

**(ABP: 3 of 4 – DL10)**

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

**Associated British Ports (20013261)**

**Comment on the Applicant's response to ABP's issues raised in Deadline 8 submissions**

These written representations are submitted on behalf of Associated British Ports ("ABP") for Deadline 10.

These submissions set out ABP's comments on '*Response to ABP's issues raised in Deadline 8 Submission*' (REP9-010), submitted by the Applicant at Deadline 9.

ABP wishes to make clear at the outset that it does not agree with nor can it accept the Applicant's latest submissions. As previously indicated at earlier Deadlines, ABP does not intend simply to repeat submissions already made. In the interests of brevity, ABP has sought to direct the ExA to where ABP has previously addressed the issues raised by the Applicant so as to avoid unnecessary duplication. To assist the ExA for Deadline 10, however, ABP has sought only to respond to the key points at issue between the parties with a view to establishing ABP's position and to clarify essential points of inconsistency and misunderstanding.

Where appropriate, the responses made by ABP cross-references ABP's previous Written Representations and other various submissions.

Reference	The Applicant's Comments	ABP's Response
<b>Permitted Development Rights</b>	<ul style="list-style-type: none"> <li>The Applicant considers that ABP's concerns regarding the loss of permitted development rights do not apply, as the <i>"question will simply be whether the Port has an interest in the land"</i>.</li> </ul>	<ul style="list-style-type: none"> <li>ABP disagrees with the Applicant's position and relies on its previous submissions made in respect of this issue.</li> <li>ABP has already responded to this issue in its previous submissions, including at:               <ul style="list-style-type: none"> <li>ABP's Response to the Examining Authority's Second Suite of Written Questions (REP8-010)</li> <li>ABP's Comments on the Applicant's response to ABP's Summary of Case at 8 March</li> </ul> </li> </ul>

Reference	The Applicant's Comments	ABP's Response
		Hearing and to Second Written Questions (REP9-011)
<b>Commercial Road</b>	<ul style="list-style-type: none"> <li>The Applicant asserts that it must reach an arrangement with ABP in respect of access along Commercial Road, as this is a requirement of the interim CoCP.</li> <li>The results of any safety or risk assessments will be part and parcel of the Applicant being able to obtain consent from ABP for the diversionary route.</li> <li>The Applicant could not have justified including the vast majority of the North Quay within the Order limits to facilitate a diversion route that is not yet known – i.e. in that scenario, that the land 'might be' required.</li> </ul>	<ul style="list-style-type: none"> <li>There is no requirement on ABP to agree to the imposition of the diversionary route over its land simply to enable the Applicant to comply with the CoCP.</li> <li>The Applicant should not assume that ABP will be able or willing, as landowner, to provide consent for the Applicant to impose the diversionary route as and when required – or indeed at all - due to the potential detrimental effect on operations and customers within the area, as well as the significant and self-evident health and safety concerns of having a roadway and pedestrian walkway running next to Lake Lothing.</li> <li>The Applicant is not in a position to impose a "reasonableness" test on ABP. The Applicant is attempting to interfere and restrict ABP's private property rights. The reality is that as the SHA and port operator – ABP will refuse access to the Applicant if it is of the view that it has so to do for safety or port operational reasons – which take priority. The Applicant has failed to take the steps necessary to secure the rights that it will require and is attempting to recover from its omission.</li> <li>It is unclear why the Applicant considers it is unable to justify powers for land that 'might be' required for the diversionary route, as this is the position the Applicant has adopted in respect of the construction compound, subject of Plot 2-22. This plot is approximately 3,374m<sup>2</sup> and covers the whole of North Quay 1, 2 and 3, from the quayside to Commercial Road. It is understood, however, that the construction compound will only occupy a small proportion of this space – in this respect, the Applicant has stated that <i>"the full extent of plot 2-22 is unlikely to be required throughout the entire construction process and the Applicant will seek to scale its footprint accordingly"</i> (REP7-005). As such, ABP considers that the same approach could be adopted by the Applicant in respect of the diversionary route.</li> </ul>
<b>Effects of land subject</b>	<ul style="list-style-type: none"> <li>The Applicant fully considered its temporary possession space</li> </ul>	<ul style="list-style-type: none"> <li>ABP notes that the Applicant has acknowledged that <i>"the Port is a dynamic environment and</i></li> </ul>

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<b>to temporary possession</b>	requirements in developing its application.	<i>berthing requirements will vary</i> " and has therefore justified the large extent of Plots 3-01 and 3-10 on the basis that the extent " <i>provides a degree of flexibility for the Applicant to manoeuvre around ABP and its tenants' requirements</i> " (REP7-005). Whilst this position is welcomed, ABP considers that the Applicant's use of such site must take into consideration the operational requirements of the Port, as far as reasonably practicable.
<b>Effect on Berths 1, 2 and 4E</b>	<ul style="list-style-type: none"> <li>• The Applicant asserts that both North Quay 1 and 2 are unaffected by the Scheme, as their collective utility is not significantly affected by the Scheme – i.e. what can currently be berthed exclusively on these berths will continue to be able to be berthed there with the Scheme in place.</li> <li>• The Applicant considers there is an 'anomaly' between the mooring scenarios and the Berth Utilisation Report.</li> <li>• From the vessel survey only 2% of commercial vessels using the Inner Harbour were between 40 and 60m LOA.</li> <li>• In respect of Berth 4E, the Applicant remains of the view that this berth is "not entirely lost", as it considers a proportion of it could remain in use or be reassigned to berth 4W, thus reducing the direct loss that ABP has calculated.</li> </ul>	<ul style="list-style-type: none"> <li>• ABP disagrees with the Applicant's assessment of the impact on the Scheme on North Quay 2 – this berth is effectively lost due to its limited utility. North Quay 2 is frequently used by vessels that exceed 50m LOA, and such vessels must rely on the adjacent berth areas (North Quay 1 or North Quay 3) to accommodate moorings. A decrease in berth length as a result of the Scheme means vessels (with a longer LOA) that would ordinarily use the berth would not be able to. In addition, there would be restricted room to manoeuvre due to the presence of the LLTC bridge fendering. For these reasons the berth is lost with respect to its original utility.</li> <li>• There is no 'anomaly' between the mooring scenarios and the Berth Utilisation Report – the mooring scenarios have been provided by ABP as practical examples designed to assist the ExA, and the Applicant, in understanding the wider context of matters that will detrimentally impact on the ability to moor vessels along North Quay once the Scheme is in place. The impact on berthing is clearly not as straightforward as the Applicant asserts (i.e. there is at least 120m of usable quay), as this simplistic view fails to take into consideration a range of operational factors, such as lack of available mooring points, lack of manoeuvring space, vessel manoeuvrability, imposition of a safe space between vessels, weather conditions and risk of mooring lines becoming caught within the fenders.</li> <li>• The practical examples highlighted in the mooring scenarios are clearly not exhaustive, and also do not supersede or conflict with any future aspirations ABP may have for these berths, for example, potential future use a dedicated aggregate facility, as envisaged by the Berth Utilisation Report.</li> <li>• As ABP has previously demonstrated, the vessel</li> </ul>

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		<p>survey is of little utility, as it only shows a 'snapshot in time'. Since this time, the range of vessels utilising the Inner Harbour have significantly changed, in particular due to the commencement of the Petersons operations. As such, ABP considers that the Applicant's assessments based on these figures can only be given limited weight.</p> <ul style="list-style-type: none"> <li>• The Applicant's view that the reassignment of part of North Quay 4E to 4W would reduce the "direct loss" suffered by ABP as a result of the Scheme is incorrect. As ABP has previously demonstrated, Berth 4E, as currently configured, has no utility and cannot remain in use, as it is not operationally safe to berth small vessels within the limited quayside available between the bridge and the fence. This issue cannot be addressed by moving the fence, or moving or adding additional bollards. This berth would only retain utility if alternative mitigation works were undertaken, for example, the provision of pontoons to facilitate berthing for smaller vessels within this area</li> <li>• If part of Berth 4E were 'reassigned' to Berth 4W, this would merely result in the reallocation of space between adjoining berths and does not provide ABP with any additional quay space - as was previously stated by ABP at Deadline 8.</li> </ul>
<p><b>Justification of assumptions of future development</b></p>	<ul style="list-style-type: none"> <li>• The Applicant has now provided a table to demonstrate how it calculated the figure of '36 CTV vessels' using Lowestoft, which is apparently derived from the figures specified in the BVG Report, and then <i>"assigning those vessels to the port in closest proximity to the plan centre of each windfarm"</i>.</li> </ul>	<ul style="list-style-type: none"> <li>• There are fundamental errors in the Applicant's calculations and assessment of CTV requirements at Lowestoft, as demonstrated by the table provided by the Applicant.             <ul style="list-style-type: none"> <li>○ The Applicant's assumption that distance is the only selection criteria for operators when selecting a construction or O&amp;M base clearly demonstrates an ongoing and recurring lack of knowledge of the Offshore Wind Farm (OWF) sector. Distance is only one factor that operators consider when deciding where to base their OWF operations – other relevant factors include the location of any existing operations and supply chain services</li> <li>○ There is a fundamental error in relation to the Applicant's calculation of the 'Greater Gabbard' OWF, as the Applicant has recorded <u>0 CTVs using Lowestoft</u>. Greater Gabbard's whole O&amp;M operations are currently operate</li> </ul> </li> </ul>

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		<p>out of the Port, and have been based at the Port since 2012. This O&amp;M facility utilises between <u>6 and 16 CTVs</u> – the additional CTVs operating during the busy summer months. The Applicant's omission of these CTVs figures erroneously skews the data relating to Lowestoft downwards and calls into question the Applicant's assumptions regarding operator use being solely based on distance from the port.</p> <ul style="list-style-type: none"> <li>○ The Applicant has stated Round 4 will only account for 13 vessels. ABP questions the accuracy and source of this data, particularly as Crown Estate has not yet agreed the licensing model for Round 4, so the locations, sizes of output capacity and bidders are unknown at this stage. As such, ABP requests further information as to how this number has been calculated. ABP notes that industry expectation is that those OWFs will most likely be a co-location or expansion of existing developments, rather than completely fresh developments. As such, the BVG analysis makes a pragmatic assessment of the proportion of these wind farms that will use Lowestoft (REP5-027).</li> <li>○ The Applicant has totally omitted any CTV use arising from the Crown Estate OWF extensions, which are currently under negotiation. As such, additional CTV use arising from these extensions is a real and tangible prospect that must be taken into consideration.</li> <li>● Based on the Applicant's assessment methodology, once the 16 Greater Gabbard CTV vessels utilising the Port are included in the Applicant's table, this would result in a total of <u>52 CTVs</u> utilising Lowestoft - this does not include any additional CTV use arising from OWF extensions or an accurate assessment of Round 4 CTV use. This figure clearly aligns with the BVG Report, which concludes that "<i>total demand of CTV berths [at Lowestoft] could reach 50.</i>"</li> <li>● Consequently, the Applicant's views that the BVG Report provides an inaccurate assessment of future development at the Port are clearly unjustified, as its own assessment supports the conclusions reached in the BVG Report (REP5-</li> </ul>

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		<p>027).</p> <ul style="list-style-type: none"> <li>As such, ABP considers that this demonstrates that the Applicant has clearly downplayed the Port's potential for future CTV growth, and supports ABP's assertions that future demand could indeed be greater than that predicted in the BVG Report (REP5-027).</li> </ul>
<p><b>Dedicated Berth and Berth Utilisation Analysis</b></p>	<ul style="list-style-type: none"> <li>The Applicant does not agree with how dedicated berths have been used in calculating berth occupancy averages, so it presented an 'alternative analysis' in its Deadline 8 submissions.</li> <li>The Applicant considers it awaits further clarification from ABP in relation to its alternative analysis of berth utilisation set out in REP8-005.</li> <li>The Applicant asserts that "<i>while ABPmer state a 50% chance of the certain opportunities being realised there is no reflection of this in the figures as all are shown to happen.</i>"</li> <li>The Applicant notes that the reduction in utilisation is "<i>based on ABP's belief that operators will be significantly deterred from using Shell Quay</i>".</li> </ul>	<ul style="list-style-type: none"> <li>As the ExA is aware, the parties met via a telephone conference on 10 May 2019 to discuss the Applicant's alternative analysis of berth utilisation, which included ABP highlighting a number of misconceptions and erroneous assumptions adopted by the Applicant in that analysis.</li> <li>As a result of those discussions, ABPmer has prepared the attached 'Port of Lowestoft Berth Utilisation – Rebuttal to Suffolk County Council submission REP8-005 (May 2019)' ("the ABPmer Rebuttal"), which forms part of ABP's Deadline 10 submissions (<b>ABP: 4 of 4 – DL10</b>). As such, no further clarification from ABP on this issue is required.</li> <li>ABPmer's views regarding the use of dedicated berths when considering berth utilisation and occupancy is set out in paragraph 2.2.2 of the ABPmer Rebuttal.</li> <li>The Applicant's assertion regarding the likelihood of future opportunities considered in the Berth Utilisation Assessment is incorrect. As previously stated by ABP, this is addressed in section 5.4.1 of the Berth Utilisation Report (REP8-018).</li> <li>The Applicant's statement is entirely incorrect and ABP objects to this position in the strongest terms. As previously stated by ABP, its evidence regarding future use of berths to the west of the LLTC bridge is based upon conversations with senior level executives in varied offshore energy developers and support companies – not ABP's own belief. Unfortunately, NDA's and other commercial sensitivities prevent ABP from providing the ExA with further specific evidence in this respect.</li> <li>Conversely, the Applicant has stated that "<i>we believe there may be some use for [Shell Quay] supporting second and third level suppliers to OWF who may be less risk adverse</i>". ABP</li> </ul>

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		<p>questions on what basis the Applicant has formed this view, as far as ABP is aware, it has not approach any second and third level suppliers.</p>
<p><b>Future Customer Risk</b></p>	<ul style="list-style-type: none"> <li>The Applicant considers that operators will assess all options and make decisions based on commercial factors, this would include operational equipment and locations, all operators have to tailor their operations based on the facilities available.</li> </ul>	<ul style="list-style-type: none"> <li>ABP strongly disagrees with this view – particularly in relation to the Applicant's implication that OWF operators will tailor their operations to suit the Port – in this case, the air draft restriction imposed by the Scheme bridge. As previously raised by ABP in its Deadline 8 submissions (REP8-012), OWF operations are normally undertaken using the operator's existing fleet of vessels, which means that the operators do not have the flexibility to simply change vessels to suit the air draft of the Scheme, as is assumed by the Applicant.</li> <li>The reality is that operators will use the presence of the Scheme as a negative factor in their suitability scoring, before considering whether to base themselves at the Port. The exposure to the risk of delay to vessel transits arising as a result of the Scheme will be viewed by operators as a negative, as this will detrimentally impact on time and cost implications over the life of the project. One example of this was practically demonstrated by ABP in paragraph 3.74 of ABP's Response to the Impact of the Scheme on the Port of Lowestoft Report (REP5-023).</li> </ul>
<p><b>Bridge Lifts</b></p>	<ul style="list-style-type: none"> <li>The Applicant merely restates its position regarding the significance of whether there are more frequent, or simply longer bridge openings as a result of increased port activity.</li> </ul>	<ul style="list-style-type: none"> <li>ABP reiterates its previous submissions regarding future potential bridge lifts, set out in:           <ul style="list-style-type: none"> <li>Paragraphs 3.25 to 3.27, and 3.86 to 3.88 of ABP's DL5 Response to the Impact of the Scheme Report (REP5-023).</li> <li>ABP's Comment on the Applicant Response to ABP's DL5 and Oral Submissions at 7 &amp; 8 March 2019 Hearings (REP8-012).</li> </ul> </li> </ul>
<p><b>Air Draft and CTV Sizes – Current and Future Trends</b></p>	<ul style="list-style-type: none"> <li>In relation to the provision of navigational aids and measures, the Applicant agrees that such measures are required, and the provision of the necessary equipment to ABP's approval is secured via the DCO, though does not consider the nature of such equipment needs to be specified at this juncture.</li> <li>The Applicant considers larger</li> </ul>	<ul style="list-style-type: none"> <li>It is imperative that the Applicant provides all necessary measures required to address navigational issues arising as a result of the Scheme.</li> <li>Despite ABP providing further independent evidence from OWF Operators that supports the demonstrable trend towards larger CTV vessels, disappointingly, the Applicant still fails to accept this proposition. Rather, it incorrectly considers that 'windfarm location' is the only factor that will</li> </ul>

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	<p>CTVs will not be required as <i>"windfarm locations of [sic] the coast of the Port of Lowestoft in the southern North Sea are constrained by the limits of territorial waters therefore they will not be more remote from the coast than those currently in the pipeline."</i></p> <ul style="list-style-type: none"> <li>• The Applicant implies that it is reasonable to assume that Operators will adopt collapsible aerials and masts, as this would <i>"provide the operator with the most economical solution"</i>.</li> <li>• The Applicant asserts that air draft is only a concern if CTVs are intending to transit during the proposed restricted periods created by the Scheme.</li> </ul>	<p>impact on the future size of CTV vessels.</p> <ul style="list-style-type: none"> <li>• As stated above, OWF operations are normally undertaken using the operators existing fleet of vessels, which means that the operators do not have the flexibility to simply change vessels to suit the air draft of the Scheme – such as adopting collapsible aerials and masts.</li> <li>• Given the demonstrable trend of larger CTV vessels, and the limited utility of the vessel survey as capturing a 'snapshot' in time only, ABP considers the Applicant's views regarding the frequency of a Scheme bridge lift can only be provided with very limited weight.</li> <li>• Further, the Applicant's comments regarding the time of CTV transits demonstrates a worry lack of understanding regarding the OWF industry. As ABP has repeatedly explained, CTV transits within the Port are undertaken during the AM and PM peak times – when those vessels are travelling out to, and returning from, the OWFs. This is the fundamental reason why the Applicant's proposed restricted periods results in such a specific detrimental impact on OWF operators.</li> </ul>
<p><b>Effect of Restriction</b></p>	<ul style="list-style-type: none"> <li>• The Applicant considers that the potential for mistiming already exists under the current operating regime of the Bascule Bridge, therefore operators are <i>"building in the potential for mistimings in the times of their approach to the bridge"</i>, which the Applicant considers would also apply to the Scheme.</li> <li>• In relation to additional delay that will be caused by the restrictions imposed by the Scheme bridge, the Applicant considers that vessels can simply <i>"adjust their transits to accommodate the existing restrictions at the Bascule Bridge and would similarly adjust for the Scheme"</i>. Consequently, <i>"the Applicant considers it potentially misleading to provide comparators of delay"</i>.</li> </ul>	<ul style="list-style-type: none"> <li>• The Applicant has completely failed to acknowledge the in-combination effect of the Scheme bridge, in the context of the existing Bascule Bridge – the impact of mistimings cannot be viewed in respect of the Scheme bridge in isolation, and any external factors affecting shipping movements will be compounded by the imposition of a second bridge.</li> <li>• The Applicant's views are inherently incorrect – vessels will be subject to additional <u>delay</u> as a result of the restricted periods relating to the Scheme. The difference between the Applicant's use of the term 'adjustment' as opposed to acknowledging the word 'delay', is merely a matter of semantics. The reality is that vessels operators will be detrimentally impacted by the imposition of the Scheme restrictions, which cannot be simply overcome by "adjustments" to journey times – which the Applicant incorrectly considers is the case.</li> <li>• The Applicant has attempted to undertake a very simplistic assessment of the magnitude of 'adjustment' it considers a CTV vessel will take to</li> </ul>

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	<ul style="list-style-type: none"> <li>• The Applicant has provided its views of ABP's assessment of the 'Impact of the additional restrictions imposed by the Scheme of Operation on vessel transit times' (REP8-024).</li> <li>• The Applicant has also attempted to undertake its own assessment of the effect of the Scheme restricted periods.</li> </ul>	<p>transit from Shell Quay, and has adopted as assumed transit time of 7 minutes from Shell Quay and 16 minutes to the Bascule Bridge. As the Applicant has failed to provide any supporting rationale or explanation for the assertion of the underlying assumptions, ABP questions on what basis these assumptions are made?</p> <ul style="list-style-type: none"> <li>• In any event, the Applicant's assessment demonstrates there is the potential for a delay of 1 hour and 12 minutes during the AM outbound transit, and 1 hour and 15 minutes during the PM inbound transit. Whereas, under the baseline position, a vessel will only be subject to a maximum delay of 56 minutes (paragraph 2.3 and 2.4 of REP8-024). This clearly demonstrates that vessels may be subject to <u>additional</u> delays during the peak transit periods.</li> <li>• ABP considers there are fundamental flaws with the Applicant's assessment, particularly as the Applicant has failed to compare the baseline position with the <u>in-combination</u> future impact of the additional Scheme restricted periods.</li> <li>• In this regard, the Applicant's reference to paragraph 3.8 of ABP's assessment merely highlights its inherent misunderstanding of REP8-024 – this paragraph sets out the impact arising from both bridges for PM outbound vessels, prior to the comparison of delay against the baseline position (i.e. only one bridge). The <u>additional</u> impact arising from the in-combination effect on PM outbound vessels is set out in paragraph 4.1(c) of REP8-024, which is either a 3 minute additional delay, or a 39 minute additional delay if the vessel cannot hold station between the two bridges. As such, the Applicant's reference to this paragraph out of context is deliberately misleading.</li> <li>• Further, the Applicant's assertion regarding ABP's calculations is incorrect. It is not the case that "<i>the second bridge would always be open</i>". As the Applicant is fully aware, ABP's assessment in REP8-024 sets out the delay arising from the AM and PM restricted periods – as such, the second bridge will be closed during this time (as it is subject to a restricted period), which means it cannot simply open simultaneously to enable the vessel a continuous transit. This demonstrates that the Applicant has misunderstood the whole</li> </ul>

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		<p>purpose and rationale of the assessment undertaken by ABP in REP8-024.</p> <ul style="list-style-type: none"> <li>Overall, taking into consideration the Applicant's views on this issue, ABP stands by the assessment and conclusions specified in REP8-024, as ABP considers that this report clearly and comprehensively demonstrates the delay that will be caused to vessel transits as a result of the additional restrictions imposed by the LLTC bridge.</li> </ul>
<p><b>Navigational Risk</b></p>	<ul style="list-style-type: none"> <li>The process for the Scheme NRA is for the Applicant to update it and seek approval for it from the harbour authority before commencing construction of the Scheme. ABP will then review its own port-wide NRA in light of the Scheme NRA to ensure the respective documents are integrated.</li> <li>The Applicant considers that risk associated with larger vessels can be mitigated through operational procedures and an emergency berth is therefore not required.</li> </ul>	<ul style="list-style-type: none"> <li>ABP agrees that the formally approved NRA must be incorporated within its own port-wide NRA. As the SHA, ABP has ultimate responsibility and liability regarding navigation safety within its statutory area, and for that reason, it must be the relevant statutory authority that is responsible for the ongoing monitoring of compliance with the NRA and where required, review and update of the NRA, due to changes in future circumstances.</li> <li>As this stage, the drafting of the dDCO does not reflect this position. ABP has, however, provided amendments to Requirement 11 of the dDCO at Deadline 10 in order to address this issue.</li> <li>ABP considers that operational procedures currently proposed by the Scheme of Operation are not sufficient to mitigation the risk of a large vessel becoming trapped between the two bridges. ABP has, however, provided amendments to the Scheme of Operation at Deadline 10 in order to partially address this issue. Overall, however, ABP considers that the most appropriate way to mitigate this risk is by the provision of an emergency berth.</li> </ul>