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Date: 11 October 2019
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Your ref: TR010023
Our ref: SCC/LLTC/POST-EX

Dear Colin,

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

Response to Request from the Secretary of State requesting comments from the Applicant dated 27 September 2019

This letter constitutes Suffolk County Council's ('the Applicant') formal response to the above request inviting comment on a letter ('the Letter') sent by Associated British Ports ('ABP') to the Secretary of State on 13 June 2019 after the close of the Examination, in respect of ABP's objections to the LLTC scheme.

The Applicant has reviewed the Letter, of which it was previously unaware, and considers that it has already responded to the issues raised within it across numerous Examination submissions, which were consolidated and summarised in its Closing Submission [REP11-009], including its Postscript.

In respect of the Postscript to the Closing Submission, the Applicant notes that this was produced in response to a letter dated 30 May 2019 that ABP had advised the Applicant it had sent to the Department for Transport, which, as explained in paragraphs 18.1.1 to 18.1.8 of the Postscript, contained statements based on a previous (and therefore incorrect) version of section 127 of the Planning Act 2008. It is now understood by the Applicant that the Secretary of State never received that 30 May 2019 letter but instead received from ABP a replacement version of that letter on 31 May 2019 which repeated most of the matters set out in the 30 May 2019 letter, but referred to the most up to date version of section 127.

Paragraphs 18.1.1 to 18.1.8 of the Postscript should therefore be seen as superseded (because they addressed the ABP error subsequently corrected in its 31 May 2019 letter), however, the Applicant also considers that paragraphs 18.1.9 to 18.1.11 of the Postscript can be considered to apply equally to the 31 May 2019 letter – particularly given that this 31 May 2019 letter is referred to by ABP in the Letter.

With specific reference to the contentions about precedent in the Letter, as set out in particular in the Closing Submission and its Postscript, the Applicant does not agree that

the M4 Newport decision provides a useful precedent on what would amount to serious detriment in respect of the LLTC scheme.

Each case will turn on its own facts. The facts of that scheme are of course quite different, not least that the M4 scheme was a fixed bridge rather than a lifting bridge, and Newport Docks have different characteristics to the Port of Lowestoft (see REP10-009, paras 6.3.11 to 6.3.15). For the M4 scheme the promoter (the Welsh Government) accepted that there would be serious detriment in the absence of mitigation/accommodation works. This is clear from para 6.60 of the Inspector's Report, under the heading 'ABP and WG's agreed position', 'WG would provide the following works to address the serious detriment, which it accepts would have been caused to the Docks...'. It is also the case that the passage from para 6.642 of the Inspector's Report quoted by ABP is in the section of the Report summarising a response by the promoter to an issue raised by a separate objector.

The Inspector's subsequent comments were made in that context, namely that there was no dispute between the relevant parties that the M4 scheme would cause serious detriment unless mitigated. There was, therefore, no need for an adjudication on a contested matter.

In addition, the Inspector's remarks on serious detriment were not endorsed by the Welsh Minister in the final decision. The Minister did not need to express any views on this matter because it had fallen away once ABP withdrew its objection. It is therefore unsurprising that there is no mention in the final decision of the passages of the Report now relied on by ABP. In short, the M4 Newport scheme is not a case where either the Inspector or the decision-maker had to resolve a dispute about what impacts would amount to serious detriment.

Finally, the Applicant notes, as it did in its Examination submissions, that the M4 and Hinkley decisions are not the only recent major infrastructure projects where the issue of serious detriment was considered – both the Richborough Connection and Able Marine DCOs (the latter of which involved findings against ABP's arguments of serious detriment) needed to deal with the issue. However, whilst these cases perform a useful role in identifying the range and nature of the factors that should be considered in applying section 127, they again turn very much on their facts.

In conclusion, the Applicant's position continues to be that, in the circumstances and facts of the case, no serious detriment would be caused to ABP's statutory undertaking by the LLTC scheme.

Yours sincerely

A black rectangular redaction box covering the signature of Jon Barnard.

Jon Barnard
Project Manager, Lake Lothing Third Crossing