powers are sought

Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
1-01	Acquisition of land for the improvement of Peto Way in connection with provision of the northern approach to the new A12 Lake Lothing Third Crossing and to regularise the title position in respect of highway land	1A, 3
1-02	Acquisition of land for the improvement of Peto Way and the provision of the northern approach to the new A12 Lake Lothing Third Crossing	3
1-03	Acquisition of land for the improvement of Peto Way in connection with provision of the northern approach to the new A12 Lake Lothing Third Crossing and to regularise the title position in respect of highway land	3
1-04	Acquisition of land for the improvement of Peto Way in connection with provision of the northern approach to the new A12 Lake Lothing Third Crossing	1A
1-05	<i>Plot number not used</i>	-
1-06	Acquisition of land for the construction, operation and maintenance of a new approach road to the new A12 Lake Lothing Third Crossing including a new northern roundabout and associated landscaping and drainage	1A
1-07	Acquisition of land for the improvement of Peto Way in connection with provision of the northern approach to the new A12 Lake Lothing Third Crossing and to regularise the title position in respect of highway land	3
2-01	Acquisition of land for the construction, operation and maintenance of a new approach road to the new A12 Lake Lothing Third Crossing and new northern roundabout and associated landscaping and drainage	1A, 3
2-02	Acquisition of land for the improvement of Rotterdam	3

Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
	Road and the Peto Way/Rotterdam Road/Denmark Way roundabout, to facilitate the integration of the new A12 Lake Lothing Third Crossing and the new northern roundabout into the existing highway network	
2-03	Acquisition of land for the improvement of the Peto Way/Rotterdam Road/Denmark Way roundabout, to facilitate the integration of the new A12 Lake Lothing Third Crossing and the new northern roundabout into the existing highway network	3
2-04	Acquisition of land for the improvement of the Peto Way/Rotterdam Road/Denmark Way roundabout, to facilitate the integration of the new A12 Lake Lothing Third Crossing and the new northern roundabout into the existing highway network	3
2-05	Acquisition of land for the improvement of Denmark Road and the Peto Way/Rotterdam Road/Denmark Way roundabout, to facilitate the integration of the new A12 Lake Lothing Third Crossing and the new northern roundabout into the existing highway network, <b>and for the provision of new private means of access</b>	3
2-06	<i>Plot number not used</i>	-
2-07	Acquisition of land for the construction, operation and maintenance of a new approach road to the new A12 Lake Lothing Third Crossing including a new northern roundabout and associated landscaping and drainage, <b>and for the provision of new private means of access</b>	1A
2-08	Acquisition of land for the construction, operation and maintenance of a new approach road to the new A12 Lake Lothing Third Crossing including a new northern roundabout and associated landscaping and drainage	1A, 3
2-09	Acquisition of land for the construction, operation and maintenance of a new approach road to the new A12 Lake Lothing Third Crossing including a new northern roundabout and associated landscaping and drainage	1A
2-10	Acquisition of land for the construction, operation and maintenance of a new approach road to the new A12	1A

**Commented [HS1]:** Amendment relating to NMC5

**Commented [HS2]:** Amendment relating to NMC5

Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
	Lake Lothing Third Crossing including a new northern roundabout and associated landscaping and drainage, <b>and for the provision of new private means of access</b>	
2-11	<i>Plot number not used</i>	-
2-12	Acquisition of land for the construction, operation and maintenance of a new approach road to the new A12 Lake Lothing Third Crossing including a new northern roundabout and associated landscaping and drainage, <b>and for the provision of new private means of access</b>	1A, 1B
2-13	Temporary possession of land to provide working space for the construction of the new A12 Lake Lothing Third Crossing	1
2-14	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new A12 Lake Lothing Third Crossing	1B
2-15	Temporary possession of land to provide working space for the construction of the new A12 Lake Lothing Third Crossing	1B
2-16	Temporary possession of land to provide working space for the construction of the new A12 Lake Lothing Third Crossing	1B
2-17	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new A12 Lake Lothing Third Crossing	1B
2-18	Acquisition of land for the construction, operation and maintenance of the new A12 Lake Lothing Third Crossing	1B
2-19	Temporary possession of land to provide working space for the construction of the new A12 Lake Lothing Third Crossing	1B, 1C
2-20	Temporary possession of land to provide working space for the construction of the new A12 Lake Lothing Third Crossing	1B, 1C

**Commented [HS3]:** Amendment relating to NMC5

**Commented [HS4]:** Amendment relating to NMC5



Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
2-21	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new A12 Lake Lothing Third Crossing	1C
2-22	Temporary possession of land to provide working space for the construction of the new bridge and the new bridge approaches	1B, 1C
2-23	Acquisition of land for the construction, operation and maintenance of the new A12 Lake Lothing Third Crossing	1C
2-24	<i>Plot number not used</i>	-
2-25	Acquisition of land for the construction, operation and maintenance of the new A12 Lake Lothing Third Crossing	1A
2-26	Acquisition of airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new A12 Lake Lothing Third Crossing	1B
2-27	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new A12 Lake Lothing Third Crossing	1B
2-28	Acquisition of airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new A12 Lake Lothing Third Crossing	1B
2-29	Acquisition of airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new A12 Lake Lothing Third Crossing	1B
2-30	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new A12 Lake Lothing Third Crossing	1B
2-31	Temporary possession of land to provide working space for the construction of the new A12 Lake Lothing Third	1B, 1C

Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
	Crossing	
2-32	Acquisition of airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new A12 Lake Lothing Third Crossing	1C
2-33	Acquisition of airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new A12 Lake Lothing Third Crossing	1C
2-34	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new bridge, including a right of access along Commercial Road (from the point where it ceases to be public highway) to the location of the new bridge	1B, 1C
3-01	Temporary possession of land including lake bed to provide working space for the construction of the new bridge A12 Lake Lothing Third Crossing	1D
3-02	Temporary possession of land including lake bed to provide working space for the construction of the new bridge A12 Lake Lothing Third Crossing	1D
3-03	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new A12 Lake Lothing Third Crossing	1D
3-04	Acquisition of land for the construction, operation and maintenance of the new A12 Lake Lothing Third Crossing	1D
3-05	Acquisition of land for the construction, operation and maintenance of the new A12 Lake Lothing Third Crossing	1D
3-06	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new A12 Lake Lothing Third Crossing	1D

Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
3-07	Acquisition of land for the construction, operation and maintenance of the new A12 Lake Lothing Third Crossing	1D
3-08	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new A12 Lake Lothing Third Crossing	1D
3-09	<i>Plot number not used</i>	-
3-10	Temporary possession of land to provide working space for the construction of the new bridge and the new mooring	1D
3-11	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new A12 Lake Lothing Third Crossing	1D
3-12	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new A12 Lake Lothing Third Crossing	1E, 6
3-13	Acquisition of land for the construction, operation and maintenance of the new A12 Lake Lothing Third Crossing, including the new southern approach, and a new control tower building, together with a new access road <u>and private means of access</u> to the new control tower building <u>and to premises located to the east of the new southern approach</u> , and the associated improvement of the existing Riverside Road	1E, 5, 6
3-14	Temporary possession of land to provide working space, including a construction compound, for the construction of the new A12 Lake Lothing Third Crossing	All works
3-15	Temporary possession of land to provide working space, including a construction compound, for the construction of the new A12 Lake Lothing Third Crossing	All works
3-16	Temporary possession of land to provide working space, including a construction compound, for the construction of	All works

Commented [HS5]: Amendment relating to NMC6

Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
	the new A12 Lake Lothing Third Crossing	
3-17	Acquisition of land to construct, use and maintain the new access road between Waveney Drive and the improved Riverside Road	5
3-18	Acquisition of land to construct, use and maintain the new access road between Waveney Drive and the improved Riverside Road	5
3-19	<i>Plot number not used</i>	-
3-20	Acquisition of land to construct, use and maintain the new access road between Waveney Drive and the improved Riverside Road	5
3-21	Temporary possession of land to provide working space for the construction of the new extension to Canning Road and a new access to premises	4
3-22	Temporary possession of land to provide working space for the construction of the new extension to Canning Road and a new access to premises	4
3-23	Acquisition of land for the construction, operation and maintenance of the new extension to Canning Road and a new access to premises	4
3-24	Acquisition of land for the construction, operation and maintenance of the new extension to Canning Road and a new access to premises	4
3-25	Acquisition of land for the construction, operation and maintenance of the new extension to Canning Road and a new access to premises	4
3-26	<i>Plot number not used</i>	-
3-27	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach	1E, 5
3-28	Acquisition of land for the construction, operation and maintenance of the new A12 Lake Lothing Third Crossing,	1E, 5, 6

Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
	including the new southern approach, and a new control tower building, together with a new access road to the new control tower building, and the associated improvement of the existing Riverside Road	
3-29	Acquisition of new rights (including the imposition of restrictive covenants) to construct, use, access, maintain and protect the new A12 Lake Lothing Third Crossing, and for the diversion protection and maintenance of and access to statutory undertakers' apparatus, and for new <u>means of access to premises to the east of the new southern approach to the Lake Lothing Third Crossing</u>	1E, 5
3-30	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach	1E, 5
3-31	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach	1E
3-32	Acquisition of new rights (including the imposition of restrictive covenants) to construct, use, access, maintain and protect the new A12 Lake Lothing Third Crossing, and for the diversion protection and maintenance of and access to statutory undertakers' apparatus, and for new access to premises	1E
3-33	Acquisition of airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new A12 Lake Lothing Third Crossing	1D
3-34	Acquisition of airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new A12 Lake Lothing Third Crossing	1D
3-35	Acquisition of airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new A12 Lake Lothing Third Crossing	1D

Commented [HS6]: Amendment relating to NMC6

Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
3-36	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new A12 Lake Lothing Third Crossing	1D
3-37	Acquisition of airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new A12 Lake Lothing Third Crossing	1D
3-38	Acquisition of airspace for the construction and operation of the new bridge and new rights (including restrictive covenants) below, for the protection and maintenance of the new A12 Lake Lothing Third Crossing	1E
3-39	Acquisition of new rights (including the imposition of restrictive covenants) over land to construct, use, access, maintain and protect the new A12 Lake Lothing Third Crossing	1E
3-40	Acquisition of land to construct, use and maintain the new access road between Waveney Drive and the improved Riverside Road	5
3-41	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of providing and maintaining appropriate visibility across the new public highway	5
3-42	Temporary possession of land to provide working space for the construction of the new extension of Canning Road and improvements to the existing Riverside Road	4, 5
3-43	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach, together with new access to premises	1E, 4, 5
3-44	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach, <u>and for the improvement of the existing Canning Road, including provision of a new turning head</u>	1E, 4

**Commented [SH7]:** Amendment relating to NMC1

Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
3-45	Acquisition of new rights (including the imposition of restrictive covenants) required for the purpose of constructing, protecting, accessing and maintaining the new bridge southern approach	1E, 4
3-46	Acquisition of land for the improvement of the existing Canning Road, <b>including provision of a new turning head</b>	4
3-47	Acquisition of new rights (including the imposition of restrictive covenants) required for the purpose of constructing, protecting, accessing and maintaining the new bridge southern approach	1E, 4
3-48	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach	1E, 4
3-49	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach	1E
3-50	Acquisition of new rights (including the imposition of restrictive covenants) to construct, use, access, maintain and protect the new A12 Lake Lothing Third Crossing, and for the diversion protection and maintenance of and access to statutory undertakers' apparatus, and for new access to premises	1E
3-51	Acquisition of land for the construction, operation and maintenance of the new A12 Lake Lothing Third Crossing	1D
3-52	Acquisition of land for the construction, operation and maintenance of a new mooring in connection with the new A12 Lake Lothing Third Crossing	7
3-53	Acquisition of land for the construction, operation and maintenance of a new mooring in connection with the new A12 Lake Lothing Third Crossing	7
3-54	Temporary possession of land to provide working space for the construction of the new A12 Lake Lothing Third Crossing and the new mooring	1, 7

**Commented [SH8]:** Amendment relating to NMC1

Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
3-55	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new A12 Lake Lothing Third Crossing	1D
3-56	Temporary possession of land to provide working space for the construction of the new A12 Lake Lothing Third Crossing, and to provide temporary additional operational space for adjoining business premises during the construction period	1E
3-57	Temporary possession of land to provide working space for the construction of the new A12 Lake Lothing Third Crossing, and to provide temporary additional operational space for adjoining business premises during the construction period	1E
3-58	Acquisition of land to provide additional operational space for adjoining business premises	1E
3-59	Temporary possession of land to provide working space for the construction of the new access road between Waveney Drive and the improved Riverside Road	5
4-01	Temporary possession of land to provide working space for the construction of the new access road between Waveney Drive and the improved Riverside Road	5
4-02	Acquisition of land to construct, use and maintain the new access road between Waveney Drive and the improved Riverside Road	5
4-03	Acquisition of land to facilitate the integration of the new access road between Riverside Road and Waveney Drive, with Waveney Drive, including the improvement of Waveney Drive	5
4-04	Temporary possession of land to provide working space, including (in part) a construction compound, for the construction of the new access road between Waveney Drive and the improved Riverside Road	1, 5
4-05	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of providing and	5



Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
	maintaining appropriate visibility across the new public highway	
4-06	Acquisition of land for the improvement of the existing Canning Road	4
4-07	Acquisition of new rights (including restrictive covenants) required in connection with the diversion, protection and maintenance of and access to statutory undertakers' apparatus.	3, 4, 5
4-08	Acquisition of new rights (including restrictive covenants) required in connection with the diversion, protection and maintenance of and access to statutory undertakers' apparatus	3, 4, 5
4-09	Acquisition of new rights (including restrictive covenants) required in connection with the diversion, protection and maintenance of and access to statutory undertakers' apparatus	3, 4, 5
5-01	Acquisition of land for the improvement of the existing Canning Road	4
5-02	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout	1E, 2
5-03	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new bridge southern approach and in connection with the diversion, protection and maintenance of and access to statutory undertakers' apparatus.	1E
5-04	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach	1E
5-05	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout	1E, 2

Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
5-06	Temporary possession of land to provide working space for the construction of the new access road off Riverside Road	1E, 2
5-07	<i>Plot number not used</i>	-
5-08	<i>Plot number not used</i>	-
5-09	<i>Plot number not used</i>	-
5-10	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new bridge southern approach and in connection with the diversion, protection and maintenance of and access to statutory undertakers' apparatus.	1E
5-11	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach	1E
5-12	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout	1E
5-13	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout	1E, 2
5-14	Acquisition of new rights (including the imposition of restrictive covenants) for the diversion, protection and maintenance of and access to statutory undertakers' apparatus and the construction of a new access	2
5-15	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of providing a private means of access to land adjacent to the new bridge	2
5-16	Acquisition of land for the improvement of Tom Crisp Way, Horn Hill and Waveney Drive and for the provision of the new A12 Lake Lothing Third Crossing, including its	2

Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
	new southern approach and new southern roundabout	
5-17	Acquisition of land for the improvement of Riverside Road and Waveney Drive, and for the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout, and the provision of access to premises	2
5-18	Acquisition of land for the improvement of Riverside Road and Waveney Drive, and for the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout, and the provision of access to premises	2
5-19	<i>Plot number not used</i>	-
5-20	Acquisition of land for the improvement of Riverside Road and Waveney Drive, and for the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout	2
5-21	<i>Plot number not used</i>	-
5-22	Acquisition of land for the improvement of Riverside Road and Waveney Drive, and for the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout, and the provision of access to premises	2
5-23	<i>Plot number not used</i>	-
5-24	Acquisition of land for the improvement of Riverside Road and Waveney Drive, and for the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout, and the provision of access to premises	2
5-25	Acquisition of land for the improvement of Waveney Drive and Durban Road, and for the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout, the provision of access to premises and the construction of a new turning head	2

Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
5-26	Acquisition of land for the improvement of Waveney Drive and Durban Road, and for the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout, and the construction of a new turning head	2
5-27	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new bridge southern approach, for the provision of access, and in connection with the diversion, protection and maintenance of, and access to statutory undertakers' apparatus	1E, 4
5-28	Temporary possession of land to provide working space for the construction of the new access road off Riverside Road	1E
5-29	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach	1E
5-30	Acquisition of land for the improvement of Riverside Road and the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout	1E
5-31	Acquisition of new rights (including the imposition of restrictive covenants) for the purpose of constructing, protecting, accessing and maintaining the new bridge southern approach and in connection with the diversion, protection and maintenance of and access to statutory undertakers' apparatus	1E, 2
5-32	Acquisition of land for the improvement of Riverside Road and Waveney Drive, and for the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout	1E, 2
5-33	Acquisition of land for the improvement of Riverside Road and Waveney Drive, and for the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout	2

Plot Number(s)	Purpose(s) for which plot of land is required	Work Number(s)
5-34	Acquisition of land for the improvement of Riverside Road and Waveney Drive, and for the provision of the new A12 Lake Lothing Third Crossing, including its new southern approach and new southern roundabout	2
5-35	Temporary possession of land to provide working space for the improvement of Durban Road and Waveney Drive and the construction of the new southern roundabout.	2
5-36	Temporary possession of land to provide working space for the improvement of Durban Road and Waveney Drive and the construction of the new southern roundabout.	2
5-37	Acquisition of land to provide additional operational space for adjoining business premises	1E, 2

## Appendix B – List of statutory undertakers and other similar bodies having or possibly having a right to keep equipment on, in or over land within the Order limits

Anglian Water Services Limited
Associated British Ports
British Gas Services Limited
Cadent Gas Limited
Essex and Suffolk Water Limited (owned by Northumbrian Water Limited)
FirstGroup Plc
Homes and Communities Agency
Mobile Broadband Network Limited
National Grid Gas Plc
Network Rail Infrastructure Ltd
Openreach (British Telecommunications)
Royal Mail Group Limited
UK Power Networks Limited
Virgin Media Limited

## Appendix C – Explanations relating to alternative routes for stopped up streets, and private means of access to be stopped up

### APPENDIX C

#### EXPLANATIONS RELATING TO ALTERNATIVE ROUTES FOR STOPPED UP STREETS AND PRIVATE MEANS OF ACCESS TO BE STOPPED UP

**C1** General description of the streets and private means of access to be stopped up and of substitute and replacement streets, new streets and new means of access.

**C1.1** The general effect of the scheme upon streets and private means of access, and of substitute proposals, is as set out below for each Sheet of the Rights of Way and Access Plans (i.e. Sheets 1 and 2).

#### C2 Sheet 1 of the Rights of Way and Access Plans

##### HIGHWAYS TO BE IMPROVED

**C2.1** A length of existing highway forming part of the existing C970 Peto Way (Work No. 3 (part)) would be improved for a length of approximately 362 metres in a generally westerly direction from the Rotterdam Road/Denmark Road roundabout. This would form part of the northern approach to the new bridge crossing.

**C2.2** A length of existing highway forming part of Denmark Road (Work No. 3 (part)) would be improved for a length of approximately 162 metres east from the Rotterdam Road/Denmark Road roundabout. The improvement to Denmark Road would also include the improvement to the existing Rotterdam Road/Denmark Road roundabout. This would form part of the northern approach to the new bridge crossing.

##### NEW HIGHWAYS TO BE PROVIDED

**C2.3** A length of new highway proposed to be known as Denmark Road (Reference A) (Work No. 1A (part)) would be provided from the new bridge northern roundabout (Work No. 1A (part)) to the improved Peto Way (Work No. 3 (part)), for a distance of approximately 25 metres. This would form part of the northern approach to the new bridge crossing

**C2.4** A length of new highway proposed to be known as the A12 Lake Lothing Third Crossing (Reference B, continued on Sheet 2) (Work Nos. 1A (part) (includes the new bridge northern roundabout), 1B (includes the new bridge northern approach), 1C (includes the new bridge northern approach ) and 1D (part) (includes the new bridge)) would be provided from a point on Peto Way approximately 140 metres west of the junction of Peto Way with Denmark Road/Rotterdam Road and continuing in a generally southerly direction to Waveney Drive (refer to section C3.7 below), for a

distance of approximately 315 metres. (The total length of new/improved highway to be known as the A12 Lake Lothing Third Crossing (between Peto Way and Waveney Drive, as shown on Sheets 1 and 2 of the Rights of Way and Access Plans) is approximately 432 metres).

#### **PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS WHICH ARE OTHERWISE TO BE PROVIDED**

**C2.5** Two new private means of access (References 1 and 2) would be provided to enable the Applicant to access land owned by Network Rail and ABP on the north side of Lake Lothing, for the purpose of maintaining the new bridge. Two new private means of access (References 1a and 1b) would provide Network Rail with a connection from its operational land on the north side of Lake Lothing to the public highway on Denmark Road, such access comprising:

- vehicular access from the public highway at Denmark Road from its land on the north side of Lake Lothing via land previously acquired by the Applicant between Denmark Road and the north side of Lake Lothing (for the purpose of providing a northern landing site for the Scheme) (Reference 1a); and
- vehicular access from the northern landing site to neighbouring land owned by Network Rail (Reference 1b).

**Commented [SH9]:** Amendment relating to NMC5

#### **PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED**

**C2.6** An existing (vehicular) access (Reference a) to land owned by Suffolk County Council, on the south side of Peto Way/Denmark Road, would be stopped up from its junction with the existing Rotterdam Road/Denmark Road roundabout for a distance of approximately 8m. As this access would no longer be required if the scheme was implemented, no substitute access proposal is considered necessary.

### **C3 Sheet 2 of the Rights of Way and Access Plans**

#### **HIGHWAYS TO BE IMPROVED**

**C3.1** A length of existing highway forming part of Riverside Road would be improved (Work No. 1E) for a length of approximately 198 metres in a northerly direction from the Riverside Road/Waveney Drive junction. This length of existing highway would be reclassified as the A12.

**C3.2** A length of existing highway forming part of the B1531 Waveney Drive (Work No. 2 (part)) would be improved for a length of approximately 100 metres in a westerly direction from the existing Riverside Road/Waveney Drive junction.



**C3.3** A length of existing highway forming part of the B1531 Waveney Drive (Work No. 5 (part)) would be improved for a length of approximately 176 metres in an easterly direction from Waveney Crescent West.

**C3.4** A length of existing highway forming part of the B1531 Waveney Drive (Work No. 2 (part)) would be improved for a length of approximately 122 metres in an easterly direction from the Riverside Road/Waveney Drive junction to Tom Crisp Way roundabout. This length of existing highway would be reclassified as the A12.

**C3.5** A length of existing highway known as Canning Road (Work No. 4 (part)) would be improved for a length of approximately 96 metres in a westerly direction from Riverside Road, with the addition of a new turning head at its easternmost end.

**Commented [SH10]:** Amendment relating to NMC1

**C3.6** A length of existing highway forming part of Riverside Road (Work No. 5 (part)) would be improved for a length of approximately 108 metres in an easterly direction from the existing access to Riverside, to pass below the A12 Lake Lothing Third Crossing to provide access to the premises occupied by Nexen.

## NEW HIGHWAYS TO BE PROVIDED

**C3.7** A length of new highway proposed to be known as the A12 Lake Lothing Third Crossing (Reference B, continued from Sheet 1) (Work Nos. 1D (part) (the new bridge) and 1E (the new bridge southern approach)) would be provided from Peto Way (refer to section C2.4 above) continuing in a generally southerly direction for a distance of approximately 117 metres.

**C3.8** A length of new highway proposed to connect Waveney Drive to Riverside Road (Reference C) (Work No. 5 (part)) would be provided from a point on Waveney Drive approximately 95 metres east of Waveney Crescent west and continuing in a generally northerly direction for approximately 236 metres, to form a T-junction and then generally in an easterly direction for approximately 117 metres. This length of new highway is not proposed to be classified.

**Commented [SH11]:**  
Amendment relating to NMC8

**C3.9** A length of new highway proposed to connect Riverside Road with Canning Road (Reference D) (Work No. 4 (part)) would be provided from Riverside Road from a point approximately 37 metres east of the existing access to Riverside continuing in a generally southerly direction to Canning Road for a distance of approximately 90 metres. This length of new highway is not proposed to be classified.

**C3.9a** A length of new highway (Reference E) from a point on Riverside Road 62 metres east of the entrance to Riverside in a generally northerly direction for a distance of 40 metres, with one spur extending 32m east at a point 9 metres north of Riverside Road providing access to premises occupied by Nexen, and a turning head extending east at its northern extent providing access to the Control Tower for the new bridge.

**Commented [SH12]:** Amendment relating to NMC6

**PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A  
SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS  
WHICH ARE OTHERWISE TO BE PROVIDED**

**C3.10** An existing (vehicular) access (Reference b) to land (owned by Waveney District Council) on the north side of the existing Riverside Road, approximately 5 metres east of the existing access to premises known as Riverside, would be stopped up from the point at which it meets Riverside Road for a distance of approximately 3 metres, where it would be crossed by the new highway boundary. The access to the land from the new highway would be substituted by a new private means of access (Reference 3) located approximately 27 metres west of the existing access to Riverside.

**C3.11** An existing access (Reference d) to premises occupied by UK Power Networks Ltd on the north-west side of Riverside Road and west of the existing access to Nexen would be stopped up over a distance of approximately 3 metres. A replacement electricity sub-station would be provided with a new private means of access (Reference 4) (Work No. 6) commencing from a point on Riverside Road approximately 62 metres east of the existing entrance to Riverside, to provide a replacement access to premises occupied by UK Power Networks Ltd. This new private means of access (Reference 4) would also serve as a new private means of access to the new bridge control tower building (Work No. 6).

**C3.11** A new private means of access (Reference 4) from the new highway (Reference E) would be provided to the northwest of the existing access to Riverside, located 34 metres to the north of the existing access from Riverside Road, providing access to premises to the north-east of Riverside Road occupied by Nexen.

**Commented [SH13]:** Amendment arising from NMC6

**C3.12** An existing (vehicular) access (Reference e) to premises (occupied by Mobile Broadband Network Limited) on the west side of the existing Riverside Road, approximately 5 metres west of the existing access to Riverside, would be stopped up, from its junction with the existing Riverside Road, for a distance of approximately 58 metres. The access would be substituted by a new private means of access (Reference 5) from the new highway (Reference C) (Work No. 5 (part)) located approximately 57 metres west of the existing access to Riverside.

**C3.13** An existing (vehicular) access (Reference g) to land (owned by Waveney District Council) on the south side of the existing Riverside Road, approximately 47 metres east of the existing access to Riverside would be stopped up, from its junction with the existing Riverside Road, for a distance of approximately 3 metres. The access would be substituted by a new private means of access (Reference 6) to be provided from the new highway (Reference D) (Work No. 4 (part)).

**C3.14** An existing (vehicular) access (Reference h) to premises (occupied by Waveney District Council and Suffolk County Council) would be stopped up on the northwest side of Canning Road approximately 82 metres from its junction with the existing Riverside Road for a distance of approximately 10 metres. The access

would be substituted by a new private means of access (Reference 12) located to the west of the improved Canning Road (Work No. 4 (part)).

**C3.15** An existing (vehicular) access (Reference i) to premises at Lings Wharf, Riverside Road (occupied by MotorLings and others) on the east side of the existing Riverside Road approximately 139 metres north of the junction of Riverside Road and Waveney Drive for a distance of approximately 8 metres. The access would be substituted by a new private means of access located approximately 45 metres west of Tom Crisp Way roundabout (Reference 15) (Work No. 2 (part)).

**C3.16** An existing (vehicular) access (Reference j) to premises at Lings Wharf, Riverside Road, (occupied by MotorLings and others) on the east side of the existing Riverside Road approximately 68 metres north of the junction of Riverside Road and Waveney Drive for a distance of approximately 6 metres. The access would be substituted by a new private means of access located approximately 45 metres west of Tom Crisp Way roundabout (Reference 15) (Work No. 2 (part)).

**C3.17** An existing (vehicular) access (Reference n) to existing garage premises (which are proposed to be demolished) at Durban Road approximately 19 metres south of the junction of Riverside Road and Waveney Drive for a distance of approximately 5 metres. The access would be substituted by a new private means of access (pedestrian) located at the new bridge southern roundabout (Reference 18) (Work No. 2 (part)).

**C3.18** A new private means of access (Reference 7) from the improved Riverside Road, 25 metres north of Canning Road, to facilitate access enabling the Applicant to maintain the new bridge southern approach and adjacent utilities.

**C3.19** A new private means of access (Reference 8) from the north side of Canning Road, to facilitate maintenance of the A12 Lake Lothing Third Crossing and to provide access to utilities (Work No. 4 (part)), located approximately 16 metres to the east of the existing access to the Registry Office.

**C3.20** A new private means of access (Reference 9) to facilitate maintenance of the A12 Lake Lothing Third Crossing and to provide access to utilities (Work No. 1E (part) and Work No. 2 (part)) from the south side of the improved Canning Road approximately 14 metres to the east of the existing access to the Registry Office.

**C3.21** A new private means of access (Reference 10) from the north side of the existing MotorLings access road on the east of its junction with Riverside Road, to facilitate access for maintenance of the new bridge southern approach and adjacent utilities.

**C3.22** A new private means of access (Reference 11) from the south side of the existing MotorLings access road on the east of its junction with Riverside Road, to facilitate access for maintenance of the new bridge southern approach and adjacent utilities.

**C3.23** A new private means of access (Reference 13) located on the west side of the improved Riverside Road, on land 60 metres south of the improved Canning

Road and enabling access to land occupied by the Riverside Business Centre, to facilitate maintenance of the new bridge southern approach and adjacent utilities.

**C3.24** A new private means of access (Reference 14) from the improved Waveney Drive, located 45 metres west of the existing Tom Crisp Way roundabout, to facilitate access for the maintenance of the new bridge southern approach and adjacent utilities.

**C3.25** A new private means of access (Reference 16) from the eastern side of the land owned and occupied by MotorLings, to land directly north of the Tom Crisp Way roundabout, to enable egress from the MotorLings site onto the roundabout.

**C3.26** A new private means of access (Reference 17) to premises known as No. 1b Durban Road (Work No. 2 (part)) from Durban Road, approximately 25 metres south of the existing Waveney Drive, with Durban Road (coming off the new southern roundabout).

**C3.27** An existing private means of access to premises known as the Bellablu Beauty Clinic (Reference o) at the junction of Riverside Road and Waveney Drive is proposed to be stopped up for a distance of approximately 9 metres. The access would be substituted by a new private means of access (pedestrian) from the westerly approach to the new bridge southern roundabout (Reference 19) (Work No. 2 (part)).

**C3.28** An existing private means of access to No. 34 Waveney Drive (Reference p) at the junction of Riverside Road and Waveney Drive is to be stopped up for a distance of approximately 2 metres. The access would be substituted by a new private means of access (pedestrian) (Reference 20) (Work No. 2 (part)) to No. 34 Waveney Drive, from the westerly approach to the new bridge southern roundabout.

**C3.29** An existing private means of access to No. 32 Waveney Drive (Reference q) at the junction of Riverside Road and Waveney Drive is to be stopped up for a distance of approximately 2 metres. The access would be substituted by a new private means of access to No. 32 Waveney Drive (Reference 21) (Work No. 2 (part)) from the westerly approach to the new bridge southern roundabout for a distance of approximately 2 metres.

**C3.30** An existing access (Reference r) to premises at Lings Wharf (occupied by MotorLings and others) located on the north side of Waveney Drive at a point approximately 29 metres to the west of Tom Crisp Way roundabout, would be stopped up over a distance of approximately 2 metres. The access would be substituted by a new private means of access located approximately 45 metres west of Tom Crisp Way roundabout (Reference 15) (Work No. 2 (part)).

#### **PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED**

**C3.31** An existing access (Reference c) located east of the existing access to the premises known as Riverside, would be stopped up from the junction with Riverside Road for a distance of approximately 3 metres, where it would be crossed by the

new highway boundary. This access would no longer be required if the scheme was implemented, therefore no substitute access proposal is considered necessary.

**C3.32** An existing (vehicular) access (Reference f) to land owned by Waveney District Council on the west side of the existing Riverside Road, approximately 5 metres to the west of the existing access to Riverside, would be stopped up over a distance of approximately 3 metres. This access would no longer be required if the scheme was implemented, therefore no substitute access proposal is considered necessary.

**C3.33** An existing (pedestrian) access (Reference k) to No. 42 Waveney Drive, located on the south side of Waveney Drive at a point approximately 42 metres west of the junction of Waveney Drive with Riverside Road, would be stopped up over a distance of approximately 3 metres. As this access would no longer be required if the scheme was implemented, no substitute access proposal is considered necessary.

**C3.34** An existing (pedestrian) access (Reference l) to No. 42 Waveney Drive, located on the north-west side of Durban Road at a point approximately 44 metres to the south-west of the junction of Durban Road with Waveney Drive, would be stopped up over a distance of approximately 3 metres. As this access would no longer be required if the scheme was implemented, no substitute access proposal is considered necessary.

**C3.35** An existing (vehicular) access (Reference m) to No. 42 Waveney Drive, located on the north-west side of Durban Road at a point approximately 54 metres to the south-west of the junction of Durban Road with Waveney Drive, would be stopped up over a distance of approximately 3 metres. As this access would no longer be required if the scheme was implemented, no substitute access proposal is considered necessary.

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