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Date: 5 June 2019  
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Your ref: TR010023  
Our ref: SCC/LLTC/EX/206

Dear Richard,

## **Lake Lothing Third Crossing ('LLTC') – DCO Application – Reference TR010023**

### **Deadline 12: Final submissions**

The Applicant welcomes the early publication of Interest Parties' submissions at Deadline 11, and the opportunity to therefore assist the Examining Authority in the consideration of matters raised therein. The Applicant does not intend to comment on those matters where its position differs from those of the Interested Parties (such matters having been addressed in the submissions already made by the Applicant), save where the Interested Parties have raised new points. This letter sets out where the Applicant is able to agree with the new points raised by the Interested Parties, so as to assist the Examining Authority in narrowing the areas which remain in contention. It also responds, in the interests of clarity, to a particular 'confidentiality' issue raised by Lings.

The Applicant can confirm that the changes requested by Network Rail (REP11024) were included within version 7 of the DCO (REP11 -003).

There are matters raised by Lings (REP11-026) and by ABP (REP11-013) that the Applicant wishes to address.

### **Lings**

The Applicant set out its position in relation to Lings in REP11-010, but provides additional commentary here in view of matters not addressed there, but now raised by Lings, with which the Applicant disagrees.

As the Compulsory Acquisition Tracker (REP10 -073) outlines, engagement with Lings has been extensive and sustained.

While the Examining Authority does not of course need to concern itself with the detail of compensation matters, it is incumbent upon the Applicant to evidence (for the reasons Lings outlines) that it has gone to all reasonable efforts to avoid seeking powers of compulsory acquisition including through exploring the structure of various deals. The Applicant does not consider there to be any commercially confidential information included within the Tracker and therefore the balance between the detail required by the Examining Authority and preserving the confidentiality of detailed matters is appropriately struck. The Examining Authority will also note from the Tracker the prevalence of discussions relating to compensation matters.

**ABP**

*Newport M4 decision*

The Applicant notes that ABP has referred to some passages in the report of the Inspector for the M4 Newport road scheme, published on 4 June 2019 together with the decision of the Welsh Government made on 4 June 2019 to reject the Inspector’s recommendation in favour of that scheme.

The passages of the Inspector’s report relied on by ABP are not referred to or endorsed in the Welsh Government’s decision letter, and it is not clear from the Inspector’s report that the issues were ultimately contested (because ABP withdrew its objections to that scheme). The Inspector’s comments need to be seen in that context.

In any event, as the Applicant has already set out (REP10-009, paras 6.3.11 to 6.3.15), the M4 Newport road scheme was a different scheme (a fixed bridge) with different effects on a different port, and the Inspector’s comments were clearly made by reference to the facts of that particular case. They cannot be sensibly carried across to the Applicant’s Scheme.

*Draft DCO and Scheme of Operation*

ABP has provided further comments on the DCO and Scheme of Operation. The Applicant does not repeat the points made at Deadline 11, as such the tables below deal with clarifications and respond to new points not previously raised by ABP. The Applicant has submitted with this letter a revision 8 of the DCO (EX/207) and a comparison with revision 7 (EX/208) and revision 0 (EX/211), alongside a clean (EX/209) and track changed (EX/210) version of the Scheme of Operation. An updated Application document tracker (EX/212) is also enclosed. No update of the Explanatory Memorandum or Validation Report is needed due to the minor nature of the changes to the DCO.

DCO matters

ABP suggestion	Comment
Article 11	The Applicant notes that ABP would be required to consent to Commercial Road being diverted in the first place as street authority and then (under their Protective Provisions) as landowner for the diversion route.

	<p>As previously stated, this is no more an impediment than if the land had been included in the Order limits, given that ABP's consent to the Applicant using temporary possession powers to effect the diversion would in any event have been subject to ABP's consent under their Protective Provisions.</p>
Articles 2 and 20	<p>ABP's proposed amendments are agreed. The reference to 'Security' in article 2 was an error. The NWG will be retained in the CoCP (as per the D10 version (REP10-078)) as this is the Applicant's preferred forum for informal engagement with the navigation community, to be convened by the Applicant to provide updates on construction of the Scheme. The PMSC is not the correct forum for this.</p>
Article 46: Additional Byelaw 37G	<p>ABP claim that this is not necessary.</p> <p>Including this byelaw in the DCO ensures that the relevant controls are in place from when the new bridge becomes operational. Whilst it is understood that ABP <u>could</u> make a general direction, there is no guarantee that it would; thus this provision is required to ensure that the Scheme of Operation can be enforced.</p> <p>There is also no rational reason why the DCO should not include this additional Byelaw to reflect the provisions now included in the Scheme of Operation. Byelaws 37A to 37F (inclusive) already propose the application of those byelaws to masters of vessels (without objection by ABP), and Byelaw 37A(b) also specifically refers to the Scheme of Operation (also without objection by ABP). So it is not clear why Byelaw 37G should not be included to ensure that the Scheme of Operation is adhered to and can be enforced.</p>
Requirement 11	<p>The Applicant does not repeat points previously made on the 'unreasonably withheld' wording.</p> <p>In respect of dispute resolution and the reference here in R7 of the DCO to arbitration, this issue arises because of the obligation under Requirement 11(5) for the undertaker to comply with the NRA in the future as subsumed into ABP's harbour-wide NRA (of which any updates will therefore be the choice of ABP not the undertaker). It is therefore important that the Undertaker should be able to refer disputes for</p>

	<p>resolution and it is considered more appropriate for the arbitration procedure applying to the Protective Provisions to apply to such disputes rather than the appeals process set out in Schedule 2, as the latter is really concerned with planning-related requirements whereas disputes in relation to the NRA are likely to be more akin to any disputes arising under the Protective Provisions.</p> <p>The Applicant has in the light of this considered how disputes arising under Requirement 11(3) should be resolved. ABP's approval of the NRA under Requirement 11(3) is of much the same nature as the approvals it will need to give pre-construction under its Protective Provisions. It is therefore considered that the dispute resolution process applying to disputes under the PPs (i.e. arbitration) is also the more appropriate process for any disputes arising under Requirement 11(3).</p> <p>The wording of paragraphs (6) and (7) of this requirement has therefore been revised in the enclosed DCO revision 8 to read as follows:</p> <p><i>(6) The obligation under sub-paragraph (5) to operate the new bridge in accordance with any further updated navigation risk assessment prepared by the harbour authority in consequence of sub-paragraph (4) is subject to the terms of a determination under article 62 of any dispute between the undertaker and the harbour authority that may arise relating to that further updated navigation risk assessment.</i></p> <p><i>(7) Article 62 applies to any dispute arising under this paragraph between the undertaker and the harbour authority in place of the provisions of Part 2 of this Schedule.</i></p>
Protective provisions	<p>The Applicant has made the requested change to what is now paragraph 56 of the Protective Provisions.</p> <p>In respect of the indemnity, the Applicant does not repeat its previous submissions but can confirm that in R8 of the DCO:</p> <ul style="list-style-type: none"> <li>it has expanded the scope of paragraph 64(2)(c) to allow for costs relating to the</li> </ul>

	<p>update of the NRA to be recovered not just in relation to updates to the Scheme of Operation, but it has still limited such recovery to issues arising from the new bridge. This is because, as the Scheme NRA will come to form part of the wider NRA for the Port, the Applicant should not be responsible for costs arising from ABP deciding to update the port-wide NRA for other reasons; and</p> <ul style="list-style-type: none"><li>• the Applicant has removed the words 'the undertaker' from paragraph 64(2)(e), as requested.</li></ul>
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Scheme of Operation

The Applicant agrees to make the suggested change to paragraph 2. The changes to paragraph 4 are partially accepted with deletion of the words 'for navigation safety'. The second proposed change is not agreed for the reasons explained in paragraph 10.2.5 of REP11-009. Additionally, the Applicant does not consider that the consequences of the additional text proposed in paragraph 4 are clear. The change to paragraph 8 is also not accepted for reasons explained in paragraph 10.2.8 of REP11-009. Further the Applicant notes that the determined air draft safety clearance has potential implications for safeguarding the bridge structure; as such, the Applicant must be engaged in any revision process.

The Applicant notes that ABP makes some further new comments on fender design. Further information on this can be found in the Fender Design Report submitted with the application at APP-132b. The final design of the fenders will, in any event, be subject to the approval of ABP pursuant to its Protective Provisions and will be considered as part of the final Navigation Risk Assessment pursuant to Requirement 11(3).

If you have any questions on any of these matters, please do not hesitate to contact me.

Yours sincerely



Jon Barnard  
Project Manager, Lake Lothing Third Crossing