



PORT OF  
**TILBURY**  
LONDON

**Section 56(2) Planning Act 2008**

**Application by National Highways Limited for an Order Granting Development  
Consent**

**for**

**Lower Thames Crossing**

**Planning Inspectorate Reference: TR010032**

**PORT OF TILBURY LONDON LIMITED**

**SUMMARY OF ORAL SUBMISSIONS**

**and**

**ACTIONS FROM HEARINGS**

**Deadline 6: 31 October 2023**

1. **INTRODUCTION**

- 1.1 In the hearings held in October 2023, PoTLL attended Compulsory Acquisition Hearing 3, setting out its case in respect of compulsory acquisition and temporary possession powers, Issue Specific Hearing 8 on Construction & Operational Effects (Non traffic), and Issue Specific Hearing 10 on Traffic and Transportation.
- 1.2 PoTLL’s oral submissions are summarised below, and expanded upon where necessary, in light of the ExA’s Action points.
- 1.3 The position in relation to the Action Points of relevance to PoTLL is as follows:

Action Point	Position
<p><b>CAH3-5 PoTLL Protective Provisions</b></p> <p>Please submit an updated dDCO to include updated/agreed Protective Provisions</p>	<p>Position explained in Summary of Case from CAH3 below.</p>
<p><b>CAH3-6 PoTLL Protective Provisions</b></p> <p>Please set out a record of matters arising from Protective Provisions (and any other matters) where adjudication by the ExA is likely to be required. Parties are requested to consider the drafting approaches to Protective Provisions in other made Orders that affect port land.</p>	<p>Position explained in the Summary of Case from CAH3 below.</p>
<p><b>CAH3-7 PoTLL Outstanding Matters</b></p> <p>Please submit updated PADS/ SoCG recording agreed and outstanding matters relevant to CA, TP, statutory undertaker and related protections and Protective Provisions.</p>	<p>PoTLL has separately submitted an updated PADSS, to deal with CAH3-7, and is, in light of the updated progress, working with the Applicant to update the SoCG for Deadline 7.</p>
<p><b>CAH3-8 PoTLL: Plot 21-10</b></p> <p>Please investigate and provide final positions on the removal of plot 21-10 from the application.</p>	<p>PoTLL understands that the Applicant will be removing this plot from its plans at Deadline 7.</p>
<p><b>CAH3-9 PoTLL Side Agreements/ Framework Agreement</b></p> <p>Please provide an update on progress with side agreements /a framework agreement. Please document progress including setting out the equivalent of Heads of Terms that are relevant for the ExA/SoS to be aware of. If these are agreed then the SoCG/ PADS process should also record agreement and evidence of agreement should be provided.</p>	<p>The position is explained in the Summary of Case from CAH3 below.</p>
<p><b>CAH3-10 PoTLL: ‘Asda Roundabout’ Improvement Works</b></p>	<p>This is dealt with in <b>Appendix 1</b> of this Summary of Case, which explains the</p>

<p>Please indicate practicable steps required if additional land is required to deliver mitigation at the Asda Roundabout and/or alternative measures where additional land is not be required. Can additional land be provided within the boundary or Highway and/ or Port operational land? Can the application of the CA Regulations be avoided?</p>	<p>mitigation proposal put forward by PoTLL and responds to these questions.</p>
<p>ISH10: Actions on the Applicant in relation to Orsett Cock and Wider Networks Requirement</p>	<p>Following the discussion at the Hearing, PoTLL has provided updated drafting of proposed Requirements for Orsett Cock, Wider Networks ('Silvertown style'), Tilbury Link Road and Asda Roundabout. These are provided at <b>Appendices 2 to 6</b> of this Summary of Case, with Explanatory Notes.</p>

## 2. **COMPULSORY ACQUISITION HEARING 3**

- 2.1 PoTLL and the Applicant continue to negotiate a Framework Agreement and updated Protective Provisions. A meeting was held on 12 October 2023 in relation to drafts of both, where agreement on a number of important issues was reached, including that the Applicant has agreed not to place any environmental mitigation or compensation on PoTLL's land other than in respect of Work No. E14 (Tilbury Fields) to the extent this is shown located on PoTLL's land in the Works Plans.
- 2.2 A number of matters remains under discussion, including the treatment of compulsory acquisition and temporary possession powers within the Protective Provisions.

Post-hearing note: A mark-up of the Protective Provisions was received from the Applicant on 23 October 2023. PoTLL anticipates that the Applicant will be providing updated drafting of the Protective Provisions at Deadline 6. PoTLL is seeking to agree the Protective Provisions in advance of Deadline 7, and anticipates making a position statement as to matters not agreed, as well as the status of the Framework Agreement, at Deadline 7, in accordance with Action Point CAH3-9. A meeting is scheduled between the parties on 02 November to help facilitate this.

PoTLL can confirm that the matters it is seeking to deal with in the Framework Agreement align with the concerns PoTLL has raised throughout the Examination (starting with its Written Representation) seeking to build off the more 'blunt instrument' approach of the Protective Provisions. The Framework Agreement does not deal with any additional points above and beyond those points.

In response to Action Point CAH3-6, requesting a record of matters arising from the Protective Provisions where adjudication by the ExA is likely to be required, whilst PoTLL does not wish to forestall negotiations, it is clear that on two matters further satisfactory progress is not looking likely. These are the request for protection from the exercise of compulsory acquisition and temporary possession powers over PoTLL's land, and the form and scope of the indemnity. PoTLL continues to negotiate on these matters with the Applicant, however a justification for PoTLL's position in respect of both matters is provided below for consideration (if required) by the ExA and, ultimately, the Secretary of State. This builds on the submissions made at the Hearing in relation to the question of serious detriment.

### **PoTLL Approval of Land Powers**

- 2.3 PoTLL is a statutory undertaker as harbour authority for the Port of Tilbury, and is the commercial operator of the port. As such, the tests under s127 of the Planning Act 2008 are engaged and apply to the proposed acquisition of land and rights by the Applicant.

2.4 Section 127 of the Planning Act 2008 provides that, where powers of compulsory acquisition are requested over land acquired by a statutory undertaker for the purposes of its undertaking, the Secretary of State must only grant such powers over that land where:

- (a) it can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- (b) if purchased it can be replaced by other land ... without serious detriment to the carrying on of the undertaking.

2.5 In considering serious detriment to a harbour undertaking, and as noted at CAH3, it is important to note that the impacts to be considered are not simply relating to the plots in question, but also the impacts of the proposal as a whole, flowing from the fact that the compulsory acquisition powers are a key part of delivering the Scheme as a whole (in this case, the utility supply for the tunnel and the associated construction compound). This means that impacts of the Applicant's temporary possession powers to support the Scheme are also relevant in considering the overall test.

2.6 The impacts should be considered not only to the Port's current operations, but also to its future operations; and to matters which affect the commercial performance of the Port where those commercial aspects are a consequence of its statutory functions.

2.7 Support for these propositions can be found in the Recommendation Report for the Lake Lothing Third Crossing DCO.<sup>1</sup> This is provided at **Appendix 7**. This project involved the construction of an opening bridge over a harbour, with compulsory acquisition proposals for airspace, but associated temporary possession of harbour land and water areas to facilitate its construction.

2.8 In that Recommendation Report, the Examining Authority (and this was not disagreed with by the Secretary of State) noted that:

- Paragraph 8.5.138: We agree with ABP [the Harbour Authority] that the carrying on of port operations encompasses existing and future port operations together with the ability of ABP to comply with its statutory obligations and duties as SHA and CHA. We also agree with ABP that serious detriment is a matter of judgement on the scale of impact on the undertaking and that the decision maker should take a holistic approach. In this case, the impact on the port as a whole should be assessed. We also agree with ABP that, for serious detriment to occur, the impact would have to be serious, but not necessarily severe. We have considered the objection generally under the headings in the ABP closings.
- Paragraph 8.5.145: Construction would require the TP of significant areas within the port to either side of the areas of permanent CA and rights sought. Although not subject to the tests in s127 of PA2008 we have considered the impacts of TP on ABP's undertaking.
- Paragraph 8.5.159: We agree with ABP that serious detriment to the carrying on of its undertaking should be assessed in a holistic manner, including navigation even though it could be seen as a subject under planning impacts.
- Paragraph 8.5.171: As a result of all of the above, we consider that the presence and operation of the proposed bridge which would result from the CA powers sought would have a disruptive and detrimental effect on the operation of the port. We are however satisfied that this would be limited in extent in terms of its impact and duration and not seriously detrimental to the operation of the port.
- Paragraph 8.5.186-188: We accept that serious detriment should be considered in relation to the undertaking as a whole. Each case should however be considered on its own circumstances, and comparisons between schemes can be somewhat contrived or anecdotal and therefore difficult to judge on a representative basis. We agree that for serious detriment to occur, the impact should be important and significant. This does not however say that important and significant impacts always lead to serious detriment, it may just be detriment. Furthermore, the requirement for replacement land would only come into play if serious detriment was found.

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<sup>1</sup> An agreement was entered into between the Applicant and the harbour authority and so the Secretary of State was not required to determine this matter.

The importance of the location of the impact could also be a factor, as was the case at Hinckley. Here, the impacts may be, in places, important and significant in terms of the integration of the operation of the proposed bridge into the operation of the port. It is however the consequences in the round to the carrying on of the undertaking which need to be judged in terms of serious detriment.

- Paragraph 8.5.189: Having identified various areas of detriment, it is now necessary to combine these impacts and consider their detriment against the operation of the port as a whole. In carrying out this task, for the sake of completeness, we have included the effect of TP, even though this does not come within the scope of the s127 test in PA2008.

2.9 In this context, it is PoTLL's case that serious detriment is likely to be caused to the carrying on of its statutory undertaking through:

2.9.1 the compulsory acquisition of rights for utilities within Substation Road, that could:

- (a) affect access over the main road access in the Port while the utilities works are carried out;
- (b) harm the conveyor to the CMAT and, as it is necessary to divert utilities around the conveyor, causing impacts upon wider Port land. Rights powers are proposed in Substation Road, where existing ducting is full, and the conveyor serving the CMAT represents a physical obstruction underground, rendering it impossible to carry out this work. For the avoidance of doubt, the conveyor forms an integral and essential part of the CMAT, enabling supplies to be imported and exported by vessel. In the event of failure of the conveyor, or any interruption to the use of this, the CMAT is unable to operate and will shut down until use of the conveyor is restored. PoTLL has advised National Highways of this issue since pre-examination consultation, however it is only late in the Examination that National Highways has visited the site and understood the issue. This is despite PoTLL's best efforts to make National Highways aware of an issue with its proposals that will make them impossible to implement. PoTLL is now faced with the circumstance where National Highways must identify an alternative proposal. However, there is little incentive to do so whilst it retains the power to simply remove the existing rights to utilities, including PoTLL's own, within Substation Road and replace these with Work No. MU27;
- (c) interfere with the movement of rail to the Roll-on Roll-off terminal, being the only rail connection to that terminal, which provides for the just-in-time economy;
- (d) disconnect, divert or interfere with existing utility supplies to the Port and surrounding land uses; and
- (e) create new stand-off or restricted zones to apparatus within which current or future Port operations could no longer take place, including where linked to existing utilities belonging to other statutory undertakers, currently located below Substation Road;

2.9.2 temporary possession of land in and around the Port, including within the Freeport zone. If not undertaken with PoTLL's consent, this could hinder or prevent and ultimately sterilise the ability for PoTLL to develop the land (e.g. if the drainage, earthworks or management of contamination is not handled in a way that is mindful of PoTLL's future developments and operations);

2.9.3 actions taken in relation to Ecology, ensuring that the Applicant's decisions in terms of ecological management of the Freeport area (where occupied through temporary possession or the compulsory acquisition of rights; leased land includes suitable protections for PoTLL) do not restrict or prevent development and future operations;

- 2.9.4 the use of Substation Road as the main construction access point for the Scheme, adding extremely large volumes to an already crowded road, potentially compromising both PoTLL's open port duty and commercial performance;
  - 2.9.5 the temporary possession of plot 21-10, which is prime Port real estate for leasing and, whilst the Applicant has agreed this land can be removed from the scope of its temporary possession powers, revised plans have not yet been submitted into the Examination; and
  - 2.9.6 the temporary possession of the plots (21-18 and 21-19) seeking to link LTC's compound to PoTLL's CMAT conveyor, which has the potential to critically affect PoTLL's tenant's operations, block access, as well as negatively affecting the Tilbury2 water vole mitigation. This should not be permitted without PoTLL being able to put in place controls to ensure there is no detrimental impact to Port operations and commitments.
- 2.10 The value of a port to the economy is intrinsically entwined with the use of the port's land. Harbour authorities benefit from extensive permitted development powers in order to be able to change land use to reflect changes in the import/export economy. The value of land to a harbour authority is, therefore, the amount of utility inherent in that land. That is, the extent to which that land can be developed in multiple ways to support the functioning of the port and harbour and its economic function and contribution.
- 2.11 In respect of future development, any decision taken as to the use of PoTLL's land must be made with a view to how this will impact PoTLL's future development plans, those of other statutory undertakers seeking to use the same land areas, and the potential for impacts to be experienced in adjacent areas of land. This is a consideration that PoTLL regularly undertakes. PoTLL must be involved in any and all proposed use of land, in order to ensure that the future development value and utility of its land is not reduced – whether through utility works, the treatment of protected species, or managing changes to drainage that may make the land more challenging to use in the future.
- 2.12 PoTLL also requires certainty for when land will be returned to it, and the terms on which any land occupied by National Highways is held. This is managed through a requirement that National Highways enters into agreements with PoTLL for the use of its land. This process would be undermined to PoTLL's detriment if National Highways could simply make a general vesting declaration or serve a notice that it is taking temporary possession, and exclude PoTLL from its own land interests.
- 2.13 Accordingly, any activity that results in a reduction in the utility of the land or affects the ability to use it will, by definition, cause serious detriment to the port undertaking by:
- 2.13.1 impacting upon port operations, restricting these from taking place or reducing the effectiveness, flexibility and responsiveness of those port operations, as the failings of any of these matters could cripple the current operations of the Port and such impacts cannot be more severe than that;
  - 2.13.2 reducing the amount of land capable of unrestricted development, whether directly or indirectly (such as where a centrally located section of land is sterilised);
  - 2.13.3 reducing the ability to develop the land (for instance through utility standoff distances); and
  - 2.13.4 making development more challenging or difficult (such as by creating land rights that must be managed and accommodated).
- 2.14 PoTLL recognises that there may be a concern that protection from the use of CA and TP powers over such a wide area may make the Applicant's Scheme harder to implement. However, PoTLL would be obliged to act reasonably, both explicitly in the protective provisions sought, and as a matter of well-established principle that PPs must be implemented in the overall context of the scheme concerned having received in-principle consent by virtue of the DCO being made.

- 2.15 As such, there is no ability for PoTLL simply to block the LTC Scheme from being implemented; it will only be able to ensure that the carrying out of the Scheme is done in a way that does not harm its undertaking. However, without adequate protection from the exercise of these powers by the Applicant, the use of CA and TP powers **will** cause serious detriment to PoTLL's undertaking.
- 2.16 Whilst PoTLL recognises that the Applicant would not feel comfortable with the exercise of these powers on PoTLL's land being subject to PoTLL's consent, this is not a relevant factor in the tests under section 127 of the Planning Act 2008. As such, PoTLL's protective provisions must include provision for PoTLL's consent to the use of land powers within the Port (as defined in the protective provisions).
- 2.17 Finally, PoTLL fails to see why it should be treated differently from other statutory undertakers who have similar protections in the draft LTC Order, or as harbour authorities have been treated in other DCOs which affect ports. Non-exhaustive examples from both the latest version of the Draft Order and other DCOs have been provided in the table below. These demonstrate, in PoTLL's submission, that the protection it is seeking is very well precedented.

<b>Protective Provisions from the draft LTC Order [REP5-024]</b>	
<b>Location</b>	<b>Relevant extract</b>
Part 1 – Protection of electricity, gas, water and sewerage undertakers – paragraph 6	“Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement”
Part 2 – Protection of operators of electronic communications code networks – paragraph 16	“The exercise of the powers conferred by article 37 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) to the electronic communications code” (which requires notice, and enables counter-notices requiring works to apparatus to enable the proposals)
Part 5 – Protection of specified gas undertakers – paragraph 53	“Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of the gas undertaker other than by agreement.”
Part 6 – Protection of National Grid Gas PLC as gas undertaker – paragraph 69	“Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.”
Part 7 – Protection of National Grid Electricity Transmission plc as electricity undertaker – paragraph 85	“Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.”

<b>Protective Provisions for the Benefit of Port and Harbour Authorities</b>	
<b>Order and location</b>	<b>Relevant extract</b>
<p>The Lake Lothing (Lowestoft) Third Crossing Order 2020</p> <p>Schedule 13, Part 5, Paragraph 55, For the Protection of the Harbour Authority</p>	<p>“55. – (1) The undertaker must not, under the powers conferred by this Order, temporarily possess, acquire or use, or acquire new rights over, port land without the consent of the harbour authority.”</p> <p>“(2) The undertaker must not exercise the powers conferred by article 17 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of any port land without the consent of the harbour authority.”</p> <p>“(3) The powers conferred by article 29 (power to override easements and other rights) do not apply to any rights held by the harbour authority for the purpose of its statutory undertaking, except with the consent of the harbour authority.”</p>
<p>The Swansea Bay Tidal Generating Station Order 2015</p> <p>Schedule 8, Part 1, Paragraph 3, For the Protection of the Associated British Ports</p>	<p>“3. – (1) The undertaker must not under the powers conferred by this Order acquire or use, or acquire new rights over, port land without the consent of AB Ports.”</p> <p>“(2) The undertaker must not exercise powers conferred by article 15 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act (powers of entry) in respect of any port land without the consent of AB Ports.”</p> <p>“(3) Article 25 (power to override easements and other rights) does not apply to any rights held by AB Ports for the purpose of its statutory undertaking, except with the consent of AB Ports”</p>
<p>The Hornsea Offshore Wind Farm Order 2014</p> <p>Schedule 12, Part 5, Paragraph 46, For the Protection of the Associated British Ports</p>	<p>“46. The undertaker must not under the powers of this Order acquire land or acquire new rights over land held by A. B. Ports for the purpose of its statutory undertaking without the consent of A. B. Ports, which consent must not be unreasonably withheld but may be given subject to reasonable conditions.”</p>
<p>The Hornsea Offshore Wind Farm Order 2016</p> <p>Schedule 12, Part 5, Paragraph 3, For the Protection of the Associated British Ports</p>	<p>“3. The undertaker must not under the powers of this Order acquire land or acquire new rights over land held by A. B. Ports for the purpose of its statutory undertaking without the consent of A. B. Ports, which consent must not be unreasonably withheld but may be given subject to reasonable conditions.”</p>
<p>The Port of Tilbury (Expansion) Order 2019</p> <p>Schedule 10, Part 3, Paragraph 33, For the Protection of the Port of London Authority</p>	<p>“33. Nothing contained in Part 3 (powers of acquisition and possession of land) of this Order authorises the acquisition of any interest in, or the acquisition or extinguishment of any right in,</p>



	on or over, any Order land if the interest or right is at the time of the proposed acquisition vested in the PLA.”
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**Indemnity**

2.18 PoTLL requires an indemnity that covers consequential losses, in order that its interests are protected from losses that are likely to be incurred as a result of failures by the Applicant (including its contractors) in the implementation of the LTC Scheme.

2.19 **Nature of losses**

2.19.1 As a harbour authority, PoTLL is responsible for maintaining the Port and ensuring that it, and its infrastructure, remain available for users of the Port. The primary losses that will be experienced by PoTLL in the event of a failure by National Highways in the carrying out of the LTC Scheme will be consequential losses. This is a factor of the nature of the harbour undertaking, as one that facilitates the activity of third parties, rather than providing goods and services directly. Whilst PoTLL has infrastructure within the Port, this is but a small proportion of the potential losses that may be experienced by PoTLL. Without an indemnity that includes consequential losses, PoTLL is left with significant exposure to losses, caused by National Highways, without any recourse.

2.19.2 This risk is unacceptable to PoTLL.

2.20 **Indemnities within the LTC Draft DCO**

2.20.1 PoTLL has conducted a review of the various indemnities provided for other statutory undertakers within the draft DCO. In every case, the indemnities include provision for some form of consequential losses to be recovered.

<b>Protective Provisions included in the draft Order [REP5-024]</b>	
<b>Location</b>	<b>Scope of provision</b>
Part 1 – Protection of electricity, gas, water and sewerage undertakers – paragraph 11	Covers the cost of making good damage and restoring supply, and ‘any other expenses, loss, damages, penalty or costs incurred by the undertaker, by reason or in consequence of any such damage or interruption’
Part 2 – Protection of Electronic Communications Code Networks – paragraph 17	Covers the cost of making good damage and restoring supply, and ‘any other reasonable expenses, loss, damages, penalty or costs incurred by [the operator], by reason, or in consequence of, any such damage or interruption’.
Part 3 – Protection of drainage authorities – paragraph 26	Requires the undertaker to compensate the drainage authority from ‘all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the drainage authority’ caused by the undertaker carrying out the works.
Part 4 – Protection of railway interests – paragraph 42	Requires the undertaker to indemnify the railway company ‘from and against all claims and demands arising out of or in connection

	with a specified work or a protective work or any such failure, act or omission’
Part 5 – Protection of specified gas undertakers – paragraph 58	Covers the cost of making good damage and restoring supply, and ‘any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred or paid by or recovered from the gas undertaker, by reason or in consequence of any such damage or interruption or the gas undertaker becoming liable to any third party as aforesaid other than arising from any default of the gas undertaker’
Part 6 – Protection of National Grid Gas plc as gas undertaker – paragraph 74	Covers the cost of making good damage and restoring supply, and ‘any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid’
Part 7 – Protection of National Grid Electricity Transmission plc as electricity undertaker – paragraph 90	Covers the cost of making good damage and restoring supply, and ‘any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid’
Part 8 – Protection of the Port of London Authority – paragraph 109	Covers direct losses and ‘all claims and demands arising out of or in connection with the specified works or specified functions or any such failure, act or omission’
Part 9 – Protection of the Environment Agency – paragraph 127	Includes indemnification from ‘all liabilities, claims and demands arising out of or in connection with the authorised development or otherwise out of [approval of plans, construction of specified works, surveys and tests]’
Part 11 – Local Highway Authorities	No indemnity, due to separate process for issue of provisional certificates and maintenance requirements

2.20.2 By contrast, the indemnity currently provided by National Highways in the draft DCO to PoTLL (see Part 10 – Protection of the Port of Tilbury London Limited – paragraph 138) is extremely restricted. It requires National Highways to cover losses that are associated with the construction of a specified work only, and only to the extent damage is caused to PoTLL’s property. It does not cover the failure of a specified work, any aspect of protective works, the carrying out of specified functions, nor any act or omission of the undertaker, its employees, contractors and agents. It also only covers losses incurred by PoTLL by the damage, but does not cover claims against PoTLL made by third parties.

- 2.20.3 The scope of the indemnity is extremely narrow and does not cover all elements of the activity that National Highways will be undertaking within PoTLL's land. This means that PoTLL could not, under the current indemnity, recover even all of the direct losses that can reasonably be foreseen as a result of the carrying out of the authorised development.
- 2.20.4 This indemnity is wholly unsuitable and requires PoTLL to bear almost all risks from National Highways carrying out the LTC scheme on and around PoTLL's land. This indemnity cannot be accepted by PoTLL and PoTLL cannot understand why the drafters of the DCO insist on maintaining this position, given that it is wholly unprecedented (see below) and also wholly unreasonable.

## 2.21 Indemnities for the protection of Port and Harbour Authorities in DCOs

- 2.21.1 Indemnities for the benefit of port and harbour authorities are found in numerous DCOs. In each case, the indemnity is robust, covering both direct losses that may be incurred by the relevant port or harbour authority, and consequential losses that may be incurred as a result of third party claims, etc.
- 2.21.2 Indemnities can be found in the following locations. Links are provided to the relevant provision on [legislation.gov.uk](http://legislation.gov.uk), to avoid the need to repeat these lengthy provisions within this document.

<b>Indemnities contained in Protective Provisions for the Benefit of Port and Harbour Authorities</b>	
<b>Order and location</b>	<b>Relevant extract</b>
The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014/2384 – Schedule 16, Part 2, paragraph 21	<p><u>Indemnities, costs and exercise of DCO powers and compensation</u></p> <p>21.— (1) The undertaker shall be responsible for and make good to the Authority all financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by the Authority by reason of—</p> <p>(a) the construction or operation of the authorised project or the failure of any works comprised within it;</p> <p>(b) anything done in relation to a mooring or buoy pursuant to paragraph 10; or;</p> <p>(c) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised project or dealing with any failure of the authorised project;</p> <p>(d) and the undertaker shall indemnify the Authority from and against all claims and demands arising out of or in connection with the authorised project or any such failure, act or omission.</p> <p>(2) The fact that any act or thing may have been done—</p> <p>(a) by the Authority on behalf of the undertaker; or</p> <p>(b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Authority, or in a manner approved by the Authority, or under its supervision or the supervision of its duly authorised representative;</p> <p>shall not (if it was done or required without negligence on the part of the Authority or its duly authorised representative, employee, contractor or agent) excuse the undertaker from liability under the provisions of this paragraph.</p> <p>(3) In complying with the indemnity provisions pursuant to this paragraph the undertaker's liability shall either be limited to a sum to be agreed between the parties or unlimited.</p> <p>(4) The Authority shall give the undertaker reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and</p>

	no settlement or compromise of any such claim or demand shall be made without the prior consent of the undertaker.
<p>The Able Marine Energy Park Development Consent Order 2014/2935 – Schedule 9, Part 1, paragraph 17</p>	<p><u>Indemnity</u></p> <p><b>17.—</b> (1) The Harbour Authority is responsible for and must make good to the Conservancy Authority all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by the Conservancy Authority by reason of—</p> <p>(a) the construction or operation of the authorised works or the failure of the authorised works;</p> <p>(b) anything done in relation to a mooring or buoy under paragraph 9; or;</p> <p>(c) any act or omission of the Harbour Authority, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works,</p> <p>and the Harbour Authority must indemnify the Conservancy Authority from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.</p> <p>(2) The fact that any act or thing may have been done—</p> <p>(a) by the Conservancy Authority on behalf of the Harbour Authority; or</p> <p>(b) by the Harbour Authority, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Conservancy Authority, or in a manner approved by the Conservancy Authority, or under its supervision or the supervision of its duly authorised representative, does not (if it was done or required without negligence on the part of the Conservancy Authority or its duly authorised representative, employee, contractor or agent) excuse the Harbour Authority from liability under the provisions of this paragraph.</p> <p>(3) The Conservancy Authority must give the Harbour Authority reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the Harbour Authority.</p>
<p>The Hornsea One Offshore Wind Farm Order 2014/3331 – Schedule 12, Part 5, paragraph 53</p>	<p><b>53.—</b>(1) Without prejudice to the other provisions of this Part of this Schedule, the undertaker is to be responsible for, and make good to A. B. Ports, all losses, costs, charges, damages and expenses however caused (including a reasonable and proper proportion of the overhead charges of A. B. Ports) which may reasonably be incurred by or occasioned to A. B. Ports by reason of or arising from or in connection with—</p> <p>(a) the perusal of plans and the inspection of the specified works by A. B. Ports or its duly authorised representative;</p> <p>(b) the construction or failure of the specified works, or the undertaking by A. B. Ports of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of A. B. Ports arising from such construction or failure;</p> <p>(c) any act or omission of the undertaker or their servants or agents whilst engaged in the construction of any of the specified works.</p>

	<p>(2) Without prejudice to the generality of sub-paragraph (1), the undertaker must indemnify A. B. Ports from and against all claims and demands arising out of, or in connection with, such construction, or failure or act or omission as is mentioned in that sub-paragraph.</p> <p>(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of A. B. Ports or of any person in its employ or of its contractors or agents.</p> <p>(4) A. B. Ports must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.</p>
<p>The Swansea Bay Tidal Generating Station Order 2015/1386 – Schedule 8, Part 1, paragraph 12 (for Associated British Ports)</p>	<p><u>Indemnity</u></p> <p>12.—(1) Without limiting the other provisions of this Part, the undertaker is to be responsible for, and make good to AB Ports, all losses, costs, charges, damages and expenses however caused which may reasonably be incurred by or occasioned to AB Ports by reason of or arising from or in connection with—</p> <p>(a) the perusal of plans and navigation schemes and the inspection of a specified work by AB Ports or its duly authorised representative;</p> <p>(b) the carrying out of surveys, inspections, tests and sampling within the harbours and the approaches to the harbours—</p> <p>(i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of the River Tawe as AB Ports has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the undertaker is liable to remedy under paragraph 8; and</p> <p>(ii) where AB Ports has reasonable cause to believe that the construction of any of the tidal works is causing or has caused any such accumulation or erosion;</p> <p>(c) the construction or failure of a specified work, or the undertaking by AB Ports of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of AB Ports arising from such construction or failure including—</p> <p>(i) any additional costs of dredging incurred by AB Ports as a result of contamination of the seabed caused by the construction of the specified work; and</p> <p>(ii) any damage to the lock gates or damage from flooding caused by increased wave reflection as a result of the construction of the specified work;</p> <p>(d) any act or omission of the undertaker or their servants or agents whilst engaged in the construction of a specified work.</p> <p>(2) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify AB Ports from and against all claims and demands arising out of, or in connection with, such construction, or failure or act or omission as is mentioned in that sub-paragraph.</p> <p>(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of AB Ports or of any person in its employ or of its contractors or agents.</p>

	<p>(4) AB Ports must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.</p>
<p>The Swansea Bay Tidal Generating Station Order 2015/1386 – Schedule 8, Part 2, paragraph 26 (for Neath Port Authority)</p>	<p><u>Indemnity</u>  <b>26.</b>—(1) Without limiting to the other provisions of this Part, the undertaker is to be responsible for, and make good to Neath Port Authority, all losses, costs, charges, damages and expenses however caused which may reasonably be incurred by or occasioned to Neath Port Authority by reason of or arising from or in connection with—  (a)the perusal of plans and navigation schemes and the inspection of the specified work by Neath Port Authority or its duly authorised representative;  (b)the carrying out of surveys, inspections, tests and sampling within the harbour and the approaches to the harbours—  (i)to establish the marine conditions prevailing prior to the construction of any tidal work in such area as Neath Port Authority has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the undertaker is liable to remedy under paragraph 23; and  (ii)where Neath Port Authority has reasonable cause to believe that the construction of any of the tidal works is causing or has caused any such accumulation or erosion;  (c)the construction or failure of a specified work, or the undertaking by Neath Port Authority of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of Neath Port Authority arising from such construction or failure;  (d)any act or omission of the undertaker or their servants or agents whilst engaged in the construction of a specified work.  (2) Without limiting the generality of sub-paragraph (1), the undertaker shall indemnify Neath Port Authority from and against all claims and demands arising out of, or in connection with, such construction, or failure or act or omission as is mentioned in that sub-paragraph.  (3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of Neath Port Authority or of any person in its employ or its contractors or agents.  (4) Neath Port Authority must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph, and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.</p>
<p>The Hornsea Two Offshore Wind Farm Order 2016/884 – Schedule 12, Part 5, paragraph 10</p>	<p><b>10.</b>— (1) Without limiting the other provisions of this Part, the relevant undertaker must indemnify A. B. Ports in respect of all losses, costs, charges, damages and expenses however caused (including a reasonable and proper proportion of the overhead charges of A. B. Ports) that may reasonably be incurred by or occasioned to A. B. Ports by reason of or arising from or in connection with—</p>

	<p>(a) the perusal of plans and the inspection of the specified works by A. B. Ports or its duly authorised representative;</p> <p>(b) the construction or failure of the specified works or the undertaking by A. B. Ports of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of A. B. Ports arising from such construction or failure; or</p> <p>(c) any act or omission of the relevant undertaker or its servants or agents whilst engaged in the construction of any of the specified works.</p> <p>(2) Without limiting sub-paragraph (1), the relevant undertaker must indemnify A. B. Ports in respect of all claims and demands arising out of, or in connection with, such construction, or failure or act or omission as is mentioned in that sub-paragraph.</p> <p>(3) Nothing in this paragraph imposes any liability on the relevant undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of A. B. Ports or of any person in its employ or of its contractors or agents.</p> <p>(4) A. B. Ports must give to the relevant undertaker notice in writing of any claim or demand for which the relevant undertaker may be liable under this paragraph, and no settlement or compromise of any such claim or demand may be made without the consent in writing of the relevant undertaker.</p>
<p>The Lake Lothing (Lowestoft) Third Crossing Order 2020/474 – Schedule 13, Part 5, paragraph 64</p>	<p><b>64.—</b> (1) Without limiting the other provisions of this Part, the undertaker is to be responsible for, and must make good to the harbour authority, all losses, costs, charges, damages and expenses however caused which may reasonably be incurred by or occasioned to the harbour authority by reason of or arising from or in connection with—</p> <p>(a) the perusal of plans and navigation schemes and the inspection of a specified work by the harbour authority or its duly authorised representative;</p> <p>(b) the carrying out of surveys, inspections, tests and sampling within Lowestoft Harbour and the approaches to Lowestoft Harbour—</p> <p style="padding-left: 40px;">(i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of Lowestoft Harbour as the harbour authority has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the undertaker is liable to remedy under paragraph 59; and</p> <p style="padding-left: 40px;">(ii) where the harbour authority has reasonable cause to believe that the construction of any of the tidal works is causing or has caused any such accumulation or erosion;</p> <p>(c) any update of the navigation risk assessment relating to Lowestoft Harbour in consequence of paragraph 11(4) (navigation risk assessment) of Schedule 2 to the extent that it is required as a consequence of any variation to, or replacement of, the Scheme of Operation proposed by the undertaker or the harbour authority under article 41 (operation of the new bridge) or as a result of the operation of the new bridge generally;</p> <p>(d) any variation to or replacement of the Scheme of Operation proposed by the undertaker or harbour authority under article 41;</p> <p>(e) the harbour authority responding to a request for consultation, agreement, approval or consent pursuant to any provision of this Order;</p>

	<p>(f) the construction, maintenance or failure of a specified work, or the undertaking by the harbour authority of works or measures to prevent or remedy danger or impediment to navigation, or damage to port land arising from such construction, maintenance or failure, including but not limited to—</p> <ul style="list-style-type: none"> <li>(i) any additional costs of dredging incurred by the harbour authority as a result of contamination of the lakebed caused by the construction or maintenance of the specified work;</li> <li>(ii) damage to any plant or equipment belonging to the harbour authority and located on port land, or to any port land or building on port land, that is caused by the construction, maintenance or failure of a specified work; and</li> <li>(iii) the failure of the new bridge to open fully; and</li> </ul> <p>(g) any act or omission of the undertaker or its servants or agents whilst engaged in the construction or maintenance of a specified work or in the act of operating the opening mechanism of the new bridge to enable it to open fully, save where such acts or omissions are undertaken by the harbour authority.</p> <p>(2) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify the harbour authority from and against all claims and demands arising out of, or in connection with, such construction, maintenance or failure or act or omission as is mentioned in that sub-paragraph.</p> <p>(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (2) are attributable to negligence on the part of the harbour authority or of any person in its employ or of its contractors or agents, including negligence in the course of operating the opening mechanism of the new bridge.</p> <p>(4) The harbour authority must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.</p>
<p>The Great Yarmouth Third River Crossing Development Consent Order 2020/1075 – Schedule 14, Part 6, paragraph 75</p>	<p><b>75.</b>— (1) Subject to the provisions of this paragraph, the undertaker agrees to indemnify fully and hold harmless the GYPA from and against all charges, claims, demands, damages, expenses, liabilities, losses, third party liabilities and any other cost and expense of any nature or kind whatsoever (including any reasonable and proper legal and other professional costs incurred by the GYPA) (together, “losses”) suffered or reasonably incurred by the GYPA to the extent that any losses are caused by—</p> <ul style="list-style-type: none"> <li>(a) the construction, maintenance or failure of the authorised development, a specified work or a protective work, including any mechanical or other failure of the new bridge; or</li> <li>(b) any act or omission of the undertaker or of its officers, employees, servants, contractors or agents whilst engaged in— <ul style="list-style-type: none"> <li>(i) the construction or maintenance of a specified work or a protective work;</li> <li>(ii) seeking to remedy any failure of a specified work or a protective work; or</li> <li>(iii) the act of operating the opening mechanism of the new bridge.</li> </ul> </li> </ul> <p>(2) GYPA must mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under sub-paragraph (1).</p>



	<p>(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any losses referred to in that sub-paragraph to the extent that they are—</p> <p>(a) attributable to the negligence or wilful misconduct of the GYPA or of its officers, employees, servants, contractors or agents; or</p> <p>(b) not within the reasonable control of the undertaker.</p> <p>(4) The GYPA must give to the undertaker notice in writing of any losses for which the undertaker may be liable under this paragraph and no settlement or compromise of them may be made without the written consent of the undertaker.</p>
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2.21.3 In comparing these indemnities to that proposed by National Highways for the protection of PoTLL, the differences are stark and the degree to which the proposal is inadequate is readily apparent.

## 2.22 PoTLL's requested indemnity

2.22.1 PoTLL requires an indemnity that covers all types of losses that it is likely to experience, including consequential losses. PoTLL is not able to provide greater detail as to the type and extent of consequential losses as these are subject to considerable variation flowing from the matter giving rise to the loss. For example, an incident attributable to National Highways at a berth will have very different impacts to a blockage of the eastern end of Substation Road.

2.22.2 The nature of the port is that it facilitates customers and tenants undertaking operations at the Port, including the import and export of goods, provision of cruises, and numerous other industries. Customers are relying on PoTLL providing these services, and access to these services, as well as the use of port infrastructure. If these services and facilities are not available, or cannot be accessed, PoTLL has a liability to those customers and tenants. PoTLL is also under the open port duty, requiring it to maintain access to the port for anyone who wishes to use it, and presenting a further complexity and liability in respect of any event that forces the temporary closure of any part of the port. Simply, the main liability to PoTLL of any damage or interference with its operations is to third parties; an indemnity that does not include consequential losses therefore excludes PoTLL's largest avenue of potential harm.

2.22.3 PoTLL's proposed draft indemnity is provided in the draft protective provisions in Appendix 9 of its Written Representation [REP1-274]. PoTLL recognises the Applicant's reservations about an unlimited indemnity, and is reviewing if there are any aspects of the indemnity that it is able to amend. However, in principle, PoTLL requires an indemnity that reflects the losses that it is likely to experience in the event of failures by the Applicant in carrying out and maintaining the authorised development.

## 2.23 Conclusion

2.23.1 As presently drafted, the indemnity offered to PoTLL is wholly unsuitable for a statutory undertaker, especially in light of well-established precedent and the extensive interaction between the LTC Scheme and the Port. This covers not only the use of land within the Order limits, but the use of Port facilities for the importation of aggregates and other materials to the main north portal construction compound, and potentially onwards to other wharves that can serve construction south of the river.

2.23.2 If an adequate indemnity is not provided, PoTLL will have no choice but to maintain its objection to the LTC Scheme in the strongest terms, as its statutory undertaking and the business of the Port itself, including its significant role in the UK economy, are at real risk.

### 3. ISSUE SPECIFIC HEARING 8

#### 3.1 Materials handling

3.2 PoTLL is keen to ensure that use of the river Thames is considered and maximised by the LTC Scheme. The Outline Materials Handling Plan sets out that the Applicant is seeking to achieve 80% by weight of bulk aggregate imports to the north portal construction area as being made via the Port of Tilbury's facilities. This target is limited in scope, applying only to one area of the Scheme, only to aggregates, and only to import via the Port of Tilbury.

3.3 This is the Baseline Commitment, but there is then scope for a 'Better than Baseline Commitment', which encourages the Contractor to maximise utilisation of river transport for bulk aggregates for the north portal construction area. Above and beyond the question of why this is only relevant to 'bulk' aggregates, PoTLL considers that it is not clear how the achievement of this 'Better than Baseline' has any 'teeth' as a commitment.

3.4 PoTLL notes that section 6.2 of the oMHP provides for a derogation process to apply for the Baseline and Better Than commitments but it is not clear how that process works with the 'considerations' that are applied to the Better Than Commitment in paragraph 6.2.12. For example, if the Contractor has 'considered' the Value for Money obligations, does that mean the Better than Baseline Commitment does not have to be met even before attention is turned to if the 'Exemptions apply'.

3.5 The derogation process currently does not appear to apply scrutiny to those 'considerations', as they could have already reduced what the Contractor considers is able to 'maximised' above and beyond the 80% commitment before the 'derogation' scrutiny process is undertaken. This is particularly concerning with the 'Value for Money' consideration, where environmental considerations may mean that a slightly more expensive option should otherwise be brought forward.

3.6 Those 'considerations' are the following:

- (a) the suitability and operational capacity of the Port infrastructure to facilitate the unloading of materials within the construction programme;
- (b) onward road connectivity;
- (c) the *potential* of adverse impacts on the road network – with the A1089 and Asda roundabout being specifically highlighted – in the event traffic impacts on this roundabout are to exceed the environmental assessments; and
- (d) the obligation of the Applicant to consider value for money.

3.7 In PoTLL's view, considerations (b) and (c) are not relevant to the target. The Baseline Commitment seeks to use Port of Tilbury facilities to import aggregates to the north portal compound, accessed from Tilbury2. The circumstances where the road network will be used for the transport of aggregates forming part of this target are minimal, unless the Applicant were to allow right-hand turns out of the entry to Tilbury1, which would both impact Port operations and have safety impacts that have not been assessed (but, PoTLL notes, the Applicant could have sought to have assessed and applied through the DCO powers in relation to traffic regulation). It is difficult to see how either of these 'considerations' should be affecting the ability to meet the Better Than Commitment, except in circumstances where the Applicant was seeking to avoid meeting the commitment.

3.8 Consideration (a) is similarly unnecessary. It does not amount to an exceptional derogation, given that the CMAT, a dedicated terminal for the import of bulk aggregates, is located on Tilbury2. PoTLL is subject to an open port duty, ensuring that those wishing to use the Port can do so. It is not plausible that this should be a relevant 'consideration'.

3.9 Finally, in respect of the derogation process:

- 3.9.1 PoTLL notes that the derogation process provides for a form to be submitted (at Annex B.3 of the OMHP). However, that form does not appear to ask the two questions that would apply to whether an Exemption to the Better Than Commitment applies – i.e. to provide that it would lead to material worsening traffic conditions, or materially new or materially different environmental effects. For relevant stakeholders involved in the derogation process, this will be important information to consider;
- 3.9.2 either Appendix E of the oTMPfC or section 6.2 of the OMHP needs to make clear that PoTLL would be a member of the derogation TMF sub-group; and
- 3.9.3 it is noted that the Applicant is the decision-maker on whether a derogation can be granted; and that there is no mechanism for the relevant stakeholders (who should be identified as members of the TMF sub-group that is set up) to take grievances with that decision to, for example, the Secretary of State – it is considered that provision should be made for this.

### 3.10 **Worker accommodation**

- 3.11 The Applicant is planning to construct worker accommodation in the main North Portal Compound. This is adjacent to an operational port and PoTLL has been in discussions with the Applicant about a code of practice to apply to their workers. The Applicant has been amenable to a code of practice applying within Port land, and this is being documented presently.
- 3.12 PoTLL remains concerned about the wider impacts in the local community of a large number of workers living on site, or travelling to it; and that the Applicant does not propose a broader code of practice to manage its workers' impacts in the community and on established neighbouring uses. By way of example, there do not appear to be any proposals for how any anti-social behaviour of workers would be managed during non-working hours, if this arose.
- 3.13 In addition to this, PoTLL is concerned about the impact of worker vehicles on the wider Tilbury area. It will be difficult for local residents to identify vehicles associated with LTC construction workers and may believe that inconsiderate parking and other issues are linked to the Port, which gives rise to community relations, reputational and practical management and operational issues for the Port.
- 3.14 In PoTLL's view, the way to manage these impacts, in addition to a code of practice whilst within Port land, is a scheme to manage worker vehicles away from the residential areas of Tilbury. This could be through the provision of shuttle buses or cross-river transport, but must be secured within the DCO in order that the worst-case impacts of workers living on-site can be adequately assessed. Presently, this is left to contractors and the requirement that they be a member of the Considerate Constructors Scheme.
- 3.15 The Applicant's proposals for a Worker Accommodation Working Group, Travel Plan Liaison Group and Site-Specific Travel Plans do not include any suggestion that construction worker travel routes will be identified and secured. There are potential, unassessed impacts on the road network as a result (including to the Asda Roundabout, where PoTLL is still not clear that the flows through that roundabout are realistically reflected in the Applicant's models). However, PoTLL considers that, as part of the holistic issue of worker management, including impacts on the local community, the site-specific travel plans should expressly include routing into each compound, in order that these impacts may be specifically assessed and, where necessary, managed and mitigated against.
- 3.16 Above and beyond this, PoTLL is seeking that the Applicant commits to agreeing a Protocol with it to manage the impacts of having construction workers in close proximity to an operational port (pursuant to the proposed Framework Agreement).

## 4. **ISSUE SPECIFIC HEARING 10**

- 4.1 PoTLL provided an update on matters discussed during ISH4, namely that:

- 4.1.1 A scheme of mitigation for the Asda roundabout has been developed by PoTLL. This was shared with the Applicant and Thurrock Council on Friday 20 October 2023.

Post-Hearing Note: In response to the ExA's request for urgency, the traffic modelling supporting the scheme of mitigation was provided to National Highways and Thurrock Council by email at 13:40 on Wednesday, 25 October 2023. At **Appendix 1** to this Summary, PoTLL sets out details of this mitigation scheme, including an explanation of what it involves, how it performs in modelling terms, and that it is deliverable within the highway boundary.

- 4.1.2 PoTLL has been working with DP World London Gateway and Thurrock Council on the wording of a proposed draft Requirement to secure appropriate mitigation of the Orsett Cock junction. Updates to this Requirement, the Requirement proposed to secure construction mitigation on the Asda roundabout, a Silvertown Tunnel-style Requirement for wider network monitoring and mitigation, and comments on the Applicant's new Requirement 17 (Passive provision for Tilbury link road) are being provided at Deadline 6.

Post-hearing Note: Please refer to **Appendices 2 to 6** of this Summary, which provide updated drafting in relation to all four proposed Requirements, as well as an explanation of what they are proposing. **Appendix 2** also updates on the positions of the various Interested Parties in relation to the drafting of these Requirements, in particular in relation to the Orsett Cock junction.

- 4.2 PoTLL also noted that it supported the need for a Silvertown Tunnel-style Requirement to provide comfort to local highway authorities and other stakeholders that, where significant impacts are caused to the wider road network by the LTC Scheme, this will be both identified and mitigated against.
- 4.3 There are a lot of uncertainties inherent in any new road scheme as it creates new connections that did not previously exist. The Silvertown Tunnel Order is the most relevant precedent for managing these unknown impacts.
- 4.4 A Requirement based on the Silvertown Tunnel approach would not place any undue burden on the Applicant. On the contrary, it would provide certainty as to the thresholds at which intervention is required, and ensure that National Highways is not required to upgrade the local road network.

Post-hearing Note: PoTLL has provided a detailed explanation of its proposed drafting of a Silvertown Tunnel-style Requirement for monitoring and mitigation on the wider highway network. This seeks to address the concerns raised by the Applicant during ISH10, noting PoTLL's view that this Requirement has no overlap with the scope of the Road Investment Strategy (RIS). This is set out, alongside further developed proposed drafting, in **Appendices 2 and 6** to this Summary.

## APPENDIX 1

### ASDA ROUNDABOUT – POTLL’S PROPOSED SCHEME OF MITIGATION

#### 1. INTRODUCTION

- 1.1 The Asda roundabout is a key junction on the A1089, the sole access to the Port of Tilbury from the Strategic Road Network. National Highways typically requires an assessment of this junction as part of any proposed development that increases traffic through the junction, to ensure that its capacity will not be exceeded. PoTLL has made consistent representations to the Applicant that greater consideration is needed to be made of the Asda roundabout, and that this should be included within the Lower Thames Crossing (LTC) Order limits, so that the Applicant is able to implement physical mitigation at this junction, as necessary.
- 1.2 The Applicant did not model its construction traffic impacts on this junction as part of the Application through localised modelling of microsimulation or junction models, although the strategic LTAM assessment identified delay at this junction during numerous construction phases.
- 1.3 At Deadline 3, the Applicant submitted microsimulation modelling of the impacts of its construction traffic during Phases 1 and 6 at the Asda roundabout (see [REP3-128; REP3-129; and REP3-132]). Although PoTLL has serious concerns about the extent to which this assessment underestimates the volume of traffic (as set out in Appendix B of Thurrock Council’s Deadline 5 submission [REP5-112]), the modelling showed extensive queueing in excess of 1km in length.
- 1.4 Whilst PoTLL recognises that the Applicant considers that all impacts to the Asda roundabout can be mitigated by adjusting traffic flows and regulation measures elsewhere on the network, PoTLL is keen to ensure that, should this prove impossible, a scheme of physical mitigation is available for implementation by the Applicant. This will ensure that there are no delays to implementation of mitigation, and that the scheme can be properly considered before it is urgently required.
- 1.5 The proposed scheme of mitigation was shared with National Highways and Thurrock Council, as the relevant local highway authority, on Friday 20 October. In response to the ExA’s comments during ISH10 that even one day may make a difference to the Applicant’s ability to respond to the proposals at Deadline 6, PoTLL’s transport consultants were able to share the modelling data underpinning the scheme with National Highways and Thurrock Council at 13:40 on Wednesday 25 October.
- 1.6 PoTLL therefore anticipates that the Applicant will be making submissions in response to this scheme of mitigation at Deadline 6, and is hopeful that it will be able to address any concerns or comments for Deadline 6A, in advance of the next hearing on traffic and transportation matters.

#### 2. OVERVIEW OF THE SCHEME OF MITIGATION

- 2.1 The scheme of mitigation proposed by PoTLL is a ‘hamburger’ style junction, combined with signalisation. The benefits of this proposal are:
  - 2.1.1 conflicting vehicle movements are managed better than in the current junction;
  - 2.1.2 capacity is increased for the dominant north/south movements along the A1089;
  - 2.1.3 capacity is increased for all movements in an efficient manner through signalisation; and
  - 2.1.4 priority for A1089 movements reduces conflict and improves safety for all traffic, including HGVs.
- 2.2 A pedestrian/cycle crossing is included to the north of the roundabout following discussion with Thurrock Council, in order to provide greater accessibility for non-motorised users. This crossing is included in addition to the necessary mitigation of LTC traffic, noting that there is an existing crossing

to the south of the Asda roundabout, provided as part of the Tilbury2 DCO, which provides a safe crossing of the A1089.

- 2.3 The proposal is contained wholly within the boundary of the existing highway and within land owned by National Highways.
- 2.4 Whilst this land is not included within the current Order limits, the Compulsory Acquisition Regulations would not be engaged were the land to be added to the Order limits. This is due to all relevant land being under the ownership and control of the Applicant so it would not need to seek DCO powers compulsorily to acquire the land.
- 2.5 Indeed, with PoTLL's proposal, no land powers would be needed as National Highways would not need to even 'temporarily possess' the land, as it is already all highways land.
- 2.6 In this context, PoTLL sees no reason why the Order limits could not be extended to cover the roundabout to allow for DCO works powers to be utilised at this location. Given the limited nature of the works required PoTLL struggles to see how, with the Applicant's already committed mitigation measures in place, there can be considered to be any EIA implications to doing this.

### 3. **MODELLING**

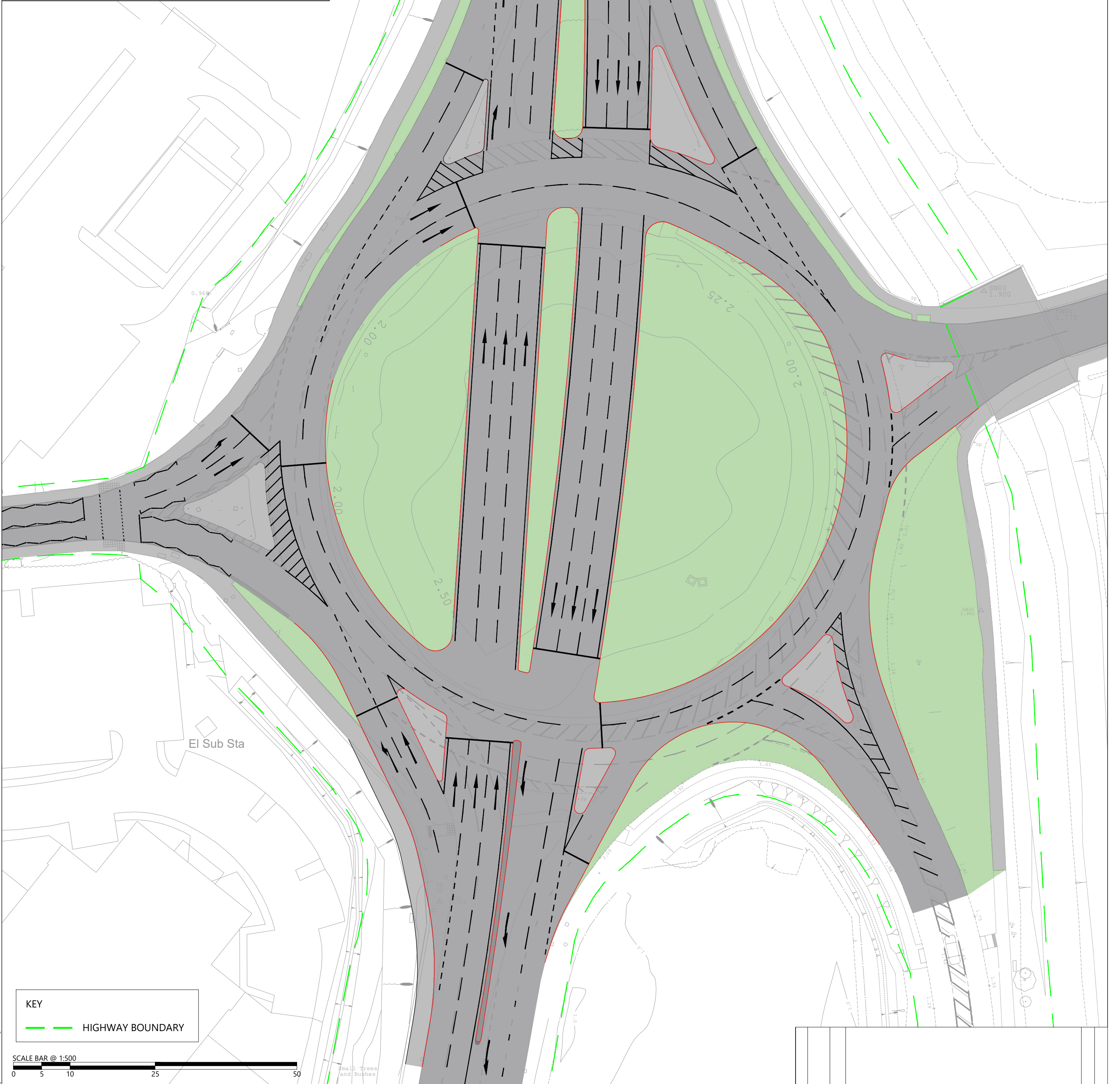
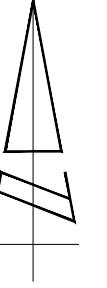
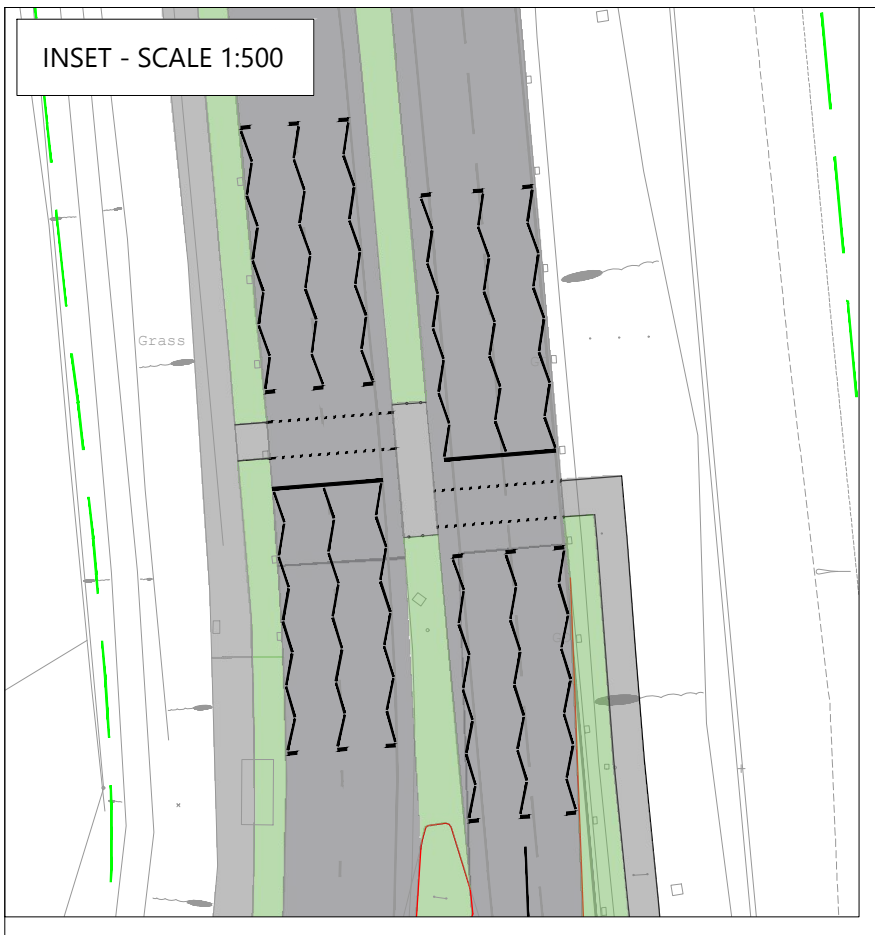
- 3.1 Junction modelling has been undertaken by PoTLL's transport consultants in order to demonstrate the effectiveness of the scheme of mitigation using the junction modelling software Linsig 3.
- 3.2 The baseline traffic flow data used for the modelling is that agreed with National Highways and Thurrock Council for the Tilbury2 DCO. This is the observed 21 June 2017 traffic flow data, and is further adjusted for committed development and the traffic flows from Tilbury2. The recorded 21 June 2017 traffic flows were adjusted to forecast 2026 levels in the modelling, utilising Tempro version 8.1.
- 3.3 The assessment of the scheme of mitigation includes the maximum flow of LTC construction traffic during for Phase 6 (as detailed by the Applicant at Deadline 3), utilising LTAM outputs with the AM and PM peaks, with a peak of 198 PCUs moving through the Asda roundabout in the AM peak.
- 3.4 Modelling has been undertaken for three peak hours: 07:00-08:00, 08:00-09:00 and 17:00-18:00. The same flow of peak LTC construction traffic has been used for both AM hour (08:00-09:00).
- 3.5 In this way, the modelling ensures that the capacity provided by the scheme of mitigation will be sufficient to handle all likely traffic flows.

### 4. **PLAN OF THE PROPOSALS**

[Please see next page for plan insert]



INSET - SCALE 1:500



KEY  
--- HIGHWAY BOUNDARY

SCALE BAR @ 1:500  
0 5 10 25 50

REPRODUCED FROM THE ORDNANCE SURVEY MAP WITH THE PERMISSION OF THE CONTROLLER OF HER MAJESTY'S STATIONERY OFFICE. LICENCE No. 100044286. © CROWN COPYRIGHT RESERVED.

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CLIENT:

PORT OF TILBURY

TITLE:

POTENTIAL ROUNDABOUT IMPROVEMENT SCHEME

PROJECT:

LOWER THAMES CROSSING

REV	DATE	BY	DESCRIPTION	CHK	APP
STATUS: FOR INFORMATION					
DRAWN:		CHECKED:		APPROVED:	
SH		PH		PH	
PROJECT No:		SCALE @ A2:		DATE:	
ITL16303		1:500		19.10.23	
DRAWING No:				REV:	
ITL16303-GA-006					



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## 5. SUMMARY OF MODELLING RESULTS

- 5.1 The following tables set out a summary of the results of the junction modelling for the proposed improvement scheme, for the AM peaks and the PM peak. The capacity of the junction, shown as 'degree of saturation', is detailed for the links of the Asda roundabout, including the approaches to and circulatory links around the junction.
- 5.2 A junction is generally considered to be operating within practical capacity where the degree of saturation is 90% or lower. As shown in Tables 1, 2 and 3, the proposed improvement scheme would operate below 90% degree of saturation during all peak hour periods.
- 5.3 The average delay per Passenger Car Unit (PCU; where one car equals one PCU) and the mean maximum queue (in vehicles) is also shown for each link. The average delay is low with a maximum of 25 seconds on the A1089 Dock Approach Road in the PM peak. The level of delay is well within acceptable limits.
- 5.4 Anticipated queues are at a low level and would have no 'knock on' effects on the operation of the wider network. Notably the queue on Dock Road is predicted to reach a maximum of 3 vehicles (approximately 20m in length), compared with the 1km queue estimated by the Applicant in its microsimulation modelling.

**Table 1: Asda Roundabout Mitigation Scheme Junction Modelling Results - First AM Peak**

Link	AM Peak 07:00-08:00		
	Degree of Saturation	Average Delay per PCU (s/PCU)	Mean Maximum Queue (Veh)
Commercial Access	27.1%	6.3	1
Dock Road	51.2%	3.8	1
A1089 St Andrews Road	57.7%	17.2	5.2
Thurrock Park Way	29.6%	15.4	1.4
A1089 Dock Approach Road	88.5%	19.3	14.9
A1089 (S) Circulatory	73.6%	20.5	9.2
A1089 (N) Circulatory	85.5%	36	4.6

**Table 2: Asda Roundabout Mitigation Scheme Junction Modelling Results - Second AM Peak**

Link	AM Peak 08:00-09:00		
	Degree of Saturation	Average Delay per PCU (s/PCU)	Mean Maximum Queue (Veh)
Commercial Access	27.0%	5.5	<1
Dock Road	59.2%	5.7	3
A1089 St Andrews Road	72.1%	24.1	5.9
Thurrock Park Way	42.1%	12.5	1.6
A1089 Dock Approach Road	81.6%	15.5	18.2
A1089 (S) Circulatory	80.3%	17.4	5.4



A1089 (N) Circulatory	80.6%	26.7	7.8
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**Table 3: Asda Roundabout Mitigation Scheme Junction Results - PM Peak**

Link	PM Peak 17:00-18:00		
	Degree of Saturation	Average Delay per PCU (s/PCU)	Mean Maximum Queue (Veh)
Commercial Access	24.5%	5.9	<1
Dock Road	44.5%	2.8	1.5
A1089 St Andrews Road	63.1%	18.6	5.2
Thurrock Park Way	63.3%	8.4	2.6
A1089 Dock Approach Road	87.1%	24.7	13
A1089 (S) Circulatory	76.0%	23.4	10.1
A1089 (N) Circulatory	85.6%	32	10.5

- 5.5 The scheme of mitigation at the Asda roundabout would provide a junction capable of accommodating the peak level of traffic during the LTC construction stage in a safe and efficient manner.

## APPENDIX 2

### EXPLANATORY NOTE RELATING TO DRAFT DCO REQUIREMENTS PROPOSED BY PORT OF TILBURY LONDON LIMITED

#### 1. INTRODUCTION

- 1.1 At Deadline 4, Port of Tilbury London Limited (PoTLL) submitted four draft DCO Requirements into the Examination (DCO Drafting Proposals [REP4-350]). Since then, significant progress has been made in respect of the drafting of each proposed Requirement.
- 1.2 In respect of the first Requirement: Asda roundabout – construction traffic mitigation, PoTLL has worked with Thurrock Council to update the drafting.
- 1.3 In respect of the second Requirement: Orsett Cock roundabout – operational traffic mitigation, PoTLL has worked with DP World London Gateway and Thurrock Council to incorporate their proposed amendments, to provide comfort to all parties that impacts of the LTC Scheme on the Orsett Cock roundabout will be appropriately mitigated.
- 1.4 The Applicant accepted the principle that a Requirement to facilitate the Tilbury Link Road should be included in the draft Order, and added a new Requirement 17 in version 7.0 of the draft Order, submitted at Deadline 5 [REP5-025]. PoTLL has considered this drafting and, whilst the approach taken by the Applicant is accepted, amendments are proposed to ensure certainty and precision and that what is sought to be achieved by the spirit of the Requirement is actually achieved, and to refer to specific objective measurable steps that are not just those in the control of the Applicant.
- 1.5 The fourth Requirement: Monitoring and mitigation strategy, was based on Requirement 7 of the Silvertown Tunnel Order 2018. Recognising the Examining Authority's (ExA's) comments, made during ISH10, that the LTC Scheme is not a one-for-one equivalent of Silvertown, and having regard to the concerns raised by the Applicant during that hearing that it should not be required to upgrade the local road network, a revised Requirement is provided that is further tailored to the circumstances and requirements of the LTC Scheme.
- 1.6 This document provides an explanation for how each Requirement operates, identifying the safeguards to ensure that, in each case, National Highways will not be required to do more than mitigate the unacceptable impacts of the Scheme. In the case of the Tilbury Link Road Requirement, the objective of the revised drafting of the Requirement is to take into consideration a proposal that is reasonably certain to be brought forward, in the context of the LTC's stated objectives for the LTC Scheme to facilitate economic growth and the policy support (as expressed in the joint Ports submission at Deadline 3 [REP3-196]) for ensuring that increased Port connectivity is enabled.

#### Structure of this Document

- 1.7 The explanatory comments in relation to each draft Requirement are set out individually below. Clean versions of each draft Requirement are provided separately at **Appendices 3 to 6**. The relevant Appendix is specified prior to the explanatory comments, for ease of reference.

#### 2. ASDA ROUNDABOUT – CONSTRUCTION MITIGATION REQUIREMENT

- 2.1 Please refer to **Appendix 3** for the draft Requirement.

## **Explanation of the operation of the Requirement**

- 2.2 Sub-paragraph (1) sets out that the construction compounds at the North Portal, accessed via the A1089, must not be commenced until a scheme of construction traffic mitigation has been approved by the Secretary of State. The remainder of the Requirement governs how the scheme of mitigation will be drawn up, implemented and monitored throughout the construction period.
- 2.3 The scheme of mitigation must include, as set out in sub-paragraph (2), the details of the routes that are to be used by construction workers. These routes have not been secured or assessed to date, and this drafting seeks to ensure that the full likely impacts of the construction of the LTC Scheme are identified before they occur. Once these routes have been ascertained, an assessment of the likely impacts of the use of those routes, alongside that of wider construction traffic, on the highway network, including to the Asda roundabout, is to be carried out. This ensures that the assessment is not overly narrow in scope, and is able to identify issues tied to construction traffic that may be experienced elsewhere on the routes into the North Portal compounds.
- 2.4 In the event the assessment identifies a material worsening of traffic conditions, the scheme of mitigation presented to the Secretary of State must include the locations where the traffic conditions are worsened, the mitigation measures the undertaker proposes to alleviate these impacts, and a programme for implementation. There may be circumstances where mitigation can be suitably implemented without needing any physical intervention on the Asda roundabout; however, where this is the case, the undertaker must provide a statement demonstrating that this is not necessary. This corresponds with the current approach taken by National Highways in respect of this junction, whereby new developments that may impact traffic conditions are required to demonstrate that the impacts will not be so severe that further mitigation is needed. In light of the mitigation proposals put forward by PoTLL at this deadline showing that physical mitigation is possible within the highway boundary, this does not impose an onerous requirement on National Highways, as all forms of potential mitigation measures could be brought forward.
- 2.5 Paragraph (d) of sub-paragraph (2) requires the identification of objective, measurable thresholds that will constitute a material worsening of traffic conditions. These thresholds are intended to be used when monitoring in accordance with paragraph (e), to identify when further mitigation measures are needed to be developed and implemented. This further mitigation is secured by sub-paragraph (5).
- 2.6 Paragraph (f) of sub-paragraph (2) requires the undertaker, when presenting the scheme of mitigation to the Secretary of State for approval, to include a summary of the consultation responses, how the undertaker responded to that, and the undertaker's reasoning for not reflecting any responses in the final scheme of mitigation. In this way, the Secretary of State will be fully informed of any areas of disagreement when he approves the scheme of mitigation, noting that the Secretary of State has the inherent power to amend the scheme as he sees fit.
- 2.7 Sub-paragraph (3) requires the undertaker to consult with the local highway authority and PoTLL on the final scheme of mitigation, and sub-paragraph (4) secures the implementation of the approved scheme.
- 2.8 As above, sub-paragraph (5) manages any ongoing need for mitigation that may arise where real-world impacts differ from those assessed. Finally, paragraph (6) provides definitions, including that the monitoring period is ongoing until the undertaker has permanently vacated the land in connection with the construction compounds. This ensures that the obligations to ensure that construction traffic does not cause issues with the road network along the main construction route exist only during construction, and are extinguished at the time the compounds are no longer in use, noting that this may differ from the opening date of the LTC tunnel.

## **3. ORSETT COCK JUNCTION – OPERATIONAL IMPACTS MITIGATION REQUIREMENT**

- 3.1 Please refer to **Appendix 4** for the draft Requirement.

## **Introduction**

- 3.2 PoTLL, DPWLG and Thurrock Council have been working together in relation to a Requirement to secure the works necessary to ensure that the Orsett Cock junction operates to acceptable levels as at the date of the opening of the Lower Thames Crossing (LTC), and that this operational standard is maintained for the five years post opening, as driver behaviour adapts to the presence of LTC.
- 3.3 The draft Requirement was originally provided by PoTLL at Deadline 4 [REP4-350] and revised drafting has now been provided at **Appendix 4**.
- 3.4 PoTLL, DPWLG and Thurrock Council are mindful of the Applicant's proposed Requirement, contained in paragraph 3.1.6 of National Highways' submission 9.114 Wider Networks Impacts Update [REP5-085]. It is the view of PoTLL, DPWLG and Thurrock Council that this drafting is inadequate and would not secure the necessary works to the Orsett Cock junction, required to avoid serious adverse impacts on the road network and access to the ports as a result of the LTC as currently designed. In particular, it does not seek to identify or secure any threshold or standard to which the Orsett Cock junction must operate to at opening and in five years post opening.
- 3.5 The draft Requirement is being submitted in order to provide the Examining Authority with alternative drafting for how the effective operation of the Orsett Cock junction with LTC in place can be secured within the draft Order.
- 3.6 The draft Requirement has been agreed by PoTLL and DPWLG as suitable to address their concerns with the impacts to this junction potentially caused by LTC. Thurrock Council is satisfied in principle that the draft Requirement is more robust and effective than that proposed by the Applicant; however, in light of its additional considerations as local highway authority, it is planning to confirm agreement, or provide further drafting, at Deadline 6A. That submission will be informed by further discussions between the three parties post Deadline 6 to seek to maximise alignment between the parties as much as is possible.

## **Explanation of the operation of the Requirement**

- 3.7 Sub-paragraph (1) provides that construction of the authorised development must not be started until a scheme of monitoring and mitigation for the Orsett Cock junction has been approved by the Secretary of State. The remainder of the Requirement sets out what the scheme of monitoring and mitigation must include, and governs the implementation and operation of the approved scheme.
- 3.8 Sub-paragraph (2) requires the scheme to include first an identification of the current baseline at the time the Applicant is seeking to implement the Scheme, the methodology of which is to be developed in consultation with the local highway authority. This baseline is then available for consideration by the Applicant and the Orsett Cock Implementation Group (OCIG), consisting of Thurrock Council, PoTLL and DPWLG, in identifying 'measurable thresholds'. These are defined in sub-paragraph (9) as the objective standards which, if exceeded, demonstrate a material worsening of traffic conditions, and/or a substantial detriment to the efficient operation of the ports.
- 3.9 This drafting is intended to ensure that up-to-date baseline data is used to develop the standards that the Orsett Cock junction must operate to. Reference is made to both a material worsening of traffic, reflecting the potential for broad impacts on the road network around the junction, and the efficient operation of the ports, recognising that the junction will be a critical link in the road network serving two major ports. The Requirement recognises that the impacts to the ports may differ from those to the wider road network, and seeks to ensure, consistent with the NPS for Ports, that the onward road network operates in a way that enables the ports to continue to be a key element of the national economy, whilst also ensuring that is balanced with the needs of the wider network, which will be the Council's concerns.
- 3.10 Having identified an objective standard where the undertaker must seek to intervene and mitigate, sub-paragraph (2)(c) requires the assessment of the detailed design of Work No. 7, being the

A13/A1089/LTC interchange that includes the Orsett Cock junction. This assessment must include microsimulation and strategic modelling, and specifically includes the Manorway junction within the modelling remit. In this way, the full impacts of the undertaker's final design against the identified measurable thresholds will be assessed and understood.

- 3.11 In the event the assessment demonstrates that the pre-defined thresholds are likely to be exceeded during operation, the undertaker must identify the locations where the traffic exceeds those thresholds, and provide details of the mitigation measures needed to reduce traffic impacts below the thresholds. A programme for implementation must be provided as part of the scheme, ensuring that any necessary mitigation is in place before the opening of the LTC tunnel.
- 3.12 The timing envisaged by the Requirement will enable the undertaker to revise its detailed design of the junction in order to ensure that the worst impacts are not experienced. Alternatively, where the impacts are less severe, they may be managed by simple mitigation measures such as revised signal timing at the junction. Irrespective of the extent of the impacts, there is sufficient flexibility inherent in the draft Requirement that the undertaker is not restricted in how it must provide the mitigation, and is able to manage its own programme to ensure the mitigation is delivered. All that is secured is the end result, namely the functioning of the Orsett Cock junction at a level that is not materially worse, nor impacts upon the operation of the ports, as assessed objectively.
- 3.13 Paragraph (e) of sub-paragraph (2) continues to set out the requirement also to create a programme of monitoring once the junction and LTC tunnel are operational. This will ensure that any real-world impacts that are worse than those assessed are identified. Paragraph (f) requires the undertaker to provide a summary of its consultation, the responses received and its reasons for not reflecting any consultation feedback in the scheme of monitoring and mitigation.
- 3.14 It remains, therefore, a matter for National Highways to determine the threshold for intervention, the mitigation that it will put in place, and the precise terms of the ongoing monitoring. However, where it does not have the agreement of the OCIG to these matters, the Secretary of State will be fully informed of the differing views when he is asked to approve the scheme of mitigation and monitoring. In this respect, there is independent oversight to ensure that the proposals for the Orsett Cock junction are reasonable, proportionate and effective at avoiding and mitigating the worst potential impacts of the LTC Scheme. National Highways must implement the scheme of monitoring and mitigation in accordance with its terms, as approved by the Secretary of State.
- 3.15 Sub-paragraphs (6) to (8) provide the mechanism for monitoring the effectiveness of the scheme, in real-world conditions after the LTC tunnel has opened to the public. This requires quarterly reports to be produced for the first year after the tunnel opens, and annual reports thereafter until the tunnel has been open for 5 years. Members of the OCIG may request the underlying data of these reports, but the undertaker is not required to provide this unless a request is made, in order to avoid the monitoring requirement being unduly onerous. The period of five years is chosen to be consistent with the Applicant's suggestion, in 7.12 Wider Network Impacts Management and Monitoring Plan [APP-545], that reporting should be aligned with National Highways' Post Opening Project Evaluation timescales.
- 3.16 In the event that the post opening monitoring identifies that the measurable thresholds have been exceeded, sub-paragraph (7) requires the undertaker to develop further mitigation measures to bring the traffic impacts below those thresholds, and to then implement, or secure the implementation of, those mitigation measures. In this way, should the real-world impacts differ materially from those assessed, this will be identified and rectified as part of the Scheme.

#### **Differences from National Highways' proposed drafting**

- 3.17 National Highways proposed a draft Requirement for the Orsett Cock junction at paragraph 3.1.6 of its Wider Network Impacts Update [REP5-085]. This drafting is wholly unsuited to ensuring that the Orsett Cock junction is operating at an acceptable standard from the date the LTC tunnel is opened.
- 3.18 Whilst that drafting requires a scheme to be approved by the Secretary of State, it:

- 3.18.1 does not allow for the detailed design of the junction to be carried out in a way that avoids impacts arising, instead focusing wholly on the way the design is to be implemented;
  - 3.18.2 does not update the baseline, nor use objective measures for intervention, reducing certainty for all parties;
  - 3.18.3 relies on signalisation and 'related measures', limiting the availability of mitigation options available to National Highways;
  - 3.18.4 is limited to only what 'may be reasonably practicable', offering no certainty for key stakeholders that the design will be effective;
  - 3.18.5 provides no ongoing monitoring; and
  - 3.18.6 does not secure further mitigation in the event the proposals are insufficient to provide effective operation of this key junction.
- 3.19 For these reasons, the drafting proposed by the Applicant is wholly unsuited to the need to ensure that the Orsett Cock junction is operating acceptably at the date of opening of the LTC. The ExA is requested to consider this alternative drafting as part of developing the commentary on the draft Order.

#### 4. **PASSIVE PROVISION FOR THE TILBURY LINK ROAD**

- 4.1 Please refer to **Appendix 5** for the draft Requirement, containing PoTLL's suggested amendments, in a clean format.
- 4.2 The following is a mark-up of Requirement 17, included by the Applicant within the draft Order at Deadline 5.
- 4.3 In sub-paragraph (1), the amendments are mostly minor changes to use terminology consistent with the rest of the Order. The obligation for the undertaker to design Work Nos. 5D, 5E and 5F in a manner that facilitates and accommodates the proposed Tilbury Link Road is now tied to the final iteration of the detailed design. In the original drafting, the Requirement would be discharged at the first iteration of the detailed design, which may significantly predate the final iteration. In the original drafting, the Requirement would be discharged at the point National Highways provided the first design to the Design Review Panel, with the design principle PRO.01 requiring further development of the design with the Panel's engagement. As such, the final design of the junction could be significantly different from that used to discharge the Requirement, irrespective of the status of the proposed Tilbury Link Road. This amendment ensures that the design obligation endures until the design is finalised.
- 4.4 Sub-paragraph (2) has been amended to better reflect drafting conventions of using the active tense and that the phrase 'carried out' is not considered best drafting practice.
- 4.5 Sub-paragraph (3) has been added to ensure that, following construction, there is an enduring obligation to operate and maintain the junction in a way that continues to facilitate the Tilbury Link Road. This is to ensure that, in the period between the proposed Tilbury Link Road becoming suitably certain, and its construction, changes are not made to the junction that would block the proposals. Such action would undermine the purpose of this Requirement, and this addition is intended to secure the junction design until such time that it can be used for the purpose of the Tilbury Link Road.
- 4.6 Finally, two further triggers for when a proposed Tilbury Link Road will be considered sufficiently certain to be accommodated into the junction design have been added. These are that a request for a scoping opinion has been submitted to Thurrock Council or the Secretary of State for a project that the Tilbury Link Road forms a part of; or that the road is included within documentation published by Thurrock Council under Regulation 19, when consulting on a proposed Local Plan, which would

reflect the Council's support for such a road as part of their plans for economic growth in Thurrock, meaning that it would be able to come forward expeditiously.

4.7 This ensures that, whether or not the Tilbury Link Road is brought forward under RIS3 (and thus would be subject to a Preferred Route Announcement as originally suggested by the Applicant), in the event it is promoted by Thurrock Council or a third party such as PoTLL, this proposal will also be considered by National Highways when designing the LTC junction.

4.8 This is important given the likely funding challenges for National Highways in bringing forward RIS3, and its already publicly-stated aim for RIS3 to focus predominantly on maintenance of new assets, rather than large new assets. It is also important in the context that National Highways, in settling RIS2, noted that:

*'the principal purpose of the SRN is to enable safe, reliable, predictable, rapid, often long distance, journeys of both people (whether as drivers or passengers) and goods in England between our: • Main centres of population; • Major ports, airports and rail terminals; • Geographically peripheral regions of England; and • Chief cross-border routes to Scotland and Wales;*

#### **Draft Requirement – Passive provision for Tilbury Link Road – tracked changes proposed by PoTLL**

#### **Passive provision for Tilbury link road**

17.—(1) The undertaker must **undertake the detailed** design ~~the detail~~ of Work Nos. 5D, 5E and 5F in a manner that ~~reasonably~~ facilitates and accommodates a connection to the proposed Tilbury link road, to the extent the route and design of **the** proposed Tilbury link road is available prior to and up to the date of the submission of the **final iteration of the** detailed design of the tunnel area north of the river Thames to the design review panel pursuant to clause PRO.01 of the design principles.

(2) **In particular**, Work Nos. 5D, 5E and 5F must be designed in detail and **constructed** ~~carried-out~~ by the undertaker so as to **accommodate a connection with the proposed Tilbury link road in compliance** ~~comply~~ with the Design Manual for Roads and Bridges ~~in order to reasonably accommodate a connection with the proposed Tilbury link road.~~

(3) The undertaker must operate and maintain Work Nos. 5D, 5E and 5F in a way that facilitates and accommodates the design, construction, operation and maintenance of the proposed Tilbury link road.

(4) In this paragraph, “**the proposed Tilbury link road**” means a proposal which includes a road connection or junction onto the A122 from Tilbury which is—

- (a) reflected in a preferred route announcement by the Secretary of State;
- (b) **the subject of a request for a scoping opinion submitted to Thurrock Council under Regulation 15 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017, or an application to the Secretary of State under Regulation 10 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, whether the road forms the whole or part of the subject of the request for a scoping opinion;**
- (c) **included within documentation published by Thurrock Council under Regulation 19 of The Town and Country Planning (Local Planning) (England) Regulations 2012; or**
- (d) ~~in the absence of that announcement,~~ such other proposal as is reasonably considered by the undertaker to **set out** ~~constitute~~ the likely route and function of that link road.

#### **5. WIDER HIGHWAY NETWORK MONITORING AND MITIGATION**

5.1 Please refer to **Appendix 6** for the draft Requirement.

#### **The need for the Requirement**

5.2 This draft Requirement is based on Requirement 7 of the Silvertown Tunnel Order 2018. It has significant changes from that drafting, in order to better reflect the nature of the LTC Scheme, the

status of the Applicant as the strategic highway company for the strategic road network under the Infrastructure Act 2015, and the concern that mitigation should not be conflated with local and strategic highway development, whether under Road Investment Strategy (RIS) 3 or otherwise.

- 5.3 The Applicant's approach, articulated in ISH4 and repeated in ISH10, is that the extent of its obligations towards the wider road network is to monitor this, in order that the data can support applications by local highway authorities for improvement schemes, including under the RIS.
- 5.4 As noted by the ExA during ISH10, there are within the National Networks National Policy Statement (NNNPS) some overarching principles relevant to the mitigation of impacts on the wider road network. Paragraph 5.211 places a specific requirement on the decision-maker to give 'due consideration to impacts on local transport networks and policies set out in local plans', including those around demand management.
- 5.5 Paragraph 5.215 further sets out that mitigation measures for schemes should be "proportionate and reasonable", and that where a development would "worsen accessibility, such impacts should be mitigated so far as reasonably possible". Whilst 'accessibility' in the context of the NNNPS is limited to non-motorised users, it is well established that congestion will reduce accessibility by making it more challenging to cross the road, reducing air quality, and by traffic diverting onto quieter streets reducing safety for those users.
- 5.6 Furthermore, PoTLL notes paragraph 5.280 of the draft NPS, which although not yet designated, is still able to be considered as an 'important and relevant' matter (as has been the case for a large number of energy projects and the emerging replacement Energy NPSs) as an indication of the direction of government policy:
- "Where a development negatively impacts on surrounding transport infrastructure including connecting transport networks, the Secretary of State should ensure that the applicant has taken reasonable steps to mitigate these impacts. This could include the applicant increasing the project's scope to avoid impacts on surrounding transport infrastructure and providing resilience on the wider network. The applicant may increase the project's scope to avoid impacts on the surrounding transport infrastructure and improve network resilience. Where the proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels, the Secretary of State should expect applicants to accept requirements and/or obligations to fund infrastructure or mitigate adverse impacts on transport networks".*
- 5.7 In light of the results of the Applicant's own Transport Assessment, and the on-going concerns of Interested Parties that more negative effects are likely to arise once the LTC Scheme is built, the proposed Requirement directly reflects that emerging policy imperative – i.e. a Requirement to ensure the effects of the LTC Scheme on connecting transport networks and supporting transport infrastructure are mitigated to acceptable levels.
- 5.8 The Applicant has sought to argue that a Silvertown approach is not necessary in the case of LTC as, being a project on the strategic road network, the equivalent policy is that of the RIS. That is, monitoring will identify the impacts of LTC and this data can be used in case-making for individual schemes to be taken forward and funded under the RIS.
- 5.9 The Applicant then provided a useful summary of how the Silvertown approach operates, in that there is a series of pre-defined 'triggers' where the undertaker, TfL, must review whether there is an impact on the roads that needs to be mitigated. This is done in consultation with the Silvertown Tunnel Implementation Group (STIG), however the ultimate decision for intervention is made by TfL.
- 5.10 The Applicant is the licensed operator for the strategic road network (SRN), and its focus is inherently, and under the terms of its licence, on the SRN. It is answerable to the Secretary of State for Transport for its funding and the account for its decisions. That same Secretary of State is also the decision-maker for which schemes are to receive funding, through their agreement of the RIS.



- 5.11 The Applicant's argument relies on one critical point: that the RIS is equivalent to the Silvertown approach for mitigation. However this is simply not the case. The Silvertown approach is focused on identifying the impacts of that scheme, assessing the severity of that impact against pre-defined triggers, undertaking a further review of those impacts that meet the relevant triggers, and determining which of these most severe impacts require mitigation and the form that this mitigation will take place. This is all secured by the DCO.
- 5.12 By contrast, the RIS is focused on increasing road capacity to reflect ongoing development and growth in areas, such that the existing road network is struggling to operate appropriately and upgrade and improvement is therefore required. It is a whole network approach to the SRN as a whole, not focussed on mitigating the impacts of the proposals contained within it.
- 5.13 The statutory basis of a RIS is set out in section 3 of the Infrastructure Act 2015. It is to specify:
- (a) the objectives to be achieved by the company during the period to which it relates, and*
- (b) the financial resources to be provided by the Secretary of State for the purpose of achieving those objectives.*
- (4) The objectives to be achieved may include—*
- (a) activities to be performed;*
- (b) results to be achieved;*
- (c) standards to be met.*
- 5.14 It is also helpful to note how National Highways itself described what RIS2 was to achieve:
- "This second Road Investment Strategy (RIS2) sets a long-term strategic vision for the network. With that vision in mind, it then: specifies the performance standards [National Highways] must meet; lists **planned enhancement schemes** we expect to be built; and states the funding that we will make available".*
- "Our investment decisions need to respond accordingly if we are to maintain a network that meets what users want, in particular in terms of safety, reliability and reasonable journey times. It means that the existing network needs to be kept in good condition, with the impact of roadworks and incidents minimised, so that it is resilient. **It means taking action on existing pinchpoints which will become even more congested given growth. And it means considering expansions in capacity where that is the best option to meet demonstrable need"**.*
- 5.15 It is clear, therefore, that the role of the RIS is to consider the SRN network as a whole. It is informed by route strategies, strategic studies and government objectives and priorities. It is not a mechanism for the direct impacts of National Highways' schemes to be mitigated.
- 5.16 As such, the development of the RIS is fundamentally different from the Silvertown approach, which seeks only to 'make good' the impacts of that scheme that cause the existing road network to be degraded in its operation. It is inherently not seeking to upgrade the network; only to restore it to functional operation after this was harmed by the scheme.
- 5.17 The fundamental difference between a RIS3 approach and the Silvertown approach is that a Silvertown-style Requirement would secure an outcome now, namely the mitigation of unacceptable impacts to the wider road network. RIS3, meanwhile, remains wholly uncertain in terms of delivering specific improvement schemes, as its outcomes are not yet known. This uncertainty makes reliance on the RIS wholly unsuitable as a form of mitigation; there is simply no guarantee, under the Applicant's approach, that the impacts of the LTC Scheme will be addressed through RIS3.

- 5.18 Recognising, however, that any scheme of mitigation must not extend into territory that is overseen by a RIS, and that with any development there will be impacts on the road network that will not require intervention, the below Requirement has been drafted to address the Applicant's concerns, whilst also providing comfort to local highway authorities that they will not be left in a position where their road network does not function, due to the impacts of LTC, requiring immediate intervention for which funding is not secured and may well not be available. It also seeks to ensure that, insofar as such severe impacts are identified through modelling, the mechanism for mitigating these is established and secured before the tunnel opens. Notably, the undertaker is not required to implement the mitigation before opening the tunnel, provided the Secretary of State approves the suggested programme for implementation, ensuring that this Requirement will be of no impediment to the LTC Scheme<sup>2</sup>.

### **Explanation of the operation of the Requirement**

- 5.19 Sub-paragraph (1) sets out the overarching operation of the Requirement, being that a scheme of mitigation must be submitted to and approved by the Secretary of State prior to the opening of the tunnel to the public. The remainder of the Requirement governs the development of the scheme of mitigation, and the monitoring requirements to support that scheme.
- 5.20 Sub-paragraph (2) details the assessment and consultation requirements in relation to the scheme of mitigation, by reference to a 'LTCIG'. This is intended to be an implementation group made up of relevant local highway authorities and other key stakeholders. The LTCIG is not defined in the Requirement, as PoTLL does not seek to pre-empt the list of stakeholders that will form part of the LTCIG.
- 5.21 The undertaker must, in consultation with the LTCIG, identify 'measurable thresholds'. This is defined as the objective standards which, if exceeded, demonstrate that there has been a material worsening of traffic conditions on the highway network as a result of implementation of the LTC Scheme. The thresholds are included in the scheme of mitigation and are defined by National Highways, subject to the Secretary of State's approval.
- 5.22 The undertaker must also undertake an updated assessment of the likely impacts of the LTC scheme, followed by consultation with the LTCIG on the locations where a material worsening of traffic conditions is likely. That is, those locations where the assessment shows the pre-defined thresholds are likely to be exceeded. The undertaker must consult on its proposals to mitigate the material worsening of impacts, and the programme for implementation. Further consultation with the relevant local highway authority is also required on the detail of the mitigation scheme, in order that the mitigation scheme is, as far as possible, also acceptable to the affected local highway authority.
- 5.23 National Highways is responsible for developing the scheme of mitigation, including the measurable thresholds for intervention. In this regard, National Highways can ensure that this Requirement remains proportionate and only requires mitigation works, not improvement or other development that may fall within the ambit of the RIS or which should be brought forward by the local authorities. The scheme of mitigation, submitted to the Secretary of State, includes the responses to consultation, so that the Secretary of State has all necessary information to approve, or amend, the scheme.
- 5.24 In the event the Secretary of State is minded to modify the scheme of mitigation, they must consult with the members of LTCIG. In this way, should the Secretary of State feel that the level of intervention is too great, or too little, they may adjust the scheme of mitigation, ensuring appropriate oversight of the Scheme is maintained.
- 5.25 Sub-paragraph (5) ensures that the scheme of mitigation is implemented as approved. There is no obligation for the mitigation to be in place prior to opening, where the Secretary of State is satisfied

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<sup>2</sup> Although as noted in PoTLL's ISH10 Summary of Case, it is not for a DCO Requirement to provide 'comfort' to a scheme promoter.

that the proposed programme for implementation is appropriate. In this way, the opening of the LTC Scheme is not delayed or impeded by the operation of this Requirement.

- 5.26 Sub-paragraph (6) sets out the ongoing monitoring obligation. The monitoring period commences at least three years before the tunnel is expected to open, ensuring that there is a clear baseline for traffic flows. The monitoring period ends five years after the tunnel opens for public use, providing a clear time-limit to the obligation to mitigate traffic impacts, consistent with National Highways' Post Opening Project Evaluation timescale. In this way, the Requirement is proportionate, providing time for changes in driver behaviour to settle whilst ensuring that there is a clear end-date to liability for the Scheme's impacts.
- 5.27 Further proportionality and flexibility is included in sub-paragraph (6)(c), which requires the ongoing review, in consultation with the LTCIG, of the measurable thresholds. These can be updated if approved by the Secretary of State. In this way, the threshold for intervention can be adjusted, either to scope in an impact that proves, in practice, to be more severe than anticipated; or to raise the threshold where existing capacity is taken by third party development, resulting in additional congestion not attributable to the LTC Scheme.
- 5.28 The draft Requirement provides (and importantly secures) a mechanism for intervention where this is needed to mitigate the impacts of the Scheme on the wider road network. It is not an alternative to the RIS, and the purpose of the Requirement is wholly distinct from the RIS process. Irrespective of any mitigation put in place by National Highways, it will still be necessary for further development under the RIS to make out the case for investment in order to secure funding. However, by mitigating the impacts of the LTC Scheme, the operation of the RIS is improved as the schemes that will receive funding are the ones that will add value and benefit to the area, rather than mitigating the negative impacts of LTC. This will, in the long term, ensure that the development of the strategic road network reflects the needs from growth and development, rather than addressing the impacts of earlier RIS scheme development.

**APPENDIX 3**  
**ASDA ROUNDABOUT – CONSTRUCTION TRAFFIC MITIGATION**  
**PROPOSED REQUIREMENT**

### **Asda roundabout – construction traffic mitigation**

1.—(1) No part of Work Nos. CA5 and CA5A is to be commenced until a scheme of construction traffic mitigation for Work Nos. CA5 and CA5A has been prepared in accordance with the provisions of this paragraph, submitted to and approved in writing by the Secretary of State.

(2) The scheme of construction traffic mitigation for Work Nos. CA5 and CA5A submitted to the Secretary of State for approval under sub-paragraph (1) must include—

- (a) details of the routes on the highway network that are to be used by construction workers in connection with Work Nos. CA5 and CA5A;
- (b) an assessment, which must include junction modelling, of the impacts on the highway network, including the operation of the Asda roundabout, of the proposed construction worker routes and construction traffic related to Work Nos. CA5 and CA5A;
- (c) where the assessment demonstrates there is likely to be a material worsening of traffic conditions as a result of the construction of Work Nos. CA5 and CA5A —
  - (i) details of the locations on the highway network where such material worsening is assessed to occur;
  - (ii) details of the mitigation measures the undertaker proposes to implement to alleviate the material worsening of traffic conditions;
  - (iii) if the mitigation measures do not include highway improvements to the Asda roundabout, a statement demonstrating that such highway improvements are not required; and
  - (iv) a programme for the implementation of such mitigation measures;
- (d) details of the measurable thresholds, the exceedance of which would lead to a material worsening of traffic conditions;
- (e) a programme for monitoring throughout the monitoring period the operation of the local highway network such that any exceedances of the thresholds referred to in paragraph (d) will be identified; and
- (f) a report on the consultation carried out by the undertaker under sub-paragraph (3) that includes—
  - (i) a summary of the consultation carried out by the undertaker and the responses received to it;
  - (ii) the undertaker's responses to the consultation responses received by it; and
  - (iii) if any consultation responses are not reflected in the scheme for construction traffic mitigation for Work Nos. CA5 and CA5A submitted for the Secretary of State's approval, a statement setting out the undertaker's reasons for not including them.

(3) Prior to submitting the scheme of construction traffic mitigation for Work Nos. CA5 and CA5A the undertaker must consult the local highway authority and Port of Tilbury London Limited on a draft scheme of construction traffic mitigation for Work Nos. CA5 and CA5A and must have regard to any consultation responses received.

(4) The undertaker must carry out the approved scheme of construction traffic mitigation for Work Nos. CA5 and CA5A.

(5) In the event that the monitoring required by the approved scheme of construction traffic mitigation for Work Nos. CA5 and CA5A reveals that the thresholds referred to in sub-paragraph (2)(d) have been exceeded, the undertaker must—

- (a) develop in consultation with the relevant local highway authority and Port of Tilbury London Limited, the further mitigation measures that are necessary to restore the operation of the highway network to a level that does not exceed the approved thresholds during the monitoring period; and
  - (b) promptly implement those mitigation measures.
- (6) In this paragraph—

“the Asda roundabout” means the roundabout junction of the A1089, A126, Thurrock Parkway and the unnamed street leading to London Distribution Park; and

“the monitoring period” means a period commencing on the earlier of the date Work No. CA5 is commenced or the date Work Nos. CA5A is commenced, and continuing until the undertaker has permanently vacated the land occupied in connection with those Work Nos. CA5 and CA5A.

**APPENDIX 4**

**ORSETT COCK ROUNDABOUT – OPERATIONAL TRAFFIC MITIGATION**

**PROPOSED REQUIREMENT**

## **Orsett Cock roundabout – operational traffic mitigation**

2.—(1) No part of the authorised development is to be commenced until a scheme of monitoring and mitigation relating to Work No. 7F has been prepared in accordance with the provisions of this paragraph, submitted to and approved in writing by the Secretary of State.

(2) The scheme of monitoring and mitigation relating to Work No. 7F submitted to the Secretary of State for approval under sub-paragraph (1) must include—

- (a) details of baseline traffic flows through the existing Orsett Cock junction, prepared in accordance with the consultation described in sub-paragraph (3);
- (b) identification, in consultation with the OCIG, of the measurable thresholds;
- (c) an assessment, which must include microsimulation modelling of Work No. 7F and the Manorway junction and strategic modelling, of the likely impacts on the highway network of Work No. 7 during the operation of the authorised development;
- (d) where the assessment demonstrates that the measurable thresholds are likely to be exceeded as a result of the operation of the authorised development—
  - (i) details of the locations on the highway network where the exceedance of the measurable thresholds is assessed to occur;
  - (ii) details of the mitigation measures the undertaker proposes to implement to ensure that the measurable thresholds are not exceeded; and
  - (iii) a programme for the implementation of those mitigation measures, which must provide that they are implemented before the opening for public use of the tunnel;
- (e) a programme for monitoring throughout the monitoring period of the operation of the highway network for the purpose of identifying any exceedances of the measurable thresholds; and
- (f) a report on the consultation carried out by the undertaker under sub-paragraphs (3) and (4) that includes—
  - (i) a summary of the consultation carried out by the undertaker and the responses received to it;
  - (ii) the undertaker's responses to the consultation responses received by it; and
  - (iii) if any consultation responses are not reflected in the scheme of monitoring and mitigation relating to Work No. 7F submitted for the Secretary of State's approval under sub-paragraph (1), a statement setting out the undertaker's reasons for not including them.

(3) The undertaker must consult the local highway authority on the methodology proposed for the baseline assessment under sub-paragraph (2)(a), and such consultation must include details of the proposed—

- (a) locations to be surveyed;
- (b) time periods to be surveyed; and
- (c) method by which the survey data will be collected.

(4) Prior to submitting the scheme of monitoring and mitigation relating to Work No. 7F for the approval of the Secretary of State under sub-paragraph (1), the undertaker must consult the OCIG on a draft of the scheme and the undertaker must have regard to any consultation responses received from OCIG before finalising the scheme to be submitted for the approval of the Secretary of State under sub-paragraph (1).

(5) The undertaker must implement the approved scheme of monitoring and mitigation in accordance with its terms.

(6) Following the opening of the tunnel for public use, the undertaker must prepare and submit for the consideration of the OCIG the following monitoring reports, which must be derived from the monitoring programme included in the approved scheme of monitoring and mitigation—

- (a) quarterly monitoring reports for a period of one year from the tunnel opening for public use; and



(b) thereafter, annual monitoring reports for the duration of the monitoring period.

(7) In the event that the monitoring reports prepared by the undertaker under sub-paragraph (6) reveal that the measurable thresholds have been exceeded due to the operation of the authorised development, the undertaker must—

(a) develop, in consultation with the OCIG, the measures necessary to mitigate the exceedance of the measurable thresholds which is attributable to the operation of the authorised development; and

(b) implement, or secure the implementation of, those mitigation measures.

(8) The undertaker must supply, within 14 days of a request made by a member of the OCIG during the monitoring period, any monitoring data produced as result of the approved scheme of monitoring and mitigation.

(9) In this paragraph—

“the approved scheme of monitoring and mitigation” means the scheme of monitoring and mitigation for Work No. 7F approved by the Secretary of State under sub-paragraph (1);

“the monitoring period” means the first five years after the tunnel opens for public use;

“the OCIG” means the Orsett Cock Implementation Group, a consultative body whose membership includes the local highway authority, Port of Tilbury London Limited, London Gateway Port Limited, and any other person or body that the OCIG invites to become a member;

“the Orsett Cock junction” means the junction of the A13, A128, A1013, and Brentwood Road;

“the Manorway junction” means the junction of the A13, A1013, A1014, and the B1007;

“the measurable thresholds” means the objective standards which, if exceeded, demonstrate or evidence either or both of—

(a) a material worsening of traffic conditions on the highway network;

(b) a substantial detriment to the efficient operation of the ports; and

“the ports” means, individually and collectively, the Port of Tilbury and DP World London Gateway.

**APPENDIX 5**  
**PASSIVE PROVISION FOR TILBURY LINK ROAD**  
**AMENDED REQUIREMENT**

### **Passive provision for Tilbury link road**

17.—(1) The undertaker must undertake the detailed design of Work Nos. 5D, 5E and 5F in a manner that facilitates and accommodates a connection to the proposed Tilbury link road, to the extent the route and design of the proposed Tilbury link road is available prior to and up to the date of the submission of the final iteration of the detailed design of the tunnel area north of the river Thames to the design review panel pursuant to clause PRO.01 of the design principles.

(2) In particular, Work Nos. 5D, 5E and 5F must be designed in detail and constructed by the undertaker so as to accommodate a connection with the proposed Tilbury link road in compliance with the Design Manual for Roads and Bridges.

(3) The undertaker must operate and maintain Work Nos. 5D, 5E and 5F in a way that facilitates and accommodates the design, construction, operation and maintenance of the proposed Tilbury link road.

(4) In this paragraph, “the proposed Tilbury link road” means a proposal which includes a road connection or junction onto the A122 from Tilbury which is—

- (a) reflected in a preferred route announcement by the Secretary of State;
- (b) the subject of a request for a scoping opinion submitted to Thurrock Council under Regulation 15 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017, or an application to the Secretary of State under Regulation 10 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, whether the road forms the whole or part of the subject of the request for a scoping opinion;
- (c) included within documentation published by Thurrock Council under Regulation 19 of The Town and Country Planning (Local Planning) (England) Regulations 2012; or
- (d) such other proposal as is reasonably considered by the undertaker to set out the likely route and function of that link road.

**APPENDIX 6**

**WIDER HIGHWAY NETWORK MONITORING AND MITIGATION**

**PROPOSED REQUIREMENT**

## **Wider highway network monitoring and mitigation**

### *Pre-opening scheme of mitigation*

1.—(1) The tunnel must not be opened for public use until a scheme of mitigation, informed by the assessment and consultation mentioned in sub-paragraph (2), has been submitted to and approved in writing by the Secretary of State.

(2) In carrying out the assessment and consultation required by sub-paragraph (1), the undertaker must—

- (a) identify in consultation with the [LTCIG] the measurable thresholds;
- (b) carry out an updated assessment of the likely impacts of the operation of the authorised development on the performance of the highway network;
- (c) consult with the members of the [LTCIG] and have regard to any consultation responses received on—
  - (i) the locations on the highway network where the assessment demonstrates there is likely to be a material worsening of traffic conditions as a result of the operation of the authorised development;
  - (ii) the measures which the undertaker proposes to mitigate the impacts of such a material worsening of traffic conditions; and
  - (iii) the proposed programme for implementation of those measures;
- (d) further consult with the relevant local highway authority on the detail of mitigation measures which it proposes to implement on roads in that local highway authority's area.

(3) The scheme of mitigation submitted to the Secretary of State for approval under sub-paragraph (1) must include—

- (a) the measurable thresholds;
- (b) details and locations of the proposed mitigation measures;
- (c) responses to the consultation and further liaison carried out under sub-paragraph (2);
- (d) the estimated cost of implementing each measure; and
- (e) the proposed programme for the implementation of those measures.

(4) If the Secretary of State proposes to approve the scheme of mitigation submitted for approval with material modifications, the Secretary of State must consult the members of [LTCIG] on the proposed modifications and have regard to any responses received when deciding in what form to approve the scheme.

(5) The undertaker must implement or secure the implementation of the measures set out in the approved scheme of mitigation in accordance with its terms.

### *Post-opening monitoring and mitigation*

(6) For the duration of the monitoring period, the undertaker must—

- (a) implement and keep under review a programme for monitoring the impacts of the operation of the authorised development on the performance of the highway network, in consultation with the members of the [LTCIG];
- (b) prepare—
  - (i) quarterly monitoring reports for a period of one year from the tunnel opening for public use; and
  - (ii) annual monitoring reports thereafter,derived from that monitoring, and submit them for consideration by the members of [LTCIG];
- (c) review, in consultation with the members of [LTCIG], the ongoing suitability of the measurable thresholds;

- (d) develop in consultation with the relevant local highway authority any measures which are necessary to mitigate material worsening of traffic conditions on the highway network which are attributable to the operation of the authorised development; and
- (e) implement or secure the implementation of the necessary mitigation measures.

(7) If the undertaker thinks that it is necessary, following a review under sub-paragraph (6)(c), to adjust the measurable thresholds, it must consult with the LTCIG and apply to the Secretary of State under this sub-paragraph to vary the measurable thresholds.

(8) The Secretary of State may approve an application made under sub-paragraph (7) provided the Secretary of State is satisfied that the adjusted measurable thresholds would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement, and the measurable thresholds so approved shall be taken to be the measurable thresholds for the purpose of this paragraph.

(9) If the undertaker's statutory functions in relation to highways and road traffic on the strategic road network are not sufficient to enable the undertaker to implement any mitigation measure which it is obliged to implement under this requirement, the undertaker must either—

- (a) seek to agree with the relevant local highway authority that the undertaker will implement that measure on behalf of that local highway authority; or
- (b) if such an agreement cannot be reached, pay to that local highway authority a sum equivalent to—
  - (i) the estimated cost of the local highway authority implementing that measure, which the local highway authority must use for that purpose; or
  - (ii) the costs reasonably incurred by the local highway authority in implementing an alternative measure in the same location which the local highway authority has determined will mitigate the adverse impact attributable to the authorised development.

(10) In this paragraph—

- (a) “the measurable thresholds” means the objective standards which, if exceeded, demonstrate a material worsening of traffic conditions on the highway network; and
- (b) “the monitoring period” means a period commencing no later than three years before the tunnel is expected to open for public use and continuing for not less than three years after the tunnel opens for public use.

**APPENDIX 7**

**RECOMMENDATION REPORT FOR THE LAKE LOTHING (LOWESTOFT) THIRD  
CROSSING DCO**



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

The Planning Act 2008

**Lake Lothing Third Crossing**

Examining Authority's Report  
of Findings and Conclusions

and

Recommendation to the Secretary of State for  
Transport

---

Examining Authority

**David Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC** – Lead Member

**Stephen Roscoe BEng MSc CEng MICE** – Panel Member

**5 September 2019**



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# OVERVIEW

File Ref: TR010023

The application for the Lake Lothing Third Crossing (the Proposed Development), dated 3 July 2018, was made under section 37 of the Planning Act 2008 and received in full by the Planning Inspectorate on 13 July 2018.

The Applicant is Suffolk County Council.

The application was accepted for examination on 9 August 2018.

The examination of the application began on 5 December 2018 and was completed on 5 June 2019.

The Proposed Development comprises a new multi-span single carriageway opening bascule bridge highway crossing which, via associated approach roads and new roundabout junctions connecting into the existing road network, would link the areas north and south of Lake Lothing, Lowestoft. The opening bascule bridge design, facilitated by a bridge control tower on the south quay, would enable large vessels to continue to use the Port of Lowestoft. The Proposed Development also includes new mooring within the inner harbour for recreational vessels. The Proposed Development would accommodate all types of vehicular traffic as well as non-motorised users, such as cyclists and pedestrians. It would also include a new access road linking Waveney Drive to Riverside Road on the south side of Lake Lothing.

## **Summary of recommendation:**

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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**Examining Authority’s Report of Findings and Conclusions and  
Recommendation to the Secretary of State for Transport, dated 5  
September 2019**

**Corrections agreed by the Examining Authority prior to a decision  
being made**

<b>Page No.</b>	<b>Paragraph</b>	<b>Error</b>	<b>Correction</b>
1	1.1.2	“mooring”	“moorings”
50	5.7.1	“matter”	“matters”
54	5.8.14	Delete “liabilities” in 2 <sup>nd</sup> bullet point	Replace with “responsibilities”
127	8.5.183	Delete “recommended” as abbreviation previously used	Replace with “r”
Under list of Abbreviations – add:  NRA – Navigation Risk assessment  SCI – Sites of Community Importance			

# 1. INTRODUCTION

## 1.1. INTRODUCTION TO THE APPLICATION AND THE EXAMINATION

- 1.1.1. The application for the Lake Lothing Third Crossing (the Proposed Development) was submitted to the Planning Inspectorate by Suffolk County Council (the Applicant) on 13 July 2018 under section (s)31 of the Planning Act 2008 (the PA2008). It was accepted for examination under s55 of the PA2008 on 9 August 2018 [[PD-002](#)<sup>1</sup>].
- 1.1.2. The Proposed Development comprises a new multi-span single carriageway opening bascule bridge highway crossing which, via associated approach roads and new roundabout junctions connecting into the existing road network, would link the areas north and south of Lake Lothing, Lowestoft. The opening bascule bridge design, facilitated by a bridge control tower on the south quay, would enable large vessels to continue to use the Port of Lowestoft. The Proposed Development also includes new mooring within the inner harbour for recreational vessels. The Proposed Development would accommodate all types of vehicular traffic as well as non-motorised users, such as cyclists and pedestrians. It would also include a new access road linking Waveney Drive to Riverside Road on the south side of Lake Lothing [[APP-003](#)].
- 1.1.3. The location of the Proposed Development is shown on the Location Plan [[APP-012](#)] and Land Plans, final updated versions of which were received at Deadline 10 in the Examination Timetable [[REP10-014](#), [REP10-015](#), [REP10-016](#), [REP10-17](#), [REP10-18](#)]. At the time that the application was made, the site lay within the administrative boundaries of Waveney District Council and Suffolk County Council [[REP10-009](#)]. However, in the course of the Examination, on 1 April 2019 East Suffolk Council was created, consolidating and replacing Suffolk Coastal District Council and Waveney District Council. The Proposed Development is wholly within England.
- 1.1.4. The stated objectives of the Proposed Development are:
- to open-up opportunities for regeneration and development in Lowestoft;
  - to provide the capacity needed to accommodate planned growth;
  - to reduce community severance between north and south Lowestoft;
  - to reduce congestion and delay on the existing bridges over Lake Lothing;
  - to reduce congestion in the town centre and improve accessibility;
  - to encourage more people to walk and cycle, and reduce conflict between cycles, pedestrians and other traffic;
  - to improve bus journey times and reliability; and

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<sup>1</sup> References in square brackets are to documents in the Examination Library, available here: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010023/TR010023-000447-Examination%20Library%20-%20PDF%20Version.pdf>

- to reduce accidents [[APP-091](#)].

1.1.5. Other benefits of the Proposed Development include:

- 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; and
- 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 [[APP-091](#)].

1.1.6. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State for the Ministry of Housing, Communities and Local Government (SoSMHCLG) in its decision to accept the application for examination in accordance with s55 of the PA2008 [[PD-002](#)].

1.1.7. In respect of these tests the Application Form [[APP-003](#)] states:

*"In a direction dated 22 March 2016 under section 35 of the Planning Act 2008, the Secretary of State [for Transport] determined that the Lake Lothing Third Crossing is of national significance and is to be treated as development for which development consent is required."*

1.1.8. A copy of the s35 Direction is attached at Appendix B of the Applicant's Case for the Scheme [[APP-092](#)]. It confirms the Secretary of State for Transport's (SoST) decision that the Proposed Development, and any associated matters, should be treated as development for which development consent is required under the PA2008 and also sets out reasons why the Direction has been given.

1.1.9. Noting the s35 Direction, the Planning Inspectorate is satisfied that the Proposed Development and associated matters described in the Application Form [[APP-003](#)] and set out in Schedule 1 of the draft Development Consent Order (dCO) [[AS-030](#)] includes development for which development consent is required.

1.1.10. The benefits of the Proposed Development are corroborated in the appendix to the SoST's s35 Direction which states:

*"a connection to/from Trans European Network-Transport (TEN-T) and the Strategic Road Network [SRN] [and] would act as a tactical diversion route for the strategic road network, the A12/A47 when the Bascule Bridge, a nationally recognised pinch point, is closed thereby reducing delays and congestion on the SRN."*

1.1.11. Further, the appendix to the Direction states that the Proposed Development will provide:

- the economic benefits of the Proposed Development associated with the support of 'national growth potential';



- the connectivity to and from the Great Yarmouth and Lowestoft Enterprise Zone; and
- the delivery of the Port of Lowestoft's role in being the hub for the offshore wind farms that are part of the East Anglia Array, a major energy supplier for the UK [[APP-091](#)].

## **1.2. THE EXAMINING AUTHORITY**

- 1.2.1. On 15 October 2018 David Morgan and Dr Peter Widd were appointed as the Examining Authority (ExA) for the application under s61 and s65 of the PA2008 [[PD-001](#)].
- 1.2.2. In January 2019 Dr Peter Widd passed away unexpectedly. In this sad and unprecedented circumstance, the SoSMHCLG concluded that under s68(3) of the PA2008 a replacement Panel member was to be appointed with immediate effect.
- 1.2.3. On 23 January 2019 Stephen Roscoe was appointed under s65(1) of the PA2008 to restore the Panel to two persons [[PD-010](#)]. All of the work undertaken by Dr Widd has been incorporated in to the Examination under s73(2).

## **1.3. THE PERSONS INVOLVED IN THE EXAMINATION**

- 1.3.1. The persons involved in the Examination were:
- Persons who were Interested Parties (IPs) because they had made a Relevant Representation (RR); were a Statutory Party who requested to become an IP; or had been identified by the Applicant as persons who might be entitled to make a relevant claim for compensation if the dDCO were to be made and fully implemented.
  - Affected Persons (APs) who are affected by the Compulsory Acquisition (CA) and/ or Temporary Possession (TP) powers included in the application.
  - Other Persons who were invited to participate in the Examination by the ExA because they were either affected by it in some other relevant way or because they had particular expertise or evidence that the ExA considered to be necessary to inform the Examination.

## **1.4. THE EXAMINATION AND PROCEDURAL DECISIONS**

- 1.4.1. The Examination began on 5 December 2018 and concluded on 5 June 2019.
- 1.4.2. The principal components of and events in the Examination are summarised below. A fuller description including timescales and dates can be found in Appendix A of this report.

### **The Preliminary Meeting**

- 1.4.3. On 6 November 2018 the ExA wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of The Infrastructure Planning (Examination Procedure) Rules 2010 (the EPR), inviting them to the Preliminary Meeting (PM) (the 'Rule 6 letter') [[PD-005](#)]. The Rule 6 letter included:

- the arrangements and agenda for the PM;
- notification of an Open Floor Hearing (OFH) to be held following the PM;
- an Initial Assessment of the Principal Issues (IAPI);
- the draft Examination Timetable;
- information about the availability of RRs and application documents; and
- other Procedural Decisions made by the ExA.

1.4.4. The PM took place on 5 December 2018 at Ivy House Country Lodge, Ivy Lane, Oulton Broad, Lowestoft, NR33 8HY. An audio recording [[EV-001](#)] and a note of the meeting [[EV-002](#)] were published on the National Infrastructure Planning website<sup>2</sup>.

1.4.5. The ExA's Procedural Decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the ExA's letter issued under Rule 8 of the EPR (the 'Rule 8 letter') [[PD-006](#)], dated 17 December 2018.

### **Key Procedural Decisions**

1.4.6. The Procedural Decisions set out in the Rule 8 letter related to matters that were confined to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. The decisions can be obtained from the Rule 8 letter [[PD-006](#)] and so there is no need to repeat them here.

### **Site inspections**

1.4.7. Site Inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.

1.4.8. Where the matters for inspection can be viewed from publicly accessible land and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent to access, there are safety or other technical considerations and/ or there are requests made to accompany an inspection, an Accompanied Site Inspection (ASI) is held.

1.4.9. The ExA carried out one USI on 30 October 2018 in order to establish a broad familiarity with the site and its surroundings prior to the commencement of the Examination [[EV-003](#)].

1.4.10. The ExA held the following ASIs:

- ASI1, 12 February 2019 [[EV-005](#)];
- ASI1a, 6 March 2019 [[EV-017](#)]; and

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<sup>2</sup> Available at:  
<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/lake-lothing-third-crossing/>

- AS2, 13 May 2019 [[EV-018](#)].

1.4.11. The itinerary for each of the ASIs can be found in the Examination Library under the above references.

1.4.12. The ExA has had regard to the information and impressions obtained during its site inspections in all relevant sections of this report.

### **Hearing processes**

1.4.13. Hearings are held in PA2008 Examinations in two main circumstances:

- To respond to specific requests from persons who have a right to be heard - in summary terms:
  - where persons affected by proposed CA and/ or TP powers (Affected Persons) object and request to be heard at a Compulsory Acquisition Hearing (CAH); and/ or
  - where IPs request to be heard at an OFH.
- To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement or the application of relevant law or policy is not clear.

1.4.14. The ExA held a number of hearings to ensure the thorough examination of the issues raised by the application. All hearings were held at Ivy House Country Lodge, Ivy Lane, Oulton Broad, Lowestoft, NR33 8HY; a location in the vicinity of the Proposed Development.

1.4.15. Issue Specific Hearings (ISHs) were held under s91 of the PA2008. Two ISHs were held on the subject matter of the dDCO:

- ISH1, 12 February 2019 [[EV-009](#)]; and
- ISH3, 14 May 2019 [[EV-021](#), [EV-022](#)].

1.4.16. An ISH was also held on the subject matter of the environment:

- ISH2, 7 March 2019 [[EV-011](#), [EV-012](#), [EV-015](#) and [EV-016](#)].

1.4.17. By the end of the day on 7 March 2019 the agenda for ISH2 had not been completed. ISH2 was therefore adjourned and resumed on 1 April 2019.

1.4.18. ISH2 addressed the following subject matters:

- Noise, air quality, water, traffic and transport, archaeology, ecology and design.
- Port operations (including navigation and berth utilisation).

1.4.19. Two CAHs were held under s92 of the PA2008:

- CAH1, 13 February 2019 [[EV-010](#)]; and
- CAH2, 14 May 2019 [[EV-023](#)].

- 1.4.20. All Affected Persons were provided with an opportunity to be heard. We also used these hearings to examine the Applicant's case for CA and TP in the round.
- 1.4.21. Two OFHs were held under s93 of the PA2008:
- OFH1, 5 December 2018 [[EV-004](#)]; and
  - OFH2, 8 March 2019 [[EV-013](#)].
- 1.4.22. All IPs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise.

### **Written processes**

- 1.4.23. Examination under the PA2008 is primarily a written process, in which the ExA has regard to written material forming the application and arising from the Examination. All of this material is recorded in the Examination Library (Appendix B of this report) and published on the National Infrastructure Planning website. Individual document references to the Examination Library in this report are enclosed in square brackets [] and hyperlinked to the original document held online. For this reason, this report does not contain extensive summaries of all documents and representations, although full regard has been had to them in the ExA's conclusions. The ExA has considered all important and relevant matters arising from them.
- 1.4.24. Key written sources are set out further below.

### **Relevant Representations**

- 1.4.25. 37 Relevant Representations (RRs) were received by the Planning Inspectorate [[RR-001 to RR-037](#)]. All makers of RRs received the Rule 6 letter and were provided with an opportunity to become involved in the Examination as IPs. All RRs have been fully considered by the ExA. The issues that they raise are considered in Chapter 4 of this report.

### **Written Representations and other Examination Documents**

- 1.4.26. The Applicant and IPs were provided with opportunities to:
- make Written Representations (WRs) (Deadline (D)3);
  - comment on WRs made by the Applicant and other IPs (D4);
  - summarise their oral submissions made at hearings in writing (D1, D5, D7 and D10);
  - make other written submissions requested or accepted by the ExA; and
  - comment on documents issued for consultation by the ExA including:
    - the ExA's Report on Implications for European Sites (RIES) [[PD-014](#)] published on 3 May 2019 (by D11); and
    - the ExA's commentary on the dDCO [[PD-016](#)] published on 29 May 2019 (by D11).

1.4.27. All WRs and other Examination Documents have been fully considered by the ExA. The issues that they raise are considered in Chapter 4 of this report.

### **Local Impact Reports**

1.4.28. A Local Impact Report (LIR) is a report made by a relevant Local Authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area) that has been invited by and submitted to the ExA under s60 of the PA2008.

1.4.29. LIRs have been received from the following relevant Local Authorities:

- Waveney District Council and Suffolk County Council (Joint LIR) [[REP3-016](#)]; and
- Great Yarmouth Borough Council [[REP3-010](#)].

1.4.30. The LIRs have been taken fully into account by the ExA in all relevant chapters of this report.

### **Statements of Common Ground**

1.4.31. A Statement of Common Ground (SoCG) is a statement agreed between an applicant and one or more IPs, recording matters that are agreed between them.

1.4.32. By the end of the Examination the following bodies had concluded SoCGs with the Applicant:

- Associated British Ports (ABP).
- The Broads Authority.
- The Environment Agency.
- Highways England.
- Historic England.
- The Marine Management Organisation (MMO).
- Natural England.
- Suffolk County Council and Waveney District Council.

1.4.33. The above SoCGs are contained within the Applicant's 'Statements of Common Ground Report' [[REP10-076](#)].

1.4.34. All signed SoCGs have been taken fully into account by the ExA in all relevant chapters of this report. At the close of the Examination at 23:59 on 5 June 2019 all of the SoCGs comprising the Applicant's Statements of Common Ground Report were signed, save for the SoCG between the Applicant and ABP which has the status of "approved but not signed" [[REP10-076](#), Appendix 1]. We have considered this distinction in taking account of the content of the SoCG between the Applicant and ABP.

### **Written questions**

1.4.35. The ExA asked two rounds of Written Questions.

- First Written Questions (ExQ1) [[PD-007](#)] were published with the Rule 8 letter [[PD-006](#)] on 17 December 2018.

- Second Written Questions (ExQ2) [[PD-012](#)] were published on 22 March 2019.

1.4.36. All responses to the ExA's written questions have been fully considered and taken into account in all relevant chapters of this report.

### **Requests to join and leave the Examination**

1.4.37. One person who was not already an IP requested that the ExA should enable them to join the Examination before the PM. John Pawsey for Waveney Gymnastics Club (WGC) made a written submission purporting to be a late Relevant Representation on 26 September 2018. The ExA exercised its discretion to accept the submission from WGC as an Additional Submission [[AS-015](#)]. Subsequently WGC was given Other Person status in the Examination.

1.4.38. There were no other requests to join the Examination by any other persons who were not already IPs.

1.4.39. During the Examination, as a consequence of discussion at hearings and between relevant IPs and the Applicant, the following persons wrote to the ExA to inform it that their representations were withdrawn:

- Brookhouse (Lowestoft) Nominees VI Ltd [[AS-022](#)].
- Northumbrian Water Limited [[AS-026](#)].
- Anglian Water Services Limited [[AS-024](#)].
- Cadent Gas Limited [[AS-023](#)].

1.4.40. Any consequences arising from the withdrawal of representations by the above listed persons are considered in Chapter 4 of this report.

## **1.5. ENVIRONMENTAL IMPACT ASSESSMENT**

1.5.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).

1.5.2. On 28 February 2017 the Applicant submitted a Scoping Report to the then Secretary of State for Communities and Local Government under Regulation 8 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the EIA Regulations) in order to request an opinion about the scope of the Environmental Statement (ES) to be prepared (a Scoping Opinion) [[APP-164](#)]. It follows that the Applicant is deemed to have notified the Secretary of State under Regulation 6(1)(b) of the EIA Regulations that it proposed to provide an ES in respect of the Proposed Development.

1.5.3. On 7 April 2017 the Planning Inspectorate provided a Scoping Opinion [[APP-165](#)]. Therefore, in accordance with Regulation 4(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES [[APP-136 to APP-205](#)]. The application was eligible to be considered under the EIA Regulations 2009 by virtue of the EIA Regulations 2017 transitional provisions.

1.5.4. On 8 October 2018 the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of the PA2008 and Regulation 13 of the EIA Regulations had been complied with [[OD-002](#)].

1.5.5. Consideration is given to the adequacy of the ES and matters arising from it in Chapter 4 of this report.

## **1.6. HABITATS REGULATIONS ASSESSMENT**

1.6.1. The Proposed Development is development for which a Habitats Regulations Assessment (HRA) Report has been provided [[AS-003](#) and [REP10-062](#)].

1.6.2. A Report on the Implications for European Sites (RIES) was published on 3 March 2019 [[PD-014](#)]. IPs were invited to comment on the RIES at D11 in the Examination Timetable, 4 June 2019.

1.6.3. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 5 of this report.

## **1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS**

1.7.1. By the end of the Examination there were no matters subject to any separate undertakings, obligations and/ or agreements. All relevant considerations are addressed in this report as bearing on the DCO.

## **1.8. OTHER CONSENTS**

1.8.1. Other consents may be required to implement the Proposed Development. These are identified in the Applicant's Statement of Reasons [[REP10-009](#)]. A Consents and Agreements Position Statement is also provided with the application [[APP-134](#)]. The Applicant identifies a number of consents that may be required in addition to development consent, including:

- Environmental Permits under The Environmental Permitting (England and Wales) Regulations 2016.
- Protected Species Licences under the Wildlife and Countryside Act 1981, The Conservation of Habitats and Species Regulations 2017 and other legislation.
- Consents required under the Highways Act 1980 in respect of construction works (eg crane oversailing licences, hoarding licences etc).

1.8.2. In relation to these other consents, the ExA has considered the available information bearing on these and, without prejudice to the exercise of discretion by future decision-makers, has concluded that there are no apparent impediments to the implementation of the Proposed Development should the SoST decide to grant development consent.

## **1.9. CHANGES TO THE APPLICATION**



- 1.9.1. The Applicant submitted a request to the ExA on 29 January 2019 asking that a series of eight changes to the application be accepted on the basis of their 'non-material' status [[REP4-013](#)]. The series of changes was amended in respect of 'Non-Material Change 2' (NMC2) in a subsequent letter from the Applicant dated 12 April 2019 [[AS-020](#)].
- 1.9.2. For the reasons set out in its letter dated 9 May 2019 [[PD-015](#)], the ExA is satisfied that the eight changes proposed by the Applicant do not constitute a material change to the application. Consequently, the application was updated in a series of documents provided by the Applicant at D10 [[REP10-001 to REP10-062](#)].
- 1.9.3. In the course of the Examination the ExA requested a number of other supplementary documents to clarify matters arising from the representations received and to reflect ongoing negotiations with IPs.
- 1.9.4. The ExA has considered all changes to the application and is satisfied that they do not, either alone or in combination, constitute a material change to the application.

## **1.10. STRUCTURE OF THIS REPORT**

1.10.1. The structure of this report is as follows:

- **Chapter 1** introduces the reader to the application and the processes used to carry out the Examination and make this report.
- **Chapter 2** describes the site and its surroundings, the Proposed Development, its planning history and that of related projects.
- **Chapter 3** records the legal and policy context for the SoST's decision.
- **Chapter 4** sets out the planning issues that arose from the application and during the Examination.
- **Chapter 5** considers the effects of the Proposed Development on the environment
- **Chapter 6** considers effects on European Sites and Habitats Regulations Assessment (HRA).
- **Chapter 7** sets out the balance of planning considerations arising from chapters 4 and 5, in the light of the factual, legal and policy information in chapters 1 to 3.
- **Chapter 8** sets out the ExA's examination of Compulsory Acquisition and Temporary Possession proposals.
- **Chapter 9** considers the implications of the matters arising from the preceding chapters for the draft Development Consent Order.
- **Chapter 10** summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.10.2. This report is supported by the following Appendices:

- **Appendix A** – Events in the Examination
- **Appendix B** – The Examination Library
- **Appendix C** – List of abbreviations used in the Examination
- **Appendix D** – The recommended dDCO



## **2. THE PROPOSED DEVELOPMENT**

### **2.1. THE PROPOSED DEVELOPMENT**

2.1.1. The Proposed Development would provide a new single-carriageway road crossing of Lake Lothing consisting of a multi-span bridge with associated approach roads. The principal components include:

- 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 a 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 [[APP-002](#)].

2.1.2. The Proposed Development would be able to accommodate all types of vehicular traffic as well as non-motorised users (NMUs) and the opening bascule bridge design would allow large vessels to continue to use the Port of Lowestoft [[APP-002](#)].

2.1.3. The Proposed Development would also include:

- a control tower immediately to the south of Lake Lothing to facilitate the operation of the opening section of the bridge;
- 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 Proposed Development, 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 [[APP-002](#)].

2.1.4. The following changes to the existing highway network are also included in the Proposed Development:

- 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;
- 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 [[APP-002](#)].

2.1.5. A full description of the works required to deliver the Proposed Development are set out in Chapter 5 of the Environmental Statement

(ES) [[APP-136](#)], in Schedule 1 to the draft Development Consent Order (dDCO) [[AS-030](#)] and on the Works Plans [[APP-023](#), [REP10-019](#), [REP10-020](#)].

- 2.1.6. The recommended dDCO (rdDCO) (Appendix D of this report) includes principal powers that relate to the Compulsory Acquisition (CA) of land, the creation of new rights in land and the interference with or extinguishment of existing rights in land. Temporary Possession of land is also proposed. The Statement of Reasons (SoR) [[REP10-009](#)] and the Compulsory Acquisition Negotiations and Objection Tracker [[REP10-073](#)] explain the need for the Proposed Development, with the former offering a public interest case for the land to be acquired compulsorily.
- 2.1.7. The Order land includes land in which Statutory Undertakers have rights or other interests. These include electricity, gas, water and sewerage undertakers; operators of electronic communications code networks; railways interests (Network Rail); the harbour authority (Associated British Ports); and the Environment Agency [[REP10-009](#)]. Powers within the rdDCO make provision for CA powers associated with these, subject to Schedule 13 Parts 1 to 7 which deal with the protection of their interests.

## **2.2. THE SITE**

- 2.2.1. The site is contained by the Order Limits and is illustrated in the Land Plans [[APP-016](#), [APP-017](#), [APP-018](#) and [REP10-016](#), [REP10-017](#), [REP10-018](#)]. The site is also described in detail in the SoR [[REP10-009](#)] and in Chapter 5 of the ES [[APP-136](#)].
- 2.2.2. Lake Lothing is a saltwater waterbody linking the North Sea to The Broads National Park on an east-west axis and therefore dividing Lowestoft north to south by a water feature of up to 180m wide. Currently there are two road crossings of Lake Lothing: Mutford Bridge (a lifting bridge on the A1117) to the west, and the A47 Bascule Bridge (a lifting bridge on the A47) to the east. The bridges are separated by a distance of approximately 3km [[APP-091](#)].
- 2.2.3. The Port of Lowestoft (the Port), owned and operated by ABP in its capacity as the Statutory Harbour Authority, is divided into two sections:
- The outer harbour lies to the east of the existing A47 Bascule Bridge, is constructed from breakwaters, and consists of the Hamilton Dock, Waveney Dock, Trawl Dock and a yacht marina.
  - The inner harbour comprises the entirety of Lake Lothing to the west of the A47 Bascule Bridge and east of Mutford Bridge and consists of Town Quay, South Quay, Silo Quay, North Quay, Shell Quay and the Lowestoft Haven Marina [[REP10-009](#)].
- 2.2.4. Within and adjacent to the Order Limits to the north of Lake Lothing, to the east of the Lowestoft North Quay Retail Park, the Proposed Development would connect by way of a new roundabout junction into Peto Way. The land on which the new roundabout would be located is currently vacant hardstanding, lying immediately to the south of Peto

Way. Heading in a southerly direction towards Lake Lothing, the Proposed Development would cross the East Suffolk railway line which is owned by Network Rail Infrastructure Limited. 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 [[REP10-009](#)].

- 2.2.5. Inevitably the Proposed Development would traverse Lake Lothing, requiring land within the operational port area and in the lake itself [[REP10-009](#)].
- 2.2.6. Within and adjacent to the Order Limits to the south of Lake Lothing are a number of commercial and municipal buildings. Nexen, a manufacturer of fork-lift trucks, operates from a building to the east of the site. 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 [[REP10-009](#)].
- 2.2.7. 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). 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 [[REP10-009](#)].
- 2.2.8. 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 [[REP10-009](#)].
- 2.2.9. On the south side of Lake Lothing, the Proposed Development would be located within the Riverside Enterprise Zone [[APP-092](#), Appendix D].
- 2.2.10. On both the northern and southern sides of the site, the Order Limits include some existing highway for the purposes of incorporating it into the Proposed Development [[REP10-009](#)].
- 2.2.11. Several Public Rights of Way (PRoW) would be affected by the Proposed Development, including existing highways. Private means of access would also be affected. These effects are explained in Annex C to the SoR [[REP10-009](#)]. The Rights of Way and Access Plans formalise the proposed changes to existing highways and means of access [[REP10-021](#), [REP10-022](#), [REP10-023](#)].
- 2.2.12. The site includes a small area of Crown land held on behalf the Crown by the Secretary of State for Transport [[APP-051.2](#)]. The site does not include any special category land [[REP10-009](#)].

## **2.3. THE SURROUNDINGS**

- 2.3.1. In the areas adjacent to and beyond the Order Limits the existing land uses are primarily urban; that is they comprise 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 Lake Lothing [[REP10-009](#)].
- 2.3.2. 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 [[REP10-009](#)].
- 2.3.3. On the north side of Lake Lothing lies Normanston Park which provides facilities for football and cricket. Leathes Ham, a Local Nature Reserve, lies to the north-west [[REP10-009](#)].
- 2.3.4. Outside the Order Limits and to the north of the proposed new northern roundabout and the existing roundabout at the junction of Peto Way/ Rotterdam Road/ Denmark Road there are residential, industrial and commercial properties and an outdoor play area [[REP10-009](#)].
- 2.3.5. The port operations of ABP are predominant on the north side of Lake Lothing, occupying 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 is located to the east of the Order Limits [[REP10-009](#)].
- 2.3.6. 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 (eg 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 [[REP10-009](#)].
- 2.3.7. 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 [[REP10-009](#)].
- 2.3.8. To the west of the Order Limits the land is owned and occupied by East Suffolk Council, housing administrative buildings (including the Lowestoft Register Office) and buildings occupied by the Applicant [[REP10-009](#)].
- 2.3.9. 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 [[REP10-009](#)].

- 2.3.10. West of Mutford Bridge lies Oulton Broad which provides a gateway to the River Waveney and The Norfolk Broads National Park (approximately 1.5km to the west of the Order Limits) [[REP10-009](#)].

## **2.4. RELEVANT PLANNING HISTORY**

- 2.4.1. A detailed planning history of the sites within and adjacent to the Order Limits is provided in the Applicant's Case for the Scheme [[APP-091](#), para 3.7.6 and 3.7.7]. Any relevant matters arising have been considered at the appropriate section of this report.

## **3. LEGAL AND POLICY CONTEXT**

### **3.1. INTRODUCTION**

- 3.1.1. This chapter sets out the legal and policy context in which the application was prepared and examined.

### **3.2. THE PLANNING ACT 2008 AND NATIONAL POLICY STATEMENTS**

- 3.2.1. The Proposed Development does not satisfy all of the thresholds and requirements in relation to highway-related development set out in s22 of the PA2008. However, on 22 March 2016, in a Direction under s35 of the PA2008, the Secretary of State for Transport (SoST) determined that the Lake Lothing Third Crossing is of national significance and that the Proposed Development and any associated matters are to be treated as development for which development consent is required [APP-003]. A copy of the s35 Direction is attached at Appendix B of the Applicant's Case for the Scheme [APP-092]. This includes a statement of the reasons why the Direction has been given in terms of the Trans-European Transport Network, reducing delays on the strategic road network (SRN) and contributing to the Port of Lowestoft. These are all matters which may be considered important and relevant.
- 3.2.2. Paragraph 1.3 of the National Policy Statement for National Networks<sup>3</sup> (NPSNN) explains that where a development does not meet the requirements for a Nationally Significant Infrastructure Project (NSIP) set out in s22 of the PA2008, but by Direction the SoST determines that the development is development for which development consent is required, the application needs to be considered in accordance with the NPSNN. Section 104 of the PA2008 therefore has effect in this case.
- 3.2.3. In deciding the application, s104(2) of the PA2008 requires the Secretary of State (SoS) to have regard to:
- (a) any national policy statement which has effect in relation to development of the description to which the application relates (a 'relevant national policy statement');
  - (aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009;
  - (b) any local impact report (within the meaning given by section 60(3) submitted to the SoS before the deadline specified in a notice under section 60(2);
  - (c) any matters prescribed in relation to development of the description to which the application relates; and

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<sup>3</sup> Available at: <https://www.gov.uk/government/publications/national-policy-statement-for-national-networks>

(d) any other matters which the Secretary of State thinks are both important and relevant to the SoS's decision.

3.2.4. While the SoS must take the above into account, he or she must be satisfied that the decision made on the application would not:

- lead to the United Kingdom being in breach of any of its international obligations; or
- lead to the SoS being in breach of any duty imposed on him by or under any enactment; or
- be unlawful by virtue of any enactment.

3.2.5. The SoS must also consider whether the adverse impacts of the Proposed Development outweigh its benefits, and whether any condition prescribed for deciding an application otherwise than in accordance with a National Policy Statement is met.

### **National Policy Statement for National Networks**

3.2.6. Section 2 of the NPSNN sets out the need for development of the national networks and includes the Government's vision and strategic objectives for the national road and rail networks. These are to deliver:

- networks with the capacity and connectivity and resilience to support national and local economic activity and facilitate growth and create jobs;
- networks which support and improve journey quality, reliability and safety;
- networks which support the delivery of environmental goals and the move to a low carbon economy; and
- networks which join up our communities and link effectively to each other.

3.2.7. A critical need is identified to address road congestion to provide safe, expeditious and resilient networks that better support social and economic activity, and to provide a transport network that is capable of stimulating and supporting economic growth (NPSNN paragraphs 2.1 to 2.11).

3.2.8. There is a need for development on the national networks to support national and local economic growth and regeneration, particularly in the most disadvantaged areas. Improved and new transport links can facilitate economic growth by bringing businesses closer to their workers, their markets and each other. This can help rebalance the economy (NPSNN paragraph 2.6).

3.2.9. In order to meet the need set out in paragraphs 2.1 to 2.11 of the NPSNN, in some cases it will not be sufficient to simply expand capacity on the existing network identified in the NPSNN. In those circumstances new road alignments and corresponding links, including alignments which cross a river or estuary, may be needed to support increased capacity and connectivity (NPSNN paragraph 2.27).



- 3.2.10. The NPSNN goes on to set out the principles by which proposed development of the SRN should be assessed in Section 4 and identifies the generic impacts to be considered in Section 5. The Applicant sets out the conformity of the Proposed Development with Section 4 and 5 of the NPSNN in Appendix A to its Case for the Scheme [[APP-091](#)].
- 3.2.11. We address the detailed criteria against which the impacts of the Proposed Development fall to be considered as we report on each of those impacts in Chapter 5 of this report.

### **National Policy Statement for Ports**

- 3.2.12. The National Policy Statement for Ports (NPSP) sets out the framework for making decisions on proposals for new port development, recognising the essential role they play in the UK economy and the wider economic benefits that they can bring. In addition, it sets out the vital role that UK ports play in the energy sector, in terms of import and export of energy supplies, in the construction and servicing of offshore energy installations and in supporting oil and gas pipelines. It is also noted that port handling needs for energy may change as renewables play an increasingly important part as an energy source.
- 3.2.13. The draft Development Consent Order (dDCO) does not propose new port development, but the Proposed Development does cross Lake Lothing and interfaces with the Port of Lowestoft. On this basis we consider that relevant content within the NPSP is an important consideration in the assessment of this application. The Applicant assesses the Proposed Development against relevant paragraphs within the NPSP in Appendix A to its Case for the Scheme [[APP-091](#)].

## **3.3. MARINE AND COASTAL ACCESS ACT 2009 AND UK MARINE POLICY STATEMENT**

- 3.3.1. The Marine and Coastal Access Act 2009 (MCAA) introduced the production of marine plans and designation of Marine Conservation Zones in UK waters, as well as establishing the Marine Management Organisation (MMO).

### **UK Marine Policy Statement**

- 3.3.2. Under s104(2)(aa) of the PA2008 the SoS must have regard to "*the appropriate marine policy documents.*" The appropriate marine policy documents in this case are the UK Marine Policy Statement (MPS) and the East Inshore and East Offshore Marine Plans (EIEOMP) [[APP-091](#)].
- 3.3.3. The MPS was prepared and adopted for the purposes of s44 of the MCAA and was published on 18 March 2011 by all the UK administrations as part of a new system of marine planning being introduced across UK seas.
- 3.3.4. The MPS provides the high-level policy context, within which national and sub-national marine plans will be developed, implemented, monitored, and amended and will ensure appropriate consistency in marine planning



across the UK marine area. The UK marine area includes the territorial seas and offshore area adjacent to the UK, which includes the area of sea designated as the UK Exclusive Economic Zone (the Renewable Energy Zone until the Exclusive Economic Zone comes into force) and the UK sector of the continental shelf<sup>4</sup>.

3.3.5. Chapter 3 of the MPS sets out the policy objectives for the key activities that take place in the marine environment in relation to:

- Marine protected areas.
- Defence and national security.
- Energy production and infrastructure development.
- Ports and shipping.
- Marine aggregates.
- Marine dredging and disposal.
- Telecommunications cabling.
- Fisheries.
- Aquaculture.
- Surface water management and waste water treatment and disposal.
- Tourism and recreation.

3.3.6. The Proposed Development does not fit comfortably within any of the above categories, but because the application site is located within a Marine Plan Area [[APP-091](#), Figure 7-1] the objectives of the MPS are relevant to the Proposed Development.

### **East Inshore Marine Plan**

3.3.7. The relevant marine plan is the East Inshore Marine Plan (EIMP) [[APP-091](#)]. It should be noted that whilst the EIMP was published simultaneously with the East Offshore Marine Plan (EOMP) as a single document, they are separate marine plans.

3.3.8. The EIMP area covers an area of 6,000 square kilometres and includes the area of sea stretching from Flamborough Head to Felixstowe and extends out to the seaward limit of the territorial sea (approximately 12 nautical miles), as well as inland areas such as The Broads and other waters subject to tidal influence. It includes 22% of ports (by number) in England and 11% by area of England's Special Areas of Conservation, as well as 29% of Special Protection Areas. The EOMP, which is not a relevant marine plan in this case, covers the marine area from 12 nautical miles out to the maritime borders with Netherlands, Belgium and France [[APP-091](#)].

3.3.9. The EIMP establishes ten objectives to deliver the marine plan's vision and support sustainable development. The policies comprising the plans elaborate these, covering economic growth and employment benefits; renewable energy; support for communities; conservation of heritage assets and seascape; conservation of the marine ecosystem; protection of and recovery of biodiversity; support for marine protected areas;

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<sup>4</sup> See MCAA s42(3) and (4)

support for climate change adaptation and mitigation; and integration with other plans.

- 3.3.10. The Applicant's assessment of the Proposed Development against the policies in the EIMP is set out in paragraphs 7.6.9 to 7.6.41 of its Case for the Scheme [[APP-091](#)]. Our findings and conclusions in this respect are set out in Chapter 5 of this report.

### **Marine licencing**

- 3.3.11. Works in Schedule 1 of the dDCO would be located in "*waters in or adjacent to England up to the seaward limits of the territorial sea*". A marine licence would ordinarily therefore be required to deliver the Proposed Development [[APP-091](#)].
- 3.3.12. Because of this the dDCO includes at Schedule 12 provision for a Deemed Marine Licence (DML). There is a statutory duty on applicants to consult the MMO on NSIPs which would affect, or would be likely to affect, any relevant areas defined in s42(2) PA2008; including "*waters in or adjacent to England up to the seaward limits of the territorial sea*".
- 3.3.13. The terms of this DML have been determined through consultation and engagement with the MMO [[APP-091](#)]. Our findings and conclusions in respect of the dDCO, which includes the DML, are set out in Chapter 9 of this report.

## **3.4. EUROPEAN LAW AND RELATED UK REGULATIONS**

### **Habitats Directive (Council Directive 92/43/EEC) and Birds Directive (Council 2009/147/EC)**

- 3.4.1. The provisions of the Habitats Directive and the Birds Directive are addressed in this application.
- 3.4.2. The Applicant's screening exercise in respect of whether a Habitats Regulations Assessment (HRA) is required is summarised within the HRA Report [[AS-003](#), [REP10-062](#)]. We deal with the need for a HRA in Chapter 6, and other matters relating to biodiversity and ecological conservation in Chapter 5.

### **Water Framework Directive (Council Directive 2000/60/EC)**

- 3.4.3. On 23 October 2000, Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy, or in short the EU Water Framework Directive (WFD), was adopted. The WFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. Representations from the Environment Agency in respect of the Applicant's assessment against the WFD status and objectives [[RR-009](#), [REP3-015](#), [REP10-076](#)] are considered in Chapter 5 of this report.

## **Air Quality Directive (Council Directive 2008/50/EC)**

- 3.4.4. Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (EU Air Quality Directive (AQD)) entered into force on 11 June 2008. It sets limit values for compliance and establishes control actions where the limit values (LV) are exceeded for ambient air quality with respect to sulphur dioxide (SO<sub>2</sub>); nitrogen dioxide (NO<sub>2</sub>) and mono-nitrogen oxides and nitrogen dioxide (NO<sub>x</sub>); particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>); lead; benzene; and carbon monoxide. In England the Air Quality Standards Regulations 2010 give effect to the AQD.
- 3.4.5. The Air Quality Strategy (AQS) establishes the UK framework for air quality improvements<sup>5</sup>. The AQS establishes a long-term vision for improving air quality in the UK and offers options for further consideration to reduce the risk to health and the environment from air pollution. Individual plans prepared beneath its framework provide more detailed actions to address LV exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where LV exceedances are found, including the designation of Clean Air Zones and more localised Air Quality Management Areas (AQMAs) where Air Quality Management Plans are prepared by Local Authorities.
- 3.4.6. The air quality plan for nitrogen dioxide (NO<sub>2</sub>) in the UK (2017)<sup>6</sup> was published on 26 July 2017. It has been the subject of various proceedings brought against the UK Government by the environmental non-governmental organisation ClientEarth for breaching the AQD. Successive Supreme Court judgments in favour of ClientEarth have culminated in the publication of the Supplement to the UK plan for tackling roadside nitrogen dioxide concentrations (October 2018)<sup>7</sup>.
- 3.4.7. The Clean Air Strategy (Defra, 2019) sets out the comprehensive action required from the UK Government, and society, to meet air quality objectives.
- 3.4.8. We consider the Proposed Development against air quality objectives in Chapter 5 of this report.

## **3.5. OTHER LEGAL AND POLICY PROVISIONS**

### **Climate Change**

- 3.5.1. PA2008 s10(3)(a) requires the SoS to have regard to the desirability of mitigating, and adapting to, climate change in designating a National

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<sup>5</sup> Available at: <https://www.gov.uk/government/publications/the-air-quality-strategy-for-england-scotland-wales-and-northern-ireland-volume-1>

<sup>6</sup> Available at: <https://www.gov.uk/government/publications/air-quality-plan-for-nitrogen-dioxide-no2-in-uk-2017>

<sup>7</sup> Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/746100/air-quality-no2-plan-supplement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746100/air-quality-no2-plan-supplement.pdf)

Policy Statement. This duty has been addressed throughout Chapter 5 of this report.

- 3.5.2. The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets, and these have also been taken into account, as relevant, in Chapter 5 of this report.
- 3.5.3. After the close of the examination the Climate Change Act was amended by Statutory Instrument 1056 (2019)<sup>8</sup> to a 100% net zero target by 2050. The recommendations in this report have not taken account of this change due to the timing and it will be a matter for the Secretary of State to consider in their final decision.

### **The National Planning Policy Framework and Planning Practice Guidance**

- 3.5.4. The National Planning Policy Framework (NPPF) does not contain specific policies relating to NSIPs. However, pursuant to paragraph 1.18 of the NPSNN, insofar as provisions in the NPPF are relevant to the application, we have taken them into account in our assessment of the issues in this case. Planning Practice Guidance is also taken into account where appropriate; in particular in the advice on the imposition of planning conditions<sup>9</sup> has applied to our consideration of the appropriateness of Requirements in Schedule 2 of the dDCO.

### **National Infrastructure Delivery Plan 2016 – 2021**

- 3.5.5. The Applicant states that the objectives of the NPSNN are aligned with those contained in the National Infrastructure Delivery Plan 2016 – 2021 (the NIDP)<sup>10</sup>.
- 3.5.6. The NIDP states at paragraph 3.2 that the SRN is “*vital to businesses and the successful functioning of the economy*”. Paragraph 5.16 recognises that “*with two thirds of all freight being carried on the Strategic Road Network, effective road links to ports are vital to allow goods and services to be moved into and around the country efficiently and reliably*”. The Proposed Development, in improving connectivity to and from the Port of Lowestoft, is supported by the NIDP, which lists the Proposed Development in Table ES.1 as development for which, together with a new river crossing in Ipswich, the Government will provide £151 million of funding [APP-091]. It is further supported by the Department for Transport’s port connectivity study<sup>11</sup> which recognises that if ports are

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<sup>8</sup> Available at:

[http://www.legislation.gov.uk/ukxi/2019/1056/pdfs/ukxi\\_20191056\\_en.pdf](http://www.legislation.gov.uk/ukxi/2019/1056/pdfs/ukxi_20191056_en.pdf)

<sup>9</sup> Available at: <https://www.gov.uk/guidance/use-of-planning-conditions>

<sup>10</sup> Available at: <https://www.gov.uk/government/publications/national-infrastructure-delivery-plan-2016-to-2021>

<sup>11</sup> Available at: <https://www.gov.uk/government/publications/transport-connectivity-to-ports-review-of-the-current-status-and-future-infrastructure-recommendations>

to continue thriving, then the infrastructure supporting them has to be effective and efficient [[APP-092](#)].

### **The Public Sector Equality Duty**

- 3.5.7. The Equalities Act 2010 established a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the SoS in decision-making.

### **The National Parks and Access to the Countryside Act 1949**

- 3.5.8. The National Parks and Access to the Countryside Act 1949 (NPACA) provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty (AONB). It also established powers to declare National Nature Reserves, to notify Sites of Special Scientific Interest (SSSI) and for Local Authorities to establish Local Nature Reserves (LNR).

- 3.5.9. The NPACA has relevance to the consideration of any impacts on SSSIs, as discussed in chapter. There are no AONBs that would be affected by the Proposed Development.

### **The Wildlife and Countryside Act 1981**

- 3.5.10. The Wildlife and Countryside Act 1981 (WCA) is the primary legislation which protects animals, plants, and certain habitats in the UK. The WCA provides for the notification and confirmation of SSSIs. These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England, Natural England). The WCA also contains measures for the protection and management of SSSIs.

- 3.5.11. The WCA has relevance to the consideration of impacts on SSSIs and on protected species and habitats which are discussed in Chapter 5 and Chapter 6.

### **The Countryside and Rights of Way Act 2000**

- 3.5.12. The Countryside and Rights of Way Act 2000 (CRWA) brought in new measures to further protect AONBs, with new duties for the boards set up to look after AONBs. These included meeting the demands of recreation, without compromising the original reasons for designation and safeguarding rural industries and local communities. There was also a new duty for all public bodies to have regard to the purposes of AONBs. The CRWA also brought in improved provisions for the protection and management of SSSIs, strengthened wildlife enforcement legislation and made provisions in relation to public rights of way.

- 3.5.13. Consideration of impacts on SSSIs and the effects on rights of way and the ease of movement for non-motorised users (NMUs) are considered in

Chapter 5 of this report. There are no AoNBs that would be affected by the Proposed Development.

**The Natural Environment and Rural Communities Act 2006 and the United Nations Environment Programme Convention on Biological Diversity 1992**

- 3.5.14. The Natural Environment and Rural Communities Act 2006 (NERCA) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard, so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this, regard must be given to the United Nations Environment Programme Convention on Biological Diversity of 1992.
- 3.5.15. The UK Government ratified the United Nations Environment Programme Convention (UNEPC) in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs which promotes the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.5.16. The effects on biodiversity, the biological environment and ecology and landscape matters are considered in Chapter 5 of this report. As required by Regulation 7 of The Infrastructure Planning (Decisions) Regulations 2010, we have had regard to the UNEPC in its consideration of the likely impacts of the Proposed Development and appropriate objectives and mechanisms for mitigation and compensation.

**3.6. MADE DEVELOPMENT CONSENT ORDERS**

- 3.6.1. In the application and in the course of the Examination the Applicant referred to a number of precedents in made DCOs and related approvals. References to precedents were made in the Updated Explanatory Memorandum [[REP11-011](#)] and in the various responses to our written and oral questions.
- 3.6.2. The following made DCOs were specifically referred to:
- A160/A180 (Port of Immingham Improvement) Development Consent Order 2015.
  - A19 / A1058 Coast Road (Junction Improvement) Order 2016.
  - Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))).
  - M1 Junction 10a (Grade Separation) Order 2013.
  - Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013.
  - Silvertown Tunnel Order 2018.
  - A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016.
  - A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014.
  - Network Rail (North Doncaster Chord) Order 2012.



- Northumberland County Council (A1-South East Northumberland Link Road (Morpeth Northern Bypass) Development Consent Order 2015.
- Burbo Bank Extension Offshore Wind Farm Order 2014.
- Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.
- National Grid (Richborough Connection Project) Development Consent Order 2017.
- Rookery South (Resource Recovery Facility) Order 2011.
- M20 Junction 10a Development Consent Order 2017.
- River Humber Gas Pipeline Replacement Order 2016.
- North London Heat and Power Generating Station Order 2017.
- Millbrook Gas Fired Generating Station Order 2019.
- Hinkley Point C (Nuclear Generating Station) Order 2013.

3.6.3. The following precedent development approvals outwith the PA2008 were also cited to the ExA by the Applicant:

- Nottingham Express Transit System Order 2009.
- Borough of Poole (Poole Harbour Opening Bridges) Order 2006.
- The River Mersey (Mersey Gateway Bridge) Order 2011.
- High Speed Rail (London – West Midlands) Act 2017.
- London Underground (Northern Line Extension) Order 2014.
- Midland Metro (Wolverhampton City Centre Extension) Order 2016.

3.6.4. We consider the relevance, importance and applicability of the precedents referred to by the Applicant in Chapter 9 of this report.

## **3.7. TRANSBOUNDARY EFFECTS**

3.7.1. Under Regulation 24 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the EIA Regulations) the Planning Inspectorate on behalf of the SoS has concluded that the Proposed Development is not likely to have significant effects on the environments in another European Economic Area (EEA) State.

3.7.2. In reaching this view the Planning Inspectorate has applied the precautionary approach<sup>12</sup>. The conclusions have been published in the Transboundary Screening matrices produced on behalf of the SoS dated 18 July 2017 and 26 October 2018 [OD-001]. These screening reports each concluded that the Proposed Development was not likely to have significant effects on the environment in another EEA State. Transboundary issues consultation under Regulation 24 of the EIA Regulations was therefore not considered necessary in relation to this application.

3.7.3. Having regard to these reports and having kept the matter under review throughout the Examination, we are satisfied with regard to Regulation 7 of The Infrastructure Planning (Decisions) Regulations 2010 that there

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<sup>12</sup> As explained in the Planning Inspectorate's Advice Note Twelve: Transboundary Impacts and Process, available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/04/Advice-note-12v2.pdf>

are no outstanding transboundary issues that would prevent the dDCO from being made.

### **3.8. THE DEVELOPMENT PLAN**

3.8.1. The Applicant identified the relevant development plan and other local strategy documents relevant to the Proposed Development in its Case for the Scheme [[APP-091](#)], as follows:

- Waveney Development Plan including:
  - Core Strategy Development Plan Document, adopted January 2009.
  - Development Management Policies Development Plan Document, adopted January 2011.
  - Site Specific Allocations Development Plan Document, adopted January 2011.
  - Lowestoft Lake Lothing and Outer Harbour Area Action Plan Development Plan Document, adopted January 2012.
- Supplementary guidance:
  - Sustainable Urban Neighbourhood and Kirkley Waterfront Development Brief Supplementary Planning Document, adopted May 2013.
- Waveney District Council Local Plan Final Draft, published March 2018.
- Suffolk Local Transport Plan 2011 – 2031 Part 1 Transport Strategy and Part 2 – Implementation Plan and Suffolk Rights of Way Improvement Plan 2006 – 2016.
- Suffolk Waste Core Strategy, adopted March 2011, Suffolk Minerals Core Strategy, adopted September 2008 and Suffolk Minerals and Waste Local Plan, submission draft June 2018.
- Suffolk Flood Risk Management Strategy, published 2016.
- Suffolk Nature Strategy 2015, published 2015.
- Suffolk Growth Strategy, published 2013.
- East Suffolk Economic Growth Plan, published 2018.

3.8.2. In the course of the Examination the Waveney Local Plan was adopted on 20 March 2019. Anticipating adoption at this time, and in consideration of the NPPF insofar as it affords decision-takers the ability to give weight to relevant policies in emerging plans, the Applicant assessed the Proposed Development against the then draft policies in the Final Draft Local Plan (March 2018) [[APP-091](#)].

3.8.3. The Waveney Local Plan (which within the administrative area of the new East Suffolk Council applies only to the part of East Suffolk Council formerly covered by the former Waveney District Council) supersedes the Development Plan Documents listed in paragraph 3.8.1, above. Supplementary Planning Documents are retained.



- 3.8.4. The development plan is a relevant and important consideration and we take account of it throughout this report and in reaching our recommendations to the SoST.

## **4. THE PLANNING ISSUES**

### **4.1. MAIN ISSUES IN THE EXAMINATION**

- 4.1.1. The Examining Authority (ExA)'s Initial Assessment of Principal Issues (IAPI) was published on 6 November 2018 as Annex B to the Rule 6 letter which announced the Preliminary Meeting (PM) [[PD-005](#)]. This forms an initial assessment of the issues based on the application documents and submitted Relevant Representations (RRs). The list of issues relates to both the construction and operation phases of the Proposed Development.
- 4.1.2. It includes matters relating to policy as set out in the National Policy Statement for National Networks (NPSNN), National Policy Statement for Ports (NPSP) and the extent to which the Proposed Development would comply with the policies of local development plans.
- 4.1.3. In the IAPI, issues are identified in relation to the environment, which include the design of the Proposed Development and its effect on local townscape and the visual impact on the north and south shores of the harbour; its effect on designated and non-designated heritage assets, including their settings and sub-marine remains; whether there would be an increase in the risk of flooding as a result of the Proposed Development; whether there was sufficient information presented to assure that there would be no risk to the water environment in the immediate and wider environs of the Proposed Development; whether or not the Proposed Development would cause disruption or permanent harm to habitats and plants, invertebrates and marine species and whether it would adversely impact on air quality, specifically in relation to local residents living environment.
- 4.1.4. Matters relating to maritime and port operational matters include the effect of the Proposed Development on the safe navigation of the harbour for its users, vessels and environment, its effect on existing berth space within the inner harbour and its effect on the closure of the western harbour on vessel movements over the closure period.
- 4.1.5. Matters relating to the impact of the Proposed Development on road users include the impact on traffic flows on the southern approach roads and the surrounding area and the effect on the safety local highway users.
- 4.1.6. Matters covering the Compulsory Acquisition (CA) of land and other land matters include whether or not all the land and rights proposed to be compulsorily acquired satisfy the conditions set out in sections 122(2) and 122(3) of the Planning Act 2008 (PA2008). Consideration is also given to whether or not the Temporary Possession powers proposed are justified and proportionate, whether or not alternative designs for the Proposed Development, including the extent of land acquisition (both CA and TP) necessary to facilitate it, have been taken into account, if and when, in respect of the interest in Crown land sought be acquired, the Applicant expects to receive the consent of the appropriate Crown

authority and the likely availability of funds to implement the Proposed Development.

4.1.7. Socio-economic matters include the extent to which the Proposed Development would result in any benefits in terms of the national, regional or local economy and the extent to which it would result in any adverse effects in terms of the national or local economy, including local maritime, port and other enterprises.

4.1.8. The issues identified in the Rule 6 letter have informed the matters considered by the ExA throughout the Examination. Further issues have been raised as the Examination has progressed as a result of submissions from Interested Persons (IP). We consider all the issues raised throughout the Report to the Secretary of State for Transport (SoST) Lake Lothing Third Crossing Examination and deal with them where relevant and appropriate in this report.

## **4.2. ISSUES ARISING IN WRITTEN SUBMISSIONS**

4.2.1. Issues raised in submissions informed our First Written Questions (ExQ1) [[PD-007](#)]. In ExQ1 issued on 17 December 2018, we examined the Applicant's approaches to a range of general cross-topic questions. These included:

- The parameters of the Proposed Development (the Limits of Deviation);
- the relationship of reference design used for initial ES and the specific design set out in the submitted drawings;
- the location of construction compounds;
- the need for specific elements of infrastructure; and
- detailed phasing and detailed pollution mitigation measures.

4.2.2. Specific matters relating to chapters in the Environmental Statement (ES) [[APP-136 to APP-209](#)], including:

- Townscape and Visual Impact;
- Traffic and Transport;
- Road Drainage and Water Environment;
- Nature Conversation;
- Compulsory Acquisition;
- Temporary Possession and other land considerations;
- Funding; and
- the Draft Development Consent Order [[APP-005](#)];

were all raised by the Applicant and a range of IPs and were also examined at this stage.

4.2.3. The ExA's Second Written Questions (ExQ2) [[PD-012](#)] were issued on the 22 March 2019. In ExQ2 we examined the Applicant's approaches to a range of general cross-topic questions. These included:

- The need for a further suite of revised documents to fully address the Applicant's proposed changes to the application [[REP4-013](#)], including a revised Book of Reference; and
- clarification on specific matters relating to CA.

4.2.4. Further questions were raised in respect of IPs representations in relation to detailed matters relating to plots and to the provision of technical reports to support objections made in respect of noise.

4.2.5. The Applicant submitted a range of amendments to the application during the course of the Examination in response to negotiations with IPs on land acquisition matters [[REP4-013](#)]. These minor changes comprised the reconfiguration of access points to affected businesses and minor realignments to the local road network on the southern approach. These proposed changes were presented and formally accepted by the ExA [[PD-015](#)]. Following further negotiation with affected IPs a final amended package of amendments was submitted to the ExA at Deadline (D)10 [[REP10-003](#)].

### **4.3. ISSUES ARISING IN LOCAL IMPACT REPORTS**

4.3.1. Local Impact Reports (LIR) were submitted by Waveney District Council (WDC) and Suffolk County Council (SCC) [[REP3-016](#)] with a supporting letter from Great Yarmouth Borough Council (GYBC) [[REP3-010](#)]; the Applicant and ABP duly responded [[REP4-010](#) and [REP4-030](#)].

4.3.2. The councils had regard to the purpose of LIRs as set out in s60(3) of the PA2008, DCLG's Guidance for the examination of applications for development consent and the Planning Inspectorate's Advice Note One, Local Impact Reports, in preparing their LIRs. Both LIRs cover the following matters:

- Local area characteristics – this covers a brief description of the area and identifies the parameters of any statutory designations, all beyond one kilometre in distance from the site.
- The statutory Development Plan context, comprising the Waveney District Council Local Plan (2009, 2011 and 2012, the Suffolk Minerals and Waste Development Framework (2008, 2009 and 2011). Other relevant policy identified includes the Suffolk Local Transport Plan (2011-2031) and the New Anglia Norfolk and Suffolk Economic Strategy 2017.
- Socio-economic matters.
- Flood risk.
- Air quality.
- Cultural heritage.
- Townscape and visual impact.
- Contamination.
- Noise and vibration.
- Transport.
- Design.
- Adequacy of the dDCO.

4.3.3. The Local Authorities consider that the dDCO (including its detailed provisions in respect of the above matters) in combination with the proper implementation of ancillary documents provided for, or that the Applicant has agreed to be bound by, specifically the:

- Design Report;
- Design Guidance Manual;
- Code of Construction Practice (CoCP);
- Transport Assessment; and
- Landscaping Plans;

will ensure that the impacts of the Proposed Development are acceptable and thus it accords with local policy.

## **4.4. CONFORMITY WITH NATIONAL POLICY STATEMENTS**

### **Conformity with the NPSNN**

4.4.1. The Proposed Development would form part of the Strategic Road Network (SRN). The NPSNN paragraph 2.13 recognises the importance of the SRN setting out that it *"provides critical links between cities, joins up communities, connects our major ports, airports and rail terminals"* and that *"it provides a vital role in people's journeys and drives prosperity by supporting new and existing development, encouraging trade and attracting investment"*. It further states that *"a well-functioning Strategic Road Network is critical in enabling safe and reliable journeys and the movements of goods in support of the national and regional economies"*.

4.4.2. Paragraph 2.22 of the NPSNN states that *"without improving the road network, including its performance, it will be difficult to support further economic growth, employment and housing and this will impede economic growth and reduce people's quality of life. The Government has therefore concluded that at a strategic level there is a compelling need for development of the national road network"*.

4.4.3. Paragraph 2.27 of the NPSNN recognises that capacity improvements on the existing network may not be sufficient to all needs and *"in those circumstances new road alignments and corresponding links, including alignments which cross a river or estuary, may be needed to support increased capacity and connectivity"*.

4.4.4. We are satisfied that the Proposed Development conforms with the NPSNN in all these regards.

### **Conformity with the NPSP**

4.4.5. The NPSP sets the framework for decision-making on proposals for new port development and recognises the essential role ports play in the UK economy and the wider economic benefits that they can bring. In addition, it sets out the role UK ports play in the energy sector, in terms of import and export of energy supplies, the construction and servicing of offshore installations and in supporting oil and gas pipelines. It also

anticipates that port handling needs for energy may change as renewables become an increasingly important energy resource.

- 4.4.6. Although the dDCO does not propose new port development, the proposal does cross Lake Lothing and inter-connects with the Port of Lowestoft itself. It is appropriate therefore, that an assessment of the Proposed Development is undertaken against the relevant paragraphs within the NPSP. Paragraphs which are relevant to Environmental Impact Assessment are broadly consistent with those of the NPSNN and are considered in Chapter 5.
- 4.4.7. In relation to the consideration of options for the Proposed Development the NPSP states that "*this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option*". However, it goes on to state that applicants are obliged to include in their Environmental Statement (ES) necessary information about the alternatives studied, including an indication of the reasons for the applicant's choice. Again, these matters are set out by the Applicant in detail in the supporting documents.
- 4.4.8. The NPSP contains assessment principles related to good design, which again reflect those set out in the NPSNN. Indeed, in respect of a range of further environmental and related matters, including pollution control, climate change mitigation, nuisance management, security considerations and public health the NPSP maps the areas covered in the NPSNN. These specific issues are assessed against the relevant policy requirements in Chapter 5.
- 4.4.9. Again, we are satisfied that the Proposed Development conforms with the NPSP in all these regards.
- 4.4.10. The conformity of the Proposed Development with the specific elements of both NPSs is set out in more detail in respect of the main planning issues in Chapter 5.

## **4.5. CONFORMITY WITH THE MARINE POLICY STATEMENT AND MARINE PLANS**

- 4.5.1. The UK Marine Policy Statement (MPS) is the framework for preparing Marine Plans and taking decisions affecting the marine environment. Marine Plans set out how the MPS will be implemented in specific areas. In paragraph 1.3.1 of the MPS it sets out that the MPS and marine planning systems will sit alongside and interact with existing planning regimes across the UK. Chapter 2 of the MPS sets out the vision for the marine environment and how this is to be achieved through marine planning. It contains the detailed considerations that will require consideration within individual Marine Plans, include marine ecology and biodiversity, Air quality, noise, ecological and chemical water quality and resources, seascape, historic environment, climate change adaptation and mitigation and coastal change and flooding.

4.5.2. All these topics are addressed and appropriately referenced in the Applicant's Case for the Scheme [[APP-091](#)], the substance of which is not the subject of objection at the close of the examination. We conclude therefore that the Proposed Development accords with the MPS and supporting Marine Plans.

## **4.6. CONFORMITY WITH DEVELOPMENT PLANS**

4.6.1. As is evident from the submitted LIRs, the evidence presented by the Applicant in their Case for the Scheme [[APP-091](#)] the proposals have been demonstrated to be in conformity with the policies of the development plans of the respective local planning authorities. There have been no other IP representations that suggest otherwise. Accordingly, we agree the Proposed Development accords with the policies of local development plans.

## **4.7. THE PRINCIPLE OF THE DEVELOPMENT**

4.7.1. The Applicant makes the case for the Proposed Development in the Outline Business Case [[APP-107](#)]. The Applicant articulates the need for the Proposed Development in terms of significant road traffic congestion because of Lowestoft's inadequate road network and the deleterious impact this has on the local economy. Provision of an extra crossing will reduce severance, and allow the road network to operate efficiently, providing vital extra capacity, thus making an important contribution to the enhancement of the SRN. It will reduce congestion, helping Lowestoft to attract investment and achieve its full potential as a place in which to live and work.

4.7.2. The Applicant also makes the case in terms of the economic case, and the policy context. For the economic case, the Applicant considers the benefits and dis-benefits associated with the Proposed Development's overall value for money, concluding it would offer 'very high' value for money. The Applicant states that the monetary benefits will be predominantly derived from journey time savings to commuters and business, as well as savings to vehicle operating costs. Lowestoft will benefit from reduced congestion, faster journeys and improved journey time reliability, supporting local development and regenerating Lowestoft's economy. There will also be accident and casualty savings, and savings associated with the increased use of active modes (walking and cycling) as a result of the Proposed Development. For the policy context, the Applicant considers the strategic alignment of the of the Proposed Development with national planning and policy, local development plans, and minerals and waste plans regional plans and policies, including regional economic plans, local transport plans, Assisted Area Designation and Local Enterprise Zone status.

4.7.3. In the Outline Business Case, supported by their Case for the Scheme [[APP-091](#)] the Applicant summarises the approach to the selection of the Proposed Development, initiated by the identification of 15 options for the crossing, after sifting this being reduced to a short list of three.

### **The Local Authorities' position**

- 4.7.4. In their joint LIR, WDC, SCC and GYBC in theirs confirm that, in their view, the Proposed Development would be a good fit with local plans and would make a significant contribution to their economic and development plans. There is broad consensus among IPs that the economic and social benefits of the proposed crossing (though not its specific location) have been convincingly made.

## **4.8. ENVIRONMENTAL IMPACT ASSESSMENT**

- 4.8.1. As stated in NPSNN section 4.15 and NPSP section 4, all proposals for projects that are subject to the European Union's Environmental Impact Assessment Directive and are likely to have significant effects on the environment, must be accompanied by an ES describing the aspects of the environment likely to be significantly affected by the project.
- 4.8.2. The ES submitted in support of the dDCO application includes an assessment of the effects of the construction and operation of the Proposed Development on air quality, cultural heritage, townscape and visual impact, climate, the landscape, material assets and cultural heritage, nature conservation, geology, soils and contamination, noise and vibration, materials, private assets, socio-economic and recreational/community assets, road drainage and the water environment, flooding, traffic and transport and cumulative impacts. The mitigation measures proposed as part of the design and operation of the Proposed Development together are set out in the Applicant's Mitigation Route Map [[APP-135](#)] and subsequently revised [[REP3-041](#)].
- 4.8.3. We are satisfied that the ES, together with the other information submitted by the Applicant during the Examination, is adequate and that it meets the requirements under The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. We have taken full account of the environmental information in the assessment of the application and in making our recommendation to the SoST.

### **Environmental management documents**

- 4.8.4. Environmental management of the project would be secured through Requirement (R)4 in the dDCO. R4 provides for no part of the Authorised Development to commence until a Code of Construction Practice (CoCP) for that part of the development is submitted to the county planning authority by the undertaker following consultation with the Environment Agency, the harbour authority and the local planning authority and approved by the county planning authority. The submitted CoCP must accord with the Interim CoCP (ICoCP) [[APP-163](#)].
- 4.8.5. This ICoCP (refined and amended during the course of the Examination) [[REP4-017](#) and [REP10-079](#)] includes:
- The context and underlying principles of environment management for the Proposed Development that the contractor will be required to develop appropriate to the works, into any relevant CoCP;



- the principal obligations upon the appointed contractor for the construction of the Proposed Development;
- the guidelines to be used during construction and how they will be mandated and applied; and
- the details of, or references to, the construction phase mitigation measures for each relevant environmental topic assessed in the ES, and for which the CoCP will be the principal delivery mechanism.

4.8.6. The ICoCP is comprehensive, and covers areas of general construction information (including the programme, activities, hours of construction, construction compounds, works in Lake Lothing, access, vehicle movements, emergency planning and personnel); air quality (including mitigation and monitoring); nature conservation (covering marine and terrestrial ecology and appropriate mitigation); geology, soils and contamination (including piling methodology and mitigation); noise and vibration (including mitigation); materials, water environment and flood risk.

4.8.7. During the construction phase, measures for the control of pollution and mitigation of noise and vibration, dust, visual impact and general disturbance to residents and travellers would be secured through Requirements in the dDCO, through the CoCP [[REP10-078](#)] and through various tables and sections of the ES. The dDCO would not suspend the operation of s61 of the Control of Pollution Act 1974 which would provide additional control in respect of noise and vibration.

4.8.8. More detail on mitigation measures is in the consolidated table of environmental mitigation measures, which includes details of the significance of residual effects after implementation of the mitigation measures and how each measure is secured through the dDCO.

4.8.9. We assess the adequacy of the mitigation proposed through the mechanisms for environmental management which would be secured through the Requirements in the dDCO in our consideration of the impacts of the Proposed Development.

## **4.9. CONCLUSIONS ON CHAPTER 4**

4.9.1. The principle of the Proposed Development is in accordance with the NPSNN, the NPSP, development plan policy and Local Authority strategies, and alternatives have been satisfactorily covered, so no further consideration of these points is needed.

4.9.2. We have had regard to all the submissions made in the course of the Examination and have identified in this chapter the various issues which arose in submissions from Local Authorities and IPs from the outset of the Examination. We deal with the principal issues relating to the effects of the Proposed Development on the environment in Chapter 5.

4.9.3. Summarising the issues identified above in this chapter, the main issues are:

- Noise (during construction and during operation).

- Air quality (during construction and during operation).
- Water quality and flood risk.
- Traffic and transportation (general network matters and north/south shore specific matters.
- Other environmental matters (historic environment, biodiversity and design).
- Navigation (recreation and leisure related navigation and commercial port-related navigation).

4.9.4. In assessing those issues, we have regard to the tests set out in the NPSNN, the NPSP and other relevant policy and statutory requirements.

## **4.10. HABITATS REGULATIONS ASSESMENT**

4.10.1. We consider the Habitats Regulation Assessment in Chapter 6.

## **5. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES**

### **5.1. INTRODUCTION**

5.1.1. This chapter considers the effect of the Proposed Development on the local and wider environment, its effect on the operation of the port for commercial and recreational use and its socio-economic impact. Each sub-section dealing with environmental effects has a common framework:

- policy background;
- Applicant's approach;
- issues arising; and
- summary and conclusions.

5.1.2. Matters relating to the effect of the Proposed Development on the port, because of their scope and extent of detail, are treated differently. Here the relevant Interested Party's (IP) objections are set out, then the Applicant's response and these are followed by the Examining Authority's (ExA) considerations.

5.1.3. Matters relating to the overarching legal and policy context and our findings in relation to these matters are considered in chapters 3 and 4 respectively and will not be repeated in this chapter.

### **5.2. NOISE**

5.2.1. Concerns over noise and vibration during construction and as a result of operation have been raised by a number of IPs, principally Nwes and Northumbria Water in relation to their property interests on the southern shore of the harbour adjacent to the new approach access road (presently Riverside Road) and Waveney Drive. Although Northumbria Water's objections have been wholly withdrawn through the completion of a Side Agreement with the Applicant, Nwes's objections remain. These are principally that as a result of the cumulative effect of the Proposed Development, principally as a result of noise, and as a consequence of its means of construction, the effects on the Riverside Business Centre will be severe. Because of these adverse effects, and the flexible nature of the tenure of the units within the centre, the likely outcome will be a significant reduction in the occupancy of units, threatening the longer-term financial viability of the centre [[REP3-009](#), [REP7-012](#) and [REP8-033](#)].

#### **Policy background**

5.2.2. Paragraph 5.189 of the National Policy Statement for National Networks (NPSNN) states that where a development is subject to Environmental Impact Assessment (EIA) and significant noise impacts are likely to arise from the Proposed Development, the Applicant should include the following in the noise assessment, which should form part of the Environmental Statement (ES):

- A description of the noise sources including likely usage in terms of number of movements, fleet mix and diurnal pattern. For any associated fixed structures information about the noise sources including the identification of any distinctive tonal, impulsive or low frequency characteristics of the noise.
- Identification of noise sensitive premises and noise sensitive areas that may be affected.
- The characteristics of the existing noise environment.
- A prediction on how the noise environment will change with the Proposed Development:
  - in the shorter term such as during the construction period;
  - in the longer term during the operating life of the infrastructure; and
  - at particular times of the day, evening and night as appropriate.
- An assessment of the effect of predicted changes in the noise environment on any noise sensitive premises and noise sensitive areas.
- Measures to be employed in mitigating the effects of noise. Applicants should consider using best available techniques to reduce noise impacts.
- The nature and extent of the noise assessment should be proportionate to the likely noise impact.

5.2.3. Paragraph 5.10.4 of the National Policy Statement for Ports (NPSP) includes an identical set of requirements.

5.2.4. Paragraph 5.190 of the NPSNN further advises that the potential noise impact elsewhere that is directly associated with the development, such as changes in road and rail traffic movements elsewhere on the national networks, should be considered as appropriate.

5.2.5. Paragraphs 5.191 of the NPSNN and 5.10 of the NPSP go on to state that operational noise, with respect to human receptors, should be assessed using the principles of the relevant British Standards and other guidance. The prediction of road traffic noise should be based on the method described in Calculation of Road Traffic Noise (CRTN). For the prediction, assessment and management of construction noise, reference should be made to any relevant British Standards and other guidance which also give examples of mitigation strategies. Paragraph 5.10.6 of the NPSP identifies similar but less detailed requirements.

5.2.6. Paragraph 5.198 of the NPSNN states that mitigation measures for the project should be proportionate and reasonable and may include one or more of the following:

- Engineering: containment of noise generated.
- Materials: use of materials that reduce noise, (for example low noise road surfacing).
- Lay-out: adequate distance between source and noise-sensitive receptors; incorporating good design to minimise noise transmission through screening by natural or purpose-built barriers.

- Administration: specifying acceptable noise limits or times of use. Paragraph 5.10.12 of the NPSP identifies similar requirements, but does not include materials.

5.2.7. Paragraph 5.199 of the NPSNN states that for most national network projects, the relevant Noise Insulation Regulations 1975 (updated 1988) will apply.

### **Applicant's approach**

5.2.8. The Applicant has sought, through the framework of the ES and through specific provisions in the draft Development Consent Order (dDCO), to anticipate, identify and mitigate sources and effects in relation to noise and vibration both during and after construction. Chapter 13, Noise and Vibration, of the ES [[APP-136](#)] considers the significance of effects which may arise due to the Proposed Development. To address the specific points raised:

- A description of the noise sources is set out in Section 13.4 of the ES.
- Paragraph 13.3.18 of the ES sets out that noise sensitive receptors are primarily residential dwellings but also include other receptors such as schools and community facilities as well as areas of interest to nature conservation and cultural heritage.
- The characteristics of the existing noise environment are set out in Section 13.4 of the ES which considers the baseline environment.
- An assessment of how the noise environment will change is set out at Section 13.5 of the ES.
- An assessment of the effect of predicted changes is set out at Section 13.5 of the ES.
- Mitigation is set out in Section 13.5 of the ES.

5.2.9. Potential cumulative effects potentially arising in conjunction with other planned or proposed development are described in section 20 of the ES. Several developments have been identified and section 20.6 of the ES concludes that significant adverse cumulative effects between the Proposed Development and other projects are not predicted. section 13.2 of the ES describes the standards adhered to when undertaking the assessment of construction and operational noise impacts, this includes reference to the relevant British Standard, and calculation of road traffic noise. Mitigation measures relating to noise are set out in paragraphs 13.5.60 to 13.5.65 of the ES.

5.2.10. The ES sets out that a number of mitigation measures have been explored such as a low noise surface on the road and an acoustic barrier to protect noise sensitive receptors, but neither is considered practicable. Reference to Noise Insulation Regulations is set out in paragraphs 13.5.68 to 13.5.71 of the ES. This sets out that there are 559 residential dwellings which are predicted to satisfy condition 1, having a predicted noise level above 67.5dB LA10,18hr within the first fifteen years of use of the Proposed Development. Of these, 117 properties are within 300m of the Proposed Development and are predicted to have an increase of at least 1dB as a result of the Proposed Development (ie the Relevant Noise Level in the design year is greater than the Prevailing Noise Level in the

year of opening by 1dB or more). At detailed design stage, further analysis will need to be undertaken to determine whether the noise from traffic on the road to which the Regulations apply contributes at least 1dB LA<sub>10,18hr</sub> to the Relevant Noise Level.

- 5.2.11. Requirement 4 of Schedule 2 of the dDCO requires the submission of a Code of Construction Practice (CoCP) to be approved by the county planning authority prior to the commencement of any part of the development. The approved CoCP must be in accordance with the Interim CoCP (ICoCP) [[APP-163](#)] which has been formulated by reference to the assessment of significant effects in relation to noise and vibration set out in Chapter 13 of the ES.
- 5.2.12. The Applicant has also stated a commitment to work with Nwes to understand the attenuating properties of its building and from this develop a proposal for dealing with its noise concerns related to the results of monitoring that is carried out. The Applicant is aware of the tight financial constraints within which Nwes operates and has indicated it will shape its proposal in light of that context. In light of the above, the Applicant has also sought to agree a Land and Works Agreement with Nwes, with a draft Heads of Terms agreed and a draft Legal Agreement under discussion at the time of the closure of the Examination.

### **Issues examined**

- 5.2.13. The Riverside Business Centre (RBC) will lie in close proximity to the new southern approach road of the bridge and is certainly likely to be affected by any increased noise levels. Concerns over such matters are therefore legitimate. However, although Nwes refer to technical data prepared for Northumbrian Water they provide no detailed technical evidence of likely noise effects on the RBC, nor are any detailed arguments presented on future economic viability of the enterprise. In the absence of such evidence the weight given to these concerns must necessarily be limited. Moreover, as the Applicant identifies above, there are extensive provisions within the recommended dDCO (rdDCO) that have the capability to mitigate noise impacts both during and after construction of the bridge.
- 5.2.14. With the Side Agreement signed between the Applicant and Northumbrian Water, all concerns set out by this party in relation to noise and vibration have been met [[AS-025](#) and [AS-026](#)]. With the detailed assessment of effects identified in the ES, the mitigation measures subsequently identified therein, the ICoCP appropriately secured through Requirement 4 and the Heads of Terms agreed with on-going discussions on a Legal Agreement with Nwes, residual effects in relation to noise, although not eliminated, fall below a magnitude that can be considered material harm.

### **Summary and conclusions**

- 5.2.15. We conclude the effects of noise as a result of the Proposed Development both during and after construction have been appropriately identified and addressed through the relevant sections of the ES and its mitigatory

provisions. Moreover, the interim CoCP (capable of further refinement in final submission) will be secured through Requirement 4. Heads of Terms have been agreed with the IP concerned and a draft Agreement under discussion. There is every assurance therefore that these matters will be similarly resolved. Whilst the objection to noise effects has not been withdrawn by Nwes, these we feel fall well below a magnitude that can be considered material harm.

- 5.2.16. On this basis the Proposed Development, in respect of noise, in terms of its likely magnitude, effects and effective mitigation have been comprehensively addressed by the Applicant. As such we conclude it accords with the policy expectations set out in paragraphs 5.186 to 5.200 of the NPSNN and paragraphs 5.10.1 to 5.10.13 of NPSP.

### **5.3. AIR QUALITY**

- 5.3.1. This topic relates to matters of air quality both during the construction phase, including the control of dust and after construction in terms of vehicular emissions.

#### **Policy background**

- 5.3.2. The NPSNN (section 5) and NPSP (section 5.7) acknowledge that where the impacts of a project are likely to have significant air quality effects, the Applicant should undertake an assessment of the impacts of the proposed project as part of an ES. Both NPSs set out the requirements for Applicants to assess air quality effects in relation to the EIA process, each requiring a staged approach to the assessment of air quality effects.
- 5.3.3. Paragraph 5.9 of the NPSNN requires the Applicant to provide judgements on the risk as to whether the project would affect the UK's ability to comply with the Air Quality Directive (AQD), further setting out that the Proposed Development should not result in a zone/agglomeration currently compliant with the AQD becoming noncompliant or the ability of a non-compliant area seeking compliance. Paragraph 5.7.11 of the NPSNN also states that a construction management plan may help to codify mitigation.

#### **Applicant's approach**

- 5.3.4. The Applicant's assessment of air quality effects is considered within Chapter 8 of the ES in accordance with the NPSNN and NPSP. Section 8.4 of the ES indicates that baseline air quality levels have been established through consideration of existing data, and also a 12-month programme of monitoring running to December 2017. At paragraph 8.7.15, the assessment concludes that the Proposed Development would not affect the UK's ability to comply with the AQD. Furthermore, in paragraph 8.5.52, it states that the Proposed Development will not result in a zone/agglomeration becoming non-compliant with the AQD or affect the ability to achieve regional compliance. The air quality assessment demonstrates that the operational phase of the Proposed Development will not result in any new exceedances of the air quality objectives at any sensitive receptor locations included in the study area. Furthermore, no

significant adverse impact is predicted for statutory designated ecological sites during the operational phase of the Proposed Development. No operational air quality mitigation is proposed within the ES. The Proposed Development will not result in a zone becoming non-compliant or affect the ability of the region to achieve compliance with the AQD.

- 5.3.5. Section 8.6 of the ES explains that during construction, mitigation measures will focus on controlling fugitive releases of dust. The ICoCP, which acts as an environmental management system framework, under which the construction of the Proposed Development must be undertaken to reduce impacts on the environment, has been prepared and is set out in Appendix 5A of the ES.

### **Issues examined**

- 5.3.6. Nevertheless, representations have been made by IPs, (British Steel Pension Fund Trustees Limited and Lings Motor Group) specifically in relation to the management of dust during construction [[REP3-017](#)]. These are legitimate concerns, specifically in respect of the automotive sales and hire facilities on the south shore in the environs of the site. However, the ICoCP at paragraph 3.2.2 specifies that the mitigation measures focus on controlling fugitive releases of construction phase dust and must be implemented by the contractor through the final CoCP. Such measures must include, but are not limited to:

- Dust generating activities (eg cutting, grinding and sawing) to be minimised and weather conditions considered prior to conducting potentially dust emitting activities.
- Fine material to not be stockpiled to an excessive height in order to prevent exposure to wind and/or dust nuisance.
- Roads and accesses to be kept clean.
- Where possible, plant to be located away from site boundaries that are close to residential areas.
- Water to be used as a dust suppressant, where applicable;
- Drop heights from excavators to crushing plant to be kept to a minimum.
- Distances from crushing plant to stockpiles to be kept to the minimum practicable to control dust generation associated with the fall of materials.
- Skips to be securely covered.
- Soiling, seeding, planting or sealing of completed earthworks to be completed as soon as reasonably practicable following completion of earthworks.
- Dust suppression and the maintenance of the surface of access routes to be appropriate to avoid dust as far as practicable, taking into account the intended level of trafficking.
- Wheel wash facilities to minimise trackout of dust.
- Material to not be burnt on site.
- Engines to be switched off when not in operation.

- 5.3.7. Moreover, the CoCP is capable of further refinement through final submission in accordance with Requirement 4 of the dDCO, with the added assurance of monitoring of provisions during construction.



### **Summary and conclusions**

- 5.3.8. The Applicant has from the outset recognised the potential impacts of the Proposed Development on air quality from the outset. Such impacts have been identified in the ES and detailed mitigation provisions put in place to minimise any effects on air quality either during construction or after. Whilst objections to air quality have not been withdrawn by IPs, these are not supported with technical arguments that rebut the measures proposed by the Applicant, not do they acknowledge the scope of mitigation measures that will maintain air quality. Whilst the objection to effects on air quality have not been withdrawn, these we feel fall well below a magnitude that can be considered material harm. On this basis the Proposed Development, in respect of air quality, in terms of its likely magnitude, effects and effective mitigation have been comprehensively addressed by the Applicant. As such we conclude it accords with the policy expectations set out in section 5 of the NPSNN and sections 5.7 and 5.8 of the NPSP and does not weigh in the planning balance.

## **5.4. WATER QUALITY**

There are no outstanding objections to the Proposed Development with respect of these matters as they are comprehensively addressed in the ES in Chapter 8 and clarified in respect of the hydraulic connectivity of both Oulton Broad and Leathes Ham, raised in written questions by the ExA [[PD-007](#)] and subsequently answered by the Applicant in their response [[REP3-029](#)]. The ES specifically addresses the key bullet points set out in paragraph 5.6.4 of the NPSP in respect of environmental assessment, mitigation is addressed in the ES and dDCO Requirements are in place to safeguard water quality during and after construction. On this basis therefore the proposals are again in accordance with section 5 of the NPSNN and sections 5.6 of the NPSP.

### **Summary and conclusions**

- 5.4.1. We conclude the Applicant has demonstrated, through the relevant content of the ES and subsequent clarifications, that the Proposed Development, on this basis, accords with section 5 of the NPSNN and sections 5.6 of the NPSP and other relevant policies and that all identified adverse effects can be properly mitigated through the appropriate mechanisms of the dDCO.

## **5.5. TRAFFIC AND TRANSPORTATION**

- 5.5.1. This section of the chapter examines traffic and transport matters relating to the Proposed Development, specifically in relation to concerns of IPs, relating to the configuration of junctions with Riverside Way, parking provision on the new southerly access road, private access to specific properties. These relate both to the initial application and subsequent changes to the application proposed by the Applicant [[REP4-013](#)].

## **Policy background**

- 5.5.2. Paragraph 5.204 of the NPSNN advises that applicants should consult relevant highway authorities, and local planning authorities, as appropriate, on the assessment of transport impacts, whilst paragraph 5.205 states they should consider reasonable opportunities to support other transport modes in developing infrastructure. As part of this, the Applicant should provide evidence that as part of the project they have used reasonable endeavours to address existing severance issues that act as barriers to non-motorised users. It goes on in paragraph 5.206 to state that for road and rail developments, if a development is subject to EIA and is likely to have significant environmental impacts arising from impacts on transport networks, the Applicant's ES should describe such impacts and mitigating commitments. In all other cases, the Applicant's assessment should include a proportionate assessment of the transport impacts on other networks as part of the application.
- 5.5.3. Paragraph 5.209 refers to schemes that impact on the Strategic Road Network (SRN). It goes on to state that applicants should have regard to DfT Circular 02/2013 'The Strategic Road Network and the delivery of sustainable development' which sets out the way highway authorities for the SRN will engage with communities and the development sector to deliver sustainable development and so economic growth, whilst safeguarding the primary function and purpose of the SRN. whilst paragraph 5.217 refers to mitigation measures for road developments stating that this may relate to design, lay-out or operation of the Proposed Development.

## **Applicant's approach**

- 5.5.4. The Applicant (who is also the local highway authority), when preparing the Transport Assessment (TA), has considered both national and local policy. This includes the NPSNN and NPPF as well as the local planning documents of Waveney District Council, Suffolk Local Transport Plan and the Lowestoft Transport Strategy. The comprehensive policy review in the TA demonstrates that the Proposed Development aligns closely to national, regional and local transport plans and policies. Most importantly, this demonstrates that the Proposed Development aligns with policies at all levels, showing that it can achieve the aims and objectives of various local and national authorities.
- 5.5.5. Appendix A of the TA also demonstrates that the Applicant has undertaken due consultation with the relevant highway authority.
- 5.5.6. The Applicant has made clear that one of the key aims of the Proposed Development is to reduce community severance between north and south Lowestoft. The Proposed Development meets this objective through providing pedestrian and cycle routes that better link the northern and southern communities of the central area, bringing a larger proportion of the Lowestoft population within walking/cycling distance of local amenities. In addition, the provision of a third crossing would provide an additional crossing of Lake Lothing and improve journey times for vehicles.

- 5.5.7. An assessment of traffic and transport is set out within Chapter 19 of the ES, concluding that the Proposed Development has a positive effect on transport and the traffic operation of Lowestoft and the wider strategic highway network, improving operational performance (queuing, congestion, and journey times). Existing junction capacity in the vicinity of the Proposed Development has been assessed, assuring that they can accommodate the increase in traffic associated with traffic rerouting to the Proposed Development. Amendments to layouts are proposed in the TA and included in the ES (and secured through the dDCO), where required, to mitigate the impact of the Proposed Development.
- 5.5.8. In addition, the northern and southern roundabouts connecting the Proposed Development to the surrounding highway network are designed to allow them to operate efficiently within acceptable design standards. Following the transport assessment of the Proposed Development the overall impact on severance (including new pedestrian severance from community facilities and relief from severance for pedestrians), driver stress and delay, pedestrian and cyclist amenity, journey times and delay, collisions and safety will, the Applicant demonstrates, be beneficial and permanent.
- 5.5.9. The TA assesses the impact of the Proposed Development on Lowestoft's highway network and proposes mitigation measures where necessary to ensure that the residual impact is not severe. Mitigation measures are required at a small number of junctions, as detailed in the TA, to ensure that there is sufficient capacity to accommodate the planned growth and the reassignment of traffic for the Proposed Development. During the course of the Examination some of these junction arrangements have been amended in response to CA-related negotiations and in response to representations from individual IPs.
- 5.5.10. The Applicant also makes reference to the reasons the SoS gave for the initial section 35 Direction, which advises that the Proposed Development would *"a connection to/from Trans European Network-Transport (TEN-T) and the Strategic Road Network. The TEN-T link is to the A12/A47, one of only a limited number of routes in the East of England which is recognised as such"* and that it would *"would act as a tactical diversion route for the strategic road network, the A12/A47 when the Bascule Bridge, a nationally recognised pinch point, is closed thereby reducing delays and congestion on the SRN"*.

### **Issues examined**

- 5.5.11. Late representations were made on behalf of Statuslist in respect of elements of the changes to the application proposed by the Applicant [[REP4-013](#)] and subsequently accepted by the ExA [[PD-015](#)]. These relate to the provision of additional on-street parking (NMC2<sup>13</sup>) and the provision of a turning head adjacent to the Statuslist site (NMC8). The Applicant has responded with amendments removing the on-street

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<sup>13</sup> The Applicant referenced its suite of eight proposed changes to the application NMC1, NMC2 etc

parking identified (approximately four spaces) and providing the turning head sought; amendments have been submitted to and accepted in this regard by the ExA. The Applicant also advises in closing that Heads of Terms are at an advanced stage and agreement with the IP is anticipated though at the close of the examination not secured.

- 5.5.12. It is noted that the on-street parking provision proposed in NMC2 (as amended) would still be greater than that which was included in the Applicant's original proposals as submitted in July 2018. The effect of the proposed amendment to NMC2 is articulated in the correction to the text of paragraph 4.2.3 in [\[REP4-013\]](#). The Applicant is content for NMC2 to be amended as proposed above.
- 5.5.13. Concerns by certain IPs in respect of the TA have also been overcome through the terms of a signed agreement [\[AS-022\]](#).
- 5.5.14. British Steel Pension Fund Ltd (BSPFL) have made representations [\[REP3-017\]](#) suggesting the Proposed Development has the potential to adversely affect the access to one of their tenant's units on the north shore, the ability of deliveries to serve it and the general amenity of its users. This is not supported by any technical evidence to substantiate the assertions and no objections have been received from the current occupants in respect of any of these matters.

#### **Summary and conclusions**

- 5.5.15. The BSPFL objections have not been withdrawn. However, their concerns are not supported by technical evidence of the harm asserted, nor are they duplicated by the present tenants of the site in question. Moreover, no other objections by Statutory Undertakers (SU) or the highway authority have been made that would support them. These concerns, though not withdrawn, remain unsupported by technical evidence and, we conclude, fall well below a magnitude that can be considered material harm. We conclude that the transport and network matters in respect of the Proposed Development are comprehensively addressed in the Applicant's Case for the Scheme [\[APP-091\]](#), the TA [\[APP-093\]](#) and ES [\[APP-136\]](#). Detailed concerns over elements of highway design, including those arising from the submitted NMCs have been substantively addressed in amendments to these areas.
- 5.5.16. Paragraph 2.2 of the NPSNN is emphatic in stating "*there is a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth*". It goes on in section 2.6 to state that "*there is also a need for development on the national networks to support national and local economic growth and regeneration, particularly in the most disadvantaged areas. Improved and new transport links can facilitate economic growth by bringing businesses closer to their workers, their markets and each other. This can help rebalance the economy*".

- 5.5.17. It is not disputed by any IP that the Proposed Development will deliver significant benefits in meeting these national policy objectives. Whilst minor non-material objections remain in respect of local highway matters, we are very clear in our conclusions that the Proposed Development would meet and deliver key objectives of the NPSNN. For the same reasons, insofar as they would have, we conclude, a similar impact on the economy of the port, they accord with the economic objectives of the NPSP.
- 5.5.18. It follows, in the absence of any highway related objection from SUs or other local highway authorities, that the Proposed Development also accords with local and regional transport policy. Insofar as the Proposed Development would form a link in the Trans-European Network – Transport and act as a tactical diversion route for the SRN, as cited in the SoS’s section 35 Direction, this too weighs significantly in favour of the Proposed Development.

## **5.6. OTHER ENVIRONMENTAL MATTERS (FLOOD RISK, HISTORIC ENVIRONMENT, BIODIVERSITY AND DESIGN)**

- 5.6.1. Policies relating to the flood risk, historic environment, ecological conservation and biodiversity are all set out in both the NPSNN and the NPSP.

### **Flood risk**

- 5.6.2. A comprehensive Flood Risk Assessment (FRA) is incorporated in Volume 3 of the ES, prepared in accordance with the National Planning Policy Framework (NPPF), Planning Practice Guidance (PPG) and in consultation with the Environment Agency. As the Proposed Development has been designated an Nationally Significant Infrastructure Project the FRA has been undertaken in accordance with the requirements of the NPSNN in terms of flood risk. Guidance within the Design Manual for Roads and Bridges (DMRB) and the CIRIA SuDS Manual has also informed the FRA.
- 5.6.3. The Proposed Development is located within Flood Zone 3 (3a), which means there is a 0.5% AEP of flooding from the sea or a 1% AEP chance of flooding from fluvial sources in any given year. The Proposed Development is classified as essential infrastructure and therefore the Exception Test is required for the Proposed Development. This FRA has addressed part two of the Exception Test (part one is addressed in the Case for the Scheme [[APP-091](#)]).
- 5.6.4. The modelling undertaken shows that the Proposed Development has a negligible impact on predicted flood levels for events up to and including the 0.5% AEP climate change event. A moderate impact in terms of flood risk is predicted for the 0.1% AEP climate change event and each of the H++ scenarios modelled. The increase in predicted water levels within Lake Lothing as a result of the Proposed Development can be attributed to afflux at the proposed bascule bridge rather than the displacement of water by the bascule bridge piers in the channel as there is a reduction in

water levels predicted for most events to the west of the proposed bascule bridge. Based on the results of the hydraulic modelling undertaken for this FRA, mitigation is not required for the Proposed Development as the impact on tidal flooding is negligible up to and including the 0.5% AEP climate change event.

- 5.6.5. The FRA concludes on the basis of the above that no mitigation is necessary for the Proposed Development and such conclusions are accepted by the Environment Agency. On the basis of the evidence presented, and in the absence of any outstanding objection on grounds of flood risk, we conclude the Proposed Development accords with NPPF and PPG policy objectives in this regard. Insofar as the FRA satisfactorily addresses consideration of the possible impacts of flooding the Proposed Development is also consistent with section 5.2 of the NPSP. This advises that *“the aims of planning policy on development and flood risk are to ensure that flood risk from all sources of flooding is taken into account at all stages in the planning process, to avoid inappropriate development in areas at risk of flooding and to direct development away from areas at highest risk”*.

#### **Historic environment**

- 5.6.6. Historic England initially raised concerns about the direct impact of the development upon non-designated heritage assets within the area of the development footprint, including palaeo-environmental deposits dating to the Holocene and possible earlier. However, these have subsequently been addressed by the Applicant through the Cultural Heritage Desk Based Assessment (ES Vol 3 Appendix 9A) and Deposit Model (ES Vol 3 Appendix 9B) The application also includes a WSI for future mitigation (ES Vol 3 Appendix 9F) which sets out how the proposed project might mitigate against impact to the historic environment. We will therefore require the dDCO to include provision for delivery of the project-specific Written Scheme of Investigation (WSI).
- 5.6.7. Concerns were also raised in relation to the impact of the Proposed Development upon on the South Lowestoft and Oulton Broad Conservation Areas and on the significance of a number of designated heritages through development within their setting. In particular the Royal Norfolk and Suffolk Yacht Club which is listed at Grade II\* and a group of Grade II listed buildings such as Port House. However, the specific Cultural Heritage and Townscape and Visual Impact Chapters (ES Volume 1 Chapters 9 and 10) confirm that there are only limited views from the designated heritage assets previously mentioned.
- 5.6.8. Chapter 9 of the ES (specifically including those sections referred to above) addresses the historic environment in detail. These offer sufficient assurance to Historic England, and to us, that significant adverse effects on heritage assets have been avoided and appropriately mitigated. We conclude therefore that the Proposed Development accords with paragraphs 5.12.1 to 5.12.20 of the NPSP and paragraphs 5.120 to 5.142 of the NPSNN.

## Biodiversity

- 5.6.9. Chapter 11 of the ES addresses biodiversity and nature conservation in considerable detail, covering the scope of the assessment, Directives, Statute and Policy, the methods of assessment employed, a baseline assessment of the environment, designated sites, predicted impacts prior to mitigation and mitigation itself. Refinements were sought by the ExA in ExQ1 and clarifications submitted by the Applicant and accepted by the ExA as addressing the points raised. Natural England have been consulted at successive stages prior to the preparation of the ES and their responses incorporated into the final document. There are no outstanding objections from Statutory Undertakers or other IPs and we are satisfied that the ES and the provisions of the rdDCO, including relevant Requirements and mechanisms such as the ICoCP, secure the necessary controls and mitigation to safeguard biodiversity and nature conservation matters, including all matters also covered in relation to Habitats Regulations Assessment in Chapter 6.
- 5.6.10. The NPSNN at paragraph advises decision makers that *"As a general principle, and subject to the specific policies below, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. Where significant harm cannot be avoided, then appropriate compensation measures should be sought"*. Paragraph 5.1.19 goes on to require appropriate mitigation both during and after construction. Relevant paragraphs of section 5 of NPSP also echo and support these policy objectives.
- 5.6.11. We conclude that the scope and coverage of the ES and the comprehensive provisions of the rdDCO ensure the Proposed Development is fully in accordance with the aforementioned requirements of both the NPSNN and NPSP.
- 5.6.12. Section 5.1 of the NPSP sets out in paragraph 5.1.1 on biodiversity is the variety of life in all its forms and encompasses all species of plants and animals and the complex ecosystems of which they are a part. Geological conservation relates to the sites that are designated for their geology and/or their geomorphological importance.
- 5.6.13. Sea ports are necessarily located on coasts and estuaries. These areas are often of fundamental importance to biodiversity, particularly to bird and fish life, acting as the prime nursery grounds for a range of commercial species and as critical migration pathways for other species.
- 5.6.14. Construction and operation of port infrastructure can have an adverse impact on biodiversity and/or geodiversity.
- 5.6.15. Chapter 11 of the ES examines biodiversity matters whilst section 11.5 of the ES specifically sets out mitigation measures in respect of biodiversity.



## Design

- 5.6.16. The aesthetics of the design of the Proposed Development are addressed in both the Design Report [[APP-123](#)] and the Draft Design Guidance Manual [[REP3-036](#)]. Further points of detail were addressed satisfactorily in response to ExA questions.
- 5.6.17. The Design Report makes repeated reference to the desire of the Proposed Development to produce an “*iconic architectural solution that contributes positively to the identity of the town*”. We agree, and whilst the detailed design of the bridge is yet to be submitted, we are assured by the evidence presented by the Applicant, and the absence of any outstanding objection to the design on aesthetic grounds, that the Proposed Development will fully fulfil this objective. In this regard therefore this significant contribution to the built cultural capital of the town weighs significantly in favour of the proposals in the planning balance.
- 5.6.18. The NPSNN at paragraph 4.28 anticipates that design be considered an integral element of a scheme from the outset. Paragraph 4.35 goes on to state that “*Applicants should be able to demonstrate in their application how the design process was conducted and how the proposed design evolved. Where a number of different designs were considered, applicants should set out the reasons why the favoured choice has been selected. The Examining Authority and Secretary of State should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which the design has to satisfy*”. The relevant sections of the NPS under sections 4.10 (good design) and 5.11 (visual impacts) support such policy expectations. Consequently, the Proposed Development accords with NPSNN and NPS in respect of these matters and, moreover, as the Proposed Development offers the opportunity to make a significant positive contribution to the architectural capital of the town, this too weighs significantly in favour of the proposals.

## 5.7. NAVIGATION (RECREATION AND LEISURE RELATED NAVIGATION AND COMMERCIAL PORT-RELATED NAVIGATION)

- 5.7.1. Both port-related commercial and recreational navigation matter are addressed through the draft Scheme of Operation (dSoO) [[REP3-033](#)] and the Preliminary Navigation Risk Assessment (PNRA) [[APP-208](#)]. Both are in turn secured in their final form through provisions in the rdDCO. A note to the Proposed Development advises that it should be read in conjunction with the provisions of the Order, and the Lowestoft Harbour Byelaws 1993 (as amended by the Order), which make provisions for navigation, mooring and anchorage proximate to and under the Lake Lothing Third Crossing New Bridge.
- 5.7.2. The effects on recreational and leisure navigation relate principally to:
- concerns over the closure of the port during construction;



- the provision of a waiting pontoon for leisure craft; and
- the mechanisms for consultation with leisure craft groups during and after the construction of the crossing.

5.7.3. The Lowestoft Cruising Club have expressed concern from the outset over the closure of the western harbour to access to the sea for a three-week period during the construction process. Particular concern has been expressed that this will be within the summer cruising season and therefore disruptive to the approximately 400 berth users of the western harbour. Concerns have also been expressed that should small craft be required to wait between the closure of the existing bridge and the opening of the new one, provision is made for a waiting pontoon to allow crews to safely manage their vessels during this time. IPs also ask that their engagement in the construction process and management of the crossing is secured through membership of an appropriate consultative body, their preferred option being the Navigation Working Group (NVG).

#### **Applicant's approach**

5.7.4. The Applicant has sought to address the concerns of IPs. Although the closure of the harbour for a three-week period cannot be avoided, Article 20 of the rdDCO now makes provision for a three-month period of prior notification of the closure. This affords IPs and leisure craft users sufficient time to anticipate the closure and plan accordingly to minimise disruption to cruising plans. The dSoO also makes provision for a waiting pontoon in the harbour area between the existing and proposed bridges. Although the exact location is yet to be determined, this will provide the assurance to craft users in the event they are delayed through the opening and closing sequences of the two bridges. Article 41 of the dDCO also provides, within the dSoO, for a robust consultation process with either the PMCS Stakeholder Group in the event that modifications to the SoO are sought or if it were to be replaced.

#### **Issues examined**

5.7.5. A measure of uncertainty remains over the exact location of the waiting pontoon, the precise date of harbour closure and the definitive consultative body chosen. However, we feel the Articles of the dDCO and the provisions of the dSoO offer sufficient assurance to leisure craft users both during and after the construction of the new crossing.

#### **Summary and conclusions**

5.7.6. With the provisions of the PNRA and dSoO further refined post-recommendation, the concerns of IPs in respect of recreational navigation have been met, and this accords with their closing submissions on the matter [[REP10-089](#)]. Insofar as these provisions safeguard the recreational activities of the harbour, the Proposed Development avoids conflict with paragraph 4.6.2 of the NPSP.

## **5.8. THE EFFECT OF THE PROPOSED DEVELOPMENT ON THE OPERATION OF THE PORT**

5.8.1. Associated British Ports (ABP), in its capacity as the Statutory Harbour Authority (SHA) has set out its final position in respect of all matters, both planning and land acquisition-related, in its Closing Submission [[REP11-014](#)]. The SHA role includes responsibility for vessel traffic management, safe navigation and channel depth maintenance [[REP3-024](#), paras 2.6 to 2.56 and Annex 1A and 1B]. As such it is also the Competent Harbour Authority (CHA) with respect to pilotage, which includes all the navigable waters within the port and the seaward approaches. As statutory port undertaker, ABP is able to undertake certain defined port related development within the statutory port estate [[REP3-024](#), Annex 3].

5.8.2. ABP submitted some 65 documents during the course of the Examination. Its representations are generally summarised in its Comment on the Applicant's Response to ABP's DL5 and Oral Submissions at 7 and 8 March 2019 Hearings [[REP8-012](#)], closing submissions [[REP11-014](#)] and letter to SoST dated 31 May 2019 [[REP11-015](#)].

***ABP's case***

5.8.3. This matter covers the loss of: berthing and quayside; land side areas; and the bed of the lake. This loss generally comprises: the permanent Compulsory Acquisition of some 3,000m<sup>2</sup> of land side and bed of the lake under the bridge piers; some 2,500m<sup>2</sup> of airspace and rights under bridge decks; and some 4,500m<sup>2</sup> of rights over the only access to the port. The Temporary Possession of some 40,500m<sup>2</sup> of land and water within the port estate is also sought for construction purposes.

5.8.4. There would be a direct loss of some 165m of berthing, measured in whole berths, as a result of the Proposed Development [[REP8-012](#), pages 13 and 14 and [REP8-013 to REP8-018](#)]. The sum of this loss, ABP argue, would have a materially deleterious effect on the functions of the port and thus to the performance of the area, thus harming the local economy, in conflict with the aims of national policy.

5.8.5. The Applicant asserts that ABP has taken a worst-case approach when assuming the rights acquisition strip is a complete loss to the operation of the port. ABP argue that as they believe the Applicant can decide that ABP cannot use any of this land for port operations. ABP therefore must undertake a worst-case assessment of impact. There are therefore mooring line positions and vessel manoeuvrability issues to consider [[REP3-024](#), Section 10 Table 2, [REP4-029](#), Annex 1, [REP5-023](#), paras 3.9 to 3.17 and 6.10 to 6.45, [REP5-026](#), Annex 1, [REP5-027](#), [REP5-030](#) and [REP8-011](#) and [REP9-014](#)]. There would also be an impact on the functionality of berths beyond the Order limits in terms of vessel manoeuvrability and berth accessibility. This impact would include accessibility restrictions on berths to the west of the proposed bridge due to its operation and opening times.

5.8.6. ABP argue that each length of quay within the inner harbour also has its own distinct characteristics. These characteristics are a factor in the assignment of vessels to berths and cover matters such as their length,

draught, nature of cargo, operational requirements and duration of stay. The loss of the berths would therefore also have a restrictive impact on vessel assignment.

- 5.8.7. They assert that the land side areas which would be lost could not be replaced due to the topography and other land uses around the port. The currently vacant areas are required for future demand, which can occur at short notice.
- 5.8.8. The bridge would cross the port's navigable channel at a safety clearance height of 11m, using a likely safety margin of 1m, at the highest astronomical tide (HAT) [[REP5-023](#), paras 3.66 to 3.71, [REP5-028](#) and [REP8-021](#)]. Any vessels of a height greater than 11m would therefore not be able to traverse Lake Lothing without a bridge lift. ABP assert on this basis that the Ports inner harbour would effectively have been cut in half by the Proposed Development, as such having a seriously harmful effect on the operation of the port.

#### **Disruption from the presence and operation of the proposed bridge**

- 5.8.9. ABP assert that the disruption caused by the 11m safety clearance restriction of the low-level bridge would be compounded by the 32m clearance between the fenders for the bridge piers. Furthermore, over time, global climate change sea level rises could amount to between 0.41 to 0.58m over 60 years, which would reduce the safety clearance. The heart of the inner harbour would be cut in half by the proposed bridge.
- 5.8.10. In the Port of Lowestoft, the existing A47 bascule bridge must be passed to enter the inner harbour [[REP3-024](#), Section 4, [REP5-023](#), Sections 4 and 5 and [REP7-006](#), paras 1.7 and 1.8]. The purpose of that bridge was to maintain the coastal land route as the port was developed. It was therefore an existing circumstance around which the port was developed and is operated by ABP as a SU and the SHA. They state that the introduction of the proposed bridge would be a new, inflexible and more restrictive imposition having an in-combination negative effect with the existing bridge [[REP4-032](#), ExQ1 2.24 and [REP5-023](#), paras 2.8 to 2.13 and Appendix 6]. It would also introduce the risk of the trapping of vessels between the two bridges. Moreover, the control of the proposed bridge would lie with a third party, compromising the functions of the SHA as the relevant Statutory Undertaker (SU).
- 5.8.11. As the detailed design of the proposed bridge is not complete, there are a number of critical factors which remain unresolved. These compound the harm to ABP as a SU and are exacerbated by questions as to the suitability of and qualifications held by the advisors appointed by the Applicant. Furthermore, the Applicant's specific timeframe vessel movement survey, whilst agreed, cannot be representative of movement numbers after the survey timeframe due to continual changes within the port.
- 5.8.12. The fact that vessels exceeding the safety clearance would not be able to pass the bridge without it lifting would be a serious constraint on

the operation of the inner harbour. This would materially affect the movement of offshore Crew Transfer Vessels (CTVs), both now and in the future, where trends are showing the use of larger vessels [[REP5-023](#) paras 3.66 to 3.76, [REP5-028](#), [REP8-021](#), [REP8-027](#) and [REP8-028](#)].

5.8.13. ABP therefore assert that the proposed bridge, with its low level and single leaf, would therefore represent a dangerous safety hazard, in relation to which ABP as SHA seeks an indemnity. This is on the basis that the protections offered in the dDCO are extremely limited. The indemnity sought would cover any direct and indirect loss or damage, without limitation, from circumstances which would not have occurred without the Proposed Development. It would also cover any claims whatsoever made against ABP and any ABP liability, without limitation, to SCC or third parties from the same circumstances. The indemnity provided should include the risks being covered by insurance. If this indemnity is not provided, then ABP would be corporately liable for the actions of others over which it had no control.

5.8.14. ABP also assert that the proposed bridge would also obstruct them in carrying out their statutory duties. These include:

- to keep the harbour open for use;
- wide ranging liabilities for health and safety; and
- port security.

5.8.15. ABP include the role of the SHA, where they state that the incoherent state of the design of the proposed bridge means that ABP cannot discharge its function in approving a Navigation Risk Assessment (NRA) at this consenting stage. This is particularly relevant in the context of the existing challenges to vessels and their masters and the introduction of new structures and changes to wind movement and differential shear forces [[REP3-024](#), Sections 12 and 13, [REP5-023](#) and [REP8-011](#) and [REP8-034](#)]. Furthermore, future port security issues and compliance with the International Ship and Port Facility Security Code are difficult to address at this stage [[REP3-024](#), Section 19 and [REP5-023](#), paras 8.1 and 8.2]. A reduction in the port's ability to accommodate such vessels would be detrimental.

5.8.16. ABP believe that in relation to disruption from the presence and operation of the proposed bridge therefore, the Proposed Development would have a seriously harmful effect on the operation of the port.

### **Impact on the overall business of the port**

5.8.17. ABPs submission on this matter includes:

- serious compromise to the operational viability of the port;
- negative customer perception and market reputational damage from the presence of the two bridges and associated delays;
- constraint on the retention of existing and the attraction of new business in a competitive market;
- difficulty in funding statutory duty investment following a loss of trade;

- damage to the strategic significance and the economic contribution of the port; and
  - damage to the contribution of the port to the renewable energy needs of the UK.
- 5.8.18. ABP argues that location, height and operational restrictions, as already described, would be seriously harmful to the viability of the port [[REP5-023](#), paras 3.19 to 3.24]. It believes that the negative customer perception of the two bridges across the access to part of the inner harbour would also severely limit the port's ability to satisfy customer demand. Furthermore, ABP states that it is the case that the Applicant wrongly rejected the western option for the Lake Lothing Crossing [[REP5-024](#) and [REP5-032](#)]. The Applicant's reliance on the analysis in its Economics Report [[APP-106](#)] is also questioned.
- 5.8.19. ABP notes that the port serves busy North Sea shipping routes, amongst competing continental ports. The port supports some 500 local jobs and contributes approximately £30m Gross Value Added (GVA) to the local economy. This commerce now includes operation and maintenance support for the off-shore wind and oil industry, which is an important feature of this part of the North Sea. ABP believes that the proposed bridge would put the retention of this business at risk.
- 5.8.20. The importance of the port is recognised in the SoST's s35 Direction [[APP-092](#), Appendix B] where it describes "*the Port of Lowestoft's role in being the hub for the offshore wind farms that are part of the East Anglia Array, a major energy supplier for the UK*". Moreover, the Energy and Clean Growth Minister, Claire Perry, launched the Offshore Wind Sector Deal at the port including a £250 million investment in the offshore wind energy market.
- 5.8.21. ABP assert that the bridge would also put at risk the attraction of future business in the 2020s. This would be because there is little space in the outer harbour for further offshore wind tenants, and the bridge would be a deterrent to the use of berths to the west of it, which are currently vacant [[REP3-024](#), [REP5-023](#), paras 3.29 to 3.53 and 3.72 to 3.76, [REP5-026](#), [REP5-027](#) and [REP8-020](#) and [REP8-021](#)]. The berths to the west of the bridge include Shell Quay, which has been identified as a future energy park. The wind sector would require up to 4.9 ha of land at the port, could create up to 1,100 direct and indirect jobs and could contribute some £90m to £150m to the local economy. ABP asserts that this general area to the west of the bridge would be the only future expansion land available to the port.
- 5.8.22. ABP states that demand from existing, under construction and in-development wind farms is just over 30 overnight CTV berths, but this could reach 50 berths with future projects [[REP5-027](#)]. 26 berths are available in the outer harbour but, in the inner harbour, 18 CTV berths at Shell Quay and 26 at North Quay would be affected by the Proposed Development. The Applicant's lower peak demand of 36 CTV vessels has not been justified.

- 5.8.23. ABP note that the port is well placed to support the projected growth of the off-shore wind energy market over the next 25 years. It lies in close proximity to the East Anglia windfarm zone and has berth and quayside space which is ready to go. Even using conservative assessments, this growth would be significant. These conservative assessments include that:
- ABP would only win 44 and 66% of the Round 3 and 4 opportunities;
  - not all wind farms would adopt a CTV operating model;
  - it is assumed that CTV operators would favour the locations where they have existing operations, such as the Galloper operator at Harwich; and
  - for wind farms that are assumed to use CTVs from Lowestoft, in all but one case Lowestoft is the nearest port with the only exception being Greater Gabbard, which uses Lowestoft currently and is likely to continue to do so if the wind farm is repowered for continuity.
- 5.8.24. They believe that their concerns over berthing access delays from the new bridge are real. Over a 25 to 30-year lifespan, a 5-minute delay to a vessel carrying 12 to 24 technicians would be a financially significant disadvantage. The frequency of bridge lifts would also be likely to increase to accommodate increased vessel movements within the port [[REP5-023](#), paras 3.25 to 3.27 and 3.86 to 3.88]. Bridge failure is also a concern, particularly as these concerns are difficult to answer because the bridge design has not been done. Concerns also include incidents on the bridge such as road traffic accidents, vehicle breakdowns and distressed persons.
- 5.8.25. ABP states that all of the above would represent a material constraint on the ability of the port to be competitive in carrying on its business. Such a constraint would then have an adverse effect on the port in making it difficult to find the necessary investment funding to secure its future. The effect of these constraints would also be felt outside the port, as the significance of its economic contribution to the local area would be seriously damaged. Furthermore, the contribution of the port to the renewable energy market generally would also be severely impeded.
- 5.8.26. In relation to impact on the overall business of the port therefore, ABP believe that the Proposed Development would have a seriously detrimental effect on the operation of the port.

### **Mitigation**

- 5.8.27. ABP state that the effects of the Proposed Development would be materially adverse and harmful to the carrying on of the statutory undertaking at the port. Berthing, which is essential to the operational utility and flexibility of the port, would be lost in terms of current and future operations. This must be considered in terms of the operation of the port as a whole, and this requires a holistic approach to its consideration.
- 5.8.28. They state that the height restriction from the proposed bridge would be the only such operational port constraint in the UK. This would be a



deterrent to existing and future commercial operations. The failure to mitigate these impacts or to indemnify ABP against the impact of them results in serious material harm which would touch on the future viability of the port and the local and regional economy.

5.8.29. ABP has however considered the potential for mitigation throughout the Examination. In this regard it has considered the following matters as a mechanism to maintain equivalence in respect of the port in terms of the before and after situations. These mitigation matters are:

- the provision of an emergency berth, which would be located between the two bridges for any trapped vessels [[REP3-024](#), Section 18, [REP4-032](#), page 12 ExQ1 2.36 and [REP5-023](#), paras 7.19 to 7.26];
- replacement berthing in the outer harbour, which would be outside of the bridges; and
- an indemnity, as has been described.

5.8.30. ABP states that the tests that should be applied under s127 of PA2008 relate to the carrying on of the statutory undertaking. Here they relate to ABP carrying out its statutory obligations as operator of the port and its statutory obligations and duties as SHA. The Proposed Development would seriously impact on the ability of ABP to comply with these duties.

5.8.31. The tests also suggest that replacement land could be made available to the statutory undertaking to avoid such harm. Here, the port's estate is physically and geographically constrained, and the port's expansion land to the west of the Proposed Development is required for the East of England Energy Park, amongst other things. Land replacement is therefore not an option in this Examination.

5.8.32. The Proposed Development would therefore result in serious material harm to the carrying on of ABP's statutory undertaking as operator of the Port of Lowestoft and SHA. Recent Nationally Significant Infrastructure Project (NSIP) Examinations for the Hinckley Point C Connection<sup>14</sup> and the Richborough Connection<sup>15</sup> are relevant to this Examination. At Hinckley, a small area of the Port of Bristol would be affected, but this particular location was an important part of the resources of the port and material harm was found.

### **ABP 31 May 2019 letter to the Secretary of State for Transport**

5.8.33. ABP has written to the SoST, in some length and with appendices, expressing concern about the extent of harm caused, and has drawn attention to a number of impacts set out previously in this chapter [[REP11-015 to REP11-021](#)]. Of particular note are:

- the effective severance of the inner harbour by the proposed bridge;
- the sensibility of other bridge location options;
- serious detriment to existing port operations; and

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<sup>14</sup> Hinckley Point C Connection (2016)

<sup>15</sup> Richborough Connection Project (2017)

- escalating and cumulative impact in terms of future commercial operations, operator perception, proposed port expansion and the Port's consequential inability to meet the needs of an off-shore energy market which Government has recognised as being of critical importance to the UK economy.

5.8.34. ABP had expected the Applicant to either withdraw the application and pursue a more sensible option or offer measures to mitigate the harm identified. The Applicant has failed to do either. ABP suggests that it has demonstrated that, if the Proposed Development is allowed to proceed, the SoST should not approve the Order.

5.8.35. The letter then proceeds to explain the following aspect of ABP's case, which has already been set out in this report. Its coverage of harm is split into the following elements:

- CA of the statutory port estate;
- loss of berthing and berthing utility and flexibility;
- obstruction and impediment;
- impact on existing operations;
- impact on future flexibility;
- impact on commercial perception of the port and its ability to secure future business;
- failure to mitigate;
- lack of an indemnity;
- s35 Direction; and
- conclusions and a "*minded to*" determination.

5.8.36. On the final point, ABP suggests that the SoST indicates to all parties that he is "*minded to*" refuse to approve the Order. That would provide the Applicant with the opportunity to approach ABP with a meaningful package of mitigation measures, including an acceptably termed indemnity.

### **ABP's conclusion**

5.8.37. From the evidence submitted, ABP says that it is clear that the Proposed Development, comprising the introduction of a new bascule bridge in an operational port, would have serious consequences for the port.

5.8.38. ABP states that it does not oppose the principle of a third crossing of Lake Lothing. ABP's original objection was to the location of the bridge through the middle of the operational port. If the Applicant had approached the formulation of its application in a properly considered way, that would have readily demonstrated that the selected location for the crossing now being promoted is operationally indefensible.

5.8.39. ABP, as the SHA, cannot, for the reasons detailed above, accept the location of the bridge as currently proposed if the serious harm that would be caused by the Proposed Development is not mitigated. To date, the Applicant has refused to acknowledge the extent of this harm that its Proposed Development would cause and has refused to discuss any



meaningful mitigation measures with ABP. The application, as proposed, should therefore not be confirmed.

- 5.8.40. That is clearly regrettable, given the large amount of public money that has already been expended. However, in a spirit of pragmatism, ABP has indicated to the SoST that it may still be prepared to withdraw its objections to the application, if the Applicant would be prepared to provide a genuine package of measures to mitigate the harm that would otherwise be caused.
- 5.8.41. In the current circumstances therefore, and for the purposes of the Examination, ABP's position remains one of regretful opposition and it invites the ExA to recommend that the dDCO not be made.

### ***Applicant's response***

- 5.8.42. The Applicant's response is set out in Closing Submissions (ABP) [[REP11-009](#)]. Whilst these submissions address both the broader planning matters and those specifically concerning in relation to the CA, it is the former that are considered here. The Applicant has secured the relevant technical expert advice and has used this throughout the development of the application and during the course of the Examination [[REP10-080](#), Appendix A]. The Case for the Scheme provides a comprehensive narrative on the need for the Proposed Development and its evolution [[APP-091](#)]. The Statement of Reasons (SoR) concludes that there is a compelling case in the public interest for the Proposed Development and for the carrying on of ABP's undertaking as SHA [[REP10-009](#)]. This is considered further in Chapter 8 of this report.

### **Benefit to the Port of Lowestoft**

- 5.8.43. The expansion of the port, as anticipated by ABP, would result in more intense use of the surrounding highway network. Without the Proposed Development, such journeys would be susceptible to weaknesses in the existing network, particularly existing bridge openings which would increase [[REP4-016](#), Section 2]. The port relies on its land-based connections, and the Proposed Development would benefit all highway users due to savings in time and vehicle operating costs [[APP-106](#), [REP7-005](#) and [REP8-008](#), Section 3.3]. The SoST also recognised that the Proposed Development has a key role to play in the growth of the Port of Lowestoft in the s35 Direction [[APP-092](#), Appendix B]. Indeed, ABP recognises the reliance of a port's success on adequate terrestrial infrastructure serving it [[REP3-024](#), Annex 7].

### **Vessel survey**

- 5.8.44. The Applicant undertook a nine-month vessel movement survey, in three phases, spanning just over a year for seasonal variation, and it was updated with a third tranche of survey data [[APP-208](#), [REP3-060](#), [REP7-005](#), pages 9 to 11 and [REP8-008](#)]. The accuracy of the survey has been corroborated by ABP data, and the data is agreed between the parties. The cyclical nature of vessel movements is visible in comparing the three individual survey periods and, had the survey covered a longer

period, it would have reflected lower berth utilisation [[REP8-008](#), paras 23.2.7 to 3.2.10 and [REP8-018](#)].

- 5.8.45. The Applicant also considered the additional vessel movements that could arise with the future growth of the port [[REP8-008](#), Section 5.3]. Under these circumstances, the existing bridge would also need to lift more frequently or for longer than it does currently [[REP4-016](#)]. To present a robust Benefit Cost Ratio (BCR) in the application Economics Report, it was assumed that, in the future, the proposed bridge would lift at the same frequency as the existing bridge [[APP-106](#) and [REP4-016](#), Section 4.1]. However, based on the vessel survey data, the proposed bridge is, on average, predicted to lift five times per day, compared to 14 times for the existing bridge [[REP3-056](#), Table 4-1].
- 5.8.46. In the application Economics Report, the proposed and existing bridges are modelled to lift ten times per day [[APP-106](#) and [REP4-016](#)]. The modelling understates the current impact of the 14 existing bridge openings on vehicular traffic in the Do-Minimum scenario. The modelling also understates the benefit to vehicular traffic of the proposed bridge in the ten-lift Do-Something scenario. This is because it is predicted to only require five lifts and would therefore be available to vehicular traffic more frequently than modelled. Collectively, therefore, the Applicant has reported on the basis of a conservative estimate of the benefit of the Proposed Development.
- 5.8.47. The Applicant has also undertaken a sensitivity test on the BCR, doubling the number of lifts for the two bridges, thereby reducing further the highway benefit of the Proposed Development [[REP4-016](#)]. The effect of the future growth scenario and the doubling of bridge lifts had a very limited effect on the BCR and did not alter the Proposed Development from being High Value for Money. The Applicant is therefore satisfied that its BCR output remains robust under port growth scenarios that could reduce the highway benefit of the Proposed Development.

### **Vessel simulation**

- 5.8.48. The Applicant's vessel simulation was a three-stage process which involved ABP's Harbour Master and its Marine Manager in the simulation runs [[APP-198](#)]. The Applicant commissioned an independent report of the second and third simulations [[REP10-080](#)]. Following criticism from ABP for the lack of quality in its independent expert advice, the Applicant has provided CVs of those involved [[REP10-080](#), Appendix A].
- 5.8.49. The preliminary NRA confirms that refinements to the design have been incorporated following the simulations to effectively reduce the risks created by the Proposed Development [[APP-208](#), para 7.1.1].
- 5.8.50. The Applicant considers that issues raised by ABP as outstanding and rendering the simulation of limited value, including wind shear effects and bridge cycle times, are of limited impact to the concept of the Proposed Development or the navigational safety of the port.

- 5.8.51. In respect of wind shear, the independent report concludes that the effect of wind shear is short-acting, given the transit time of the vessel through the structure [[APP-208](#), Appendix B Section 4.2]. The width of the navigation channel under the proposed bridge would be 10m wider than the entrance to the inner harbour, where wind shear would be experienced in association with the existing bridge. The independent report also concludes that this would provide greater space to counteract any different effects of wind shear, if experienced.
- 5.8.52. The independent report also identifies that, in adverse weather conditions where no suitable waiting berths were available, a pilot or master could request the second bridge to open before he transited the first. This is relevant to the emergency berth sought by ABP.
- 5.8.53. The Applicant's considers that the vessel simulation is robust and has appropriately informed both the design and preliminary NRA. In response to ABP's concerns, the Applicant has included Requirement 11 (R11) in the rdDCO. This requires the final NRA to be submitted to ABP for approval, and for that NRA to be informed by further vessel simulation [[REP7-005](#), page 17].

#### **Future prospects for the port**

- 5.8.54. The Edge Economics Report, commissioned by ABP, translates the current economic significance of the port to future economic performance [[REP3-024](#), annexes 4A and 4B]. It then considers the effect of the Proposed Development against that future performance, arguing the potential for job creation and annual GVA would be approximately halved.
- 5.8.55. The Applicant does not agree with the central assumptions applied by Edge Economics [[REP8-008](#), para 3.3.41]. These are that:
- CTV operators would be unwilling to berth west of the proposed bridge;
  - Shell Quay is no longer seen as being an acceptable facility; and
  - the proposed bridge would sterilise up to 200m of quay which could potentially be used for CTV berthing.
- 5.8.56. ABP commissioned BVG to assess the opportunities for the port, including potential CTV demand and how the ability to meet that demand could be compromised by the Proposed Development [[REP5-027](#), Annex 2]. The Applicant does not agree with the BVG conclusions in this regard.
- 5.8.57. ABP commissioned ABPmer to assess the usage of berths between 2015 and 2017, the effect of the Proposed Development on this use in current terms and in the future based on the CTV demand set out in the BVG report and elsewhere [[REP5-026](#), Annex 1 and [REP8-018](#), Annex 3]. The Applicant has fundamental concerns with the methodology used in this report.
- 5.8.58. The BVG demand up to the mid-2020s is for between 20 to 30 vessels, relatively consistent with the existing 26 berths in the outer harbour.

Any overflow to Shell Quay would only be required from the mid-2020s, by which time the operational regime and reliability of the proposed bridge would have been established. The masterplan for the port also indicates that Shell Quay would come into play around 2025 [REP9-012, Annex 1 Figure 15].

- 5.8.59. The BVG peak demand is for up to 50 CTV berths in the 2030s [REP5-027, Annex 2 Figure 3]. BVG assumes that, apart from two, all other projects in the East Anglia sector of the southern North Sea would create a demand for port space at Lowestoft [REP5-027, Annex 2 tables 1 and 2 and Section 4.1]. BVG considers that this future demand would be met from locations to the west of the proposed bridge. With the bridge in place however, berth supply would be limited to the outer harbour, as no operator would be willing to locate to the west of the proposed bridge [REP5-027, Annex 2 Section 6 and figures 7 and 8]. BVG therefore predicts a shortage of berths.
- 5.8.60. The Applicant considers that 36 CTVs is a more realistic maximum future demand, based on the nearest windfarms and the BVG calculated CTV demand per turbine [REP9-010, page 5]. This is however based on the original size of the East Anglia ONE windfarm which, as BVG note [REP5-027, Annex 2 Table 2], is now smaller, and this would reduce the Applicant's requirement to 30 CTVs [REP9-010].
- 5.8.61. The use of such a proximity as a tool to assign CTVs to a port is a "*rough and ready*" approach because are other factors for operators. These other factors do not work against any particular port, so Lowestoft is assumed to capture demand from all windfarms for which it is the closest port, even if other factors might mean that in practice an operator would favour a different port. This is not a fundamental error as claimed by ABP, but is the consequence of applying the methodology consistently in all cases.
- 5.8.62. In terms of any increased transit time, a vessel large enough to require a proposed bridge lift to complete a Shell Quay transit would be required to give advance notice. It would thus be capable of timing its arrival to coincide with the bridge lift and generally avoid delay.
- 5.8.63. In terms of transit restrictions, the draft Scheme of Operation only restricts lifts during peak road traffic hours, and the Applicant accepts that this could affect some vessel movements. An analysis of the vessel survey however indicates that operators are able to adjust movement schedules to take account of known restrictions. They therefore could accommodate proposed bridge restrictions through minor variations to sailing times.
- 5.8.64. In terms of increased risk of disruption, it has been suggested that the need to pass two lifting bridges to access a berth would be too great a risk due to bridge failure or other situations that would prevent lifting. The proposed bridge is targeting 99.9% reliability and thus may be unavailable for only 8 hours per year. The bridge would also have a

visual control tower and there are byelaws in the dDCO application governing conduct on the bridge.

- 5.8.65. The existing bridge suffers periodic failures and, on average, is closed 20 times per year [[APP-091](#), para 4.6.13 and [REP7-005](#), page 6]. ABP does not see the existing bridge as a deterrent to business related to the inner harbour. It is therefore difficult to see why the proposed bridge, designed and operated to modern standards of performance, would be a 'game changer' when making locational decisions.
- 5.8.66. The BGV conclusion, while not explicit, is that the port would be unable to attract CTV operators beyond what can be accommodated in the outer harbour. The ABPmer report suggests that, for a demand for 50 CTV berths, 14 vessels could not be accommodated in the port, and therefore this is the scale of lost CTV business [[REP8-018](#), page 21].
- 5.8.67. Prospective operators may indeed have concerns associated with the Proposed Development, particularly in advance of its construction. The BVG conclusions are however based on a presumption that these operators would be in a more advantageous position in locating in another port. Moreover, that that decision is precipitated wholly on the basis of the three matters above.
- 5.8.68. The Applicant does not believe that any, or in fact any combination, of these factors would prove a critical driver for an operator choosing not to locate in Lowestoft. This would particularly be the case when factoring in the options available for a vessel operator to make small modifications to the craft, or to vessel transit times that would ameliorate the potential negative effects that could, in extreme circumstances, occur.
- 5.8.69. The Applicant agrees that the port is well-positioned to attract business associated with the growing offshore energy sector. PD rights would also be able to be returned if the bridge was ever dismantled [[REP8-007](#), [REP9-009](#) and [REP10-080](#)]. However, the Applicant considers that the impact of the Proposed Development should not be based the certainty of future growth in the port. The BVG report and the port masterplan frame demand as being between 30 and 50 CTVs. The ABPmer report however only uses 50 CTVs in its analysis. This gives insufficient regard to the uncertainties of growth.
- 5.8.70. Furthermore, the impact on locating at Shell Quay should be interpreted on the basis that for 22 hours per day there would be no impediment from the proposed bridge, rising to 24 hours per day if the vessel does not require a bridge lift. Even for the two hours where lift restrictions would be in place, the practical consequence would be a minor adjustment to vessel transit times. The Applicant therefore does not consider that the proposed bridge would prove the critical driver for an operation choosing not to locate in Lowestoft.

### **Impact on berthing**

- 5.8.71. The Applicant states that the direct loss of berthing associated with the Proposed Development would be the 62m within the land subject to the

Order The adjacent 'rights strips' of 5m would not be not a direct loss, as they would remain available for the tying of ropes across [REP7-005, page 32 and REP8-008, para 6.1.5]. Moreover, a further 10m to either side of the rights strips should not be added as a direct loss, as space for mooring lines would be required with or without the Order [REP8-008, para 6.1.6]. ABP adds this 30m to the direct loss, totalling 92m. ABP then adds a 60m loss of North Quay 2 in respect of its original utility and 45m of North Quay 4E because there is no agreement regarding any accommodation works that would retain its utility. ABP therefore implies the total loss is 165m.

- 5.8.72. The Applicant considers that berth loss should not be measured in whole berths. This position, supported by the empirical evidence provided by the Harbour Master at the ISH on 7 March 2019, is that berth numbering simply has a referencing function. The mooring positions of vessels varies with their size and are dictated by bollard positions, with decisions made dynamically according to berth availability [REP7-005, page 35]. The land acquisition within the Order would remove access to up to four bollards, over a length of quay of 60.95m, which is consistent with the direct loss of 62m [REP8-005].
- 5.8.73. The Applicant is of the view that North Quay 4 East, immediately to the west of the proposed bridge would not be lost. Some 34.5m, including the 5m rights strip, would remain of use, although it may require fendering, due to the quay being suspended at this location [REP8-008, para 6.1.8 onwards]. Alternatively, the security fence at the western boundary of North Quay 4 East could be relocated, such that North Quay 4 East could be amalgamated with North Quay 4 West [REP8-005, para 3.1.8]. Such works could be required of the Applicant under the rdDCO Protective Provisions afforded to the SHA, or they could be carried out by ABP with the cost claimed back under the compensation code.
- 5.8.74. With respect to North Quay 2, to the east of the proposed bridge, ABP has described it as effectively lost, but has also dedicated it for an aggregates operation in assessing berth utilisation [REP8-005]. There would remain some 120m of usable quay, comprising North Quay 1 and North Quay 2. This could accommodate a range of berthing scenarios, including 100m Length Overall (LOA) vessels that may be required for an aggregates operation [REP9-010, page 2]. There would therefore be no material difference to the situation today in what could be accommodated exclusively on these berths, apart from a loss of flexibility due to a smaller North Quay 2 and no North Quay 3. [REP8-005]. The Applicant therefore does not agree with the assertion in ABPmer's report that "*The only available option would be to combine its North Quay 2 operation with North Quay 1 so that larger vessels would extend across both North Quay 1 and 2 berths. This would restrict the combined berth area of North Quays 1 and 2 for use by one large vessel only*" [REP10-080].
- 5.8.75. The Applicant estimates that berth utilisation in the inner harbour is around 35% with a peak of around 80% [REP8-008, para 3.2.12]. This is



based on observations from the vessel survey, data obtained from the marine automatic identification system and sight of North Quays 1 to 5.

- 5.8.76. ABPmer has reported on berth utilisation and then updated this report [[REP5-026](#) and [REP8-018](#)]. The Applicant has concerns with the assumptions and methodology applied in the report and does not accept its conclusions. In respect of the assumptions, the principal inputs relate to the extent of berthing loss and the potential growth within the port, as already described [[REP8-005](#) and [REP9-010](#), page 6].
- 5.8.77. In terms of potential growth, ABPmer incorrectly assumes opportunities are certain and overstates the effect of dedicated berths in the statistical analysis, but in the narrative acknowledges that they may not prevail [[REP8-005](#), page 10, [REP8-018](#), Table 6 and [REP10-088](#)]. ABPmer also overstates the berths dedicated to the vessel operator Petersons, which should be either North Quay or Town Quay but not both [[REP10-088](#)].
- 5.8.78. The Applicant also has concerns with the ABPmer methodology [[REP8-005](#)]. A fundamental factor relates to the dedicated berths, to which ABPmer gives a 100% utilisation rate. This has a significant bearing on future berth utilisation. The Applicant does not dispute the principle of dedicating berths, where this is based on the past situations, but rather how that dedication is used in the calculations for future forecasts of port utilisation.
- 5.8.79. The Applicant does not consider that ABPmer's approach is justifiable whereby six berths are dedicated, given a 100% utilisation rate and the 100% is then included in the berth utilisation rate for the inner harbour. Including 100% as a dedicated berth utilisation figure has the effect of elevating the average figures. Furthermore, an actual utilisation of 100% would be very unlikely. This is because it would be significantly in excess of the 75% threshold, set out in the ABPmer report, beyond which a berth is considered to be too busy, leading to declining efficiencies. Those dedicated berths should either be excluded from the analysis, or afforded a more realistic utilisation rate.
- 5.8.80. In the ABPmer report, without the various individual 100% entries for the six dedicated berths and the significant re-assignment of vessels to Talismans berths, the average utilisation across the inner harbour berths would not reach 75% [[REP8-018](#), Table 6]. This would be the case, even with all the growth assumed in the ABPmer assessment.
- 5.8.81. Moreover, the following factors would reduce the utilisation rate even further:
- One or more of these berths may not be dedicated, and therefore 100% would be replaced by a lower actual berth utilisation figure;
  - North Quay 4E remains usable;
  - the full opportunities identified by BVG, and the Port Masterplan, and included by ABPmer, may not materialise; and
  - the proposed bridge should not dissuade operators from being located to the west of it to the extent assumed by ABPmer.

- 5.8.82. The Applicant has calculated berth utilisation with a more realistic assessment of assumptions in which:
- Dedicated berths were removed from the calculations;
  - North Quay 4E was afforded a utilisation of 35%; and
  - the proposed bridge reduced further growth to the west of it by 50%.
- 5.8.83. This brings the Inner Harbour berth utilisation average to 58%, indicating a busy, but efficient port [[REP8-005](#), Table 5].
- 5.8.84. ABPmer has disputed the Applicant's berth utilisation calculations [[REP10-088](#)]. The Applicant produced Table 5 on the basis of the limited data included in the ABPmer report. The Applicant only has access to the average figures, berthing provision in the port and numbers of CTV currently using, and predicted to use the port. ABP has not provided any further data, or explained how the Applicant's methodology is incorrect.
- 5.8.85. In summary, the direct loss of quay would be 62m, compared with 2,100m of quay in the inner harbour. Whilst the functionality of North Quay 1 and 2 would be materially affected, they could continue to accommodate vessels up to a combined, or individual, LOA of 100m. North Quay 4 East should not be written off, as minor accommodation works could retain the residual length as a functioning quay.
- 5.8.86. The effect of the Proposed Development on berth utilisation should be approached on that basis, and then berth occupancy remains less than 60% in the inner harbour. It is only when a series of assumptions are layered into the assessment that berth utilisation exceeds desirable levels. These assumptions relate to future business, a particular berth dedication and reassignment process, and pessimistic forecasts on the effect of the Proposed Development.
- 5.8.87. The Applicant therefore suggests that given the significant uncertainty in future forecasts, proportionate weight should be given to such assertions of impact based on this analysis.

### **Air draft**

- 5.8.88. The Applicant chose an air draft of 11.5m at highest astronomical tide (HAT) to provide a working safety margin below the structure of the proposed bridge for vessels transiting without a bridge lift. The Applicant accepts that a future NRA may require a safety margin of 1m, which would give an air draft of 11m at HAT [[REP7-005](#), page 5 and [REP8-008](#), para 5.2.16]. Tidal water levels within the lake are however more than 0.5m lower than HAT for the vast majority of the time. Indeed, the Lowest Astronomical Tide is 2.8m lower than HAT and spring tides have a range of 1.9m. The 11.5m air draft was simply used as a cut-off in the vessel survey to establish an anticipated bridge lifting frequency [[REP7-005](#), page 5 and [REP8-008](#), para 5.2.16].
- 5.8.89. There would only be restrictions on commercial vessels requiring bridge lifts during peak road traffic hours [[REP7-005](#) and [REP8-005](#)]. The vast majority of the time, peak road traffic hours would not coincide with high



tide, and the clearance would be greater 11.5m [REP8-005]. The Applicant accepts that the proposed bridge could have to open more often in the future due to climate change [REP7-005]. This would occur on a very gradual basis over an extended period of time, so that vessels would be able to take account of such small-scale changes.

- 5.8.90. The Applicant has taken into account PIANC<sup>16</sup> air draft guidance [REP7-005, page 5, REP9-010, page 8 and REP11-007]. It has included the 1m clearance in the Scheme of Operation, as requested by ABP [REP11-007]. The SHA could seek to have air draft monitors installed at the proposed bridge, and this would be secured under R11 and the Protective Provisions for the SHA in the dDCO [REP9-010, page 8].
- 5.8.91. The operators of CTVs are split on whether masts can be lowered or not to reduce their required air draft [REP8-021]. This demonstrates that masts can be made retractable, to allow transit without a bridge lift if required and if CTV operating schedules were likely to coincide with the proposed peak road traffic hours lifting restrictions.
- 5.8.92. The report also shows that 50% of the CTVs identified by ABP have air drafts less than the minimum 11.5m clearance and would not require a bridge lift at any state of the tide below HAT [REP5-027, Section 2.2, REP7-005, page 6, REP8-008, para 3.3.37 and onwards, REP8-021 and REP9-010, page 9]. It also identified a further 35% of vessels with air drafts between 11.5m and 14m which could pass under the proposed bridge at certain tidal levels without requiring an opening. Moreover, 70% of CTV movements recorded in the vessel survey arose from vessels requiring less than an 11.5m air draft [REP7-005, page 6].
- 5.8.93. A large range of factors influence the type of CTV selected by an operator. The clearance afforded by it, for the two hours per day when the proposed bridge would not open on demand, would be one of these factors but this may not be a major factor [REP8-008, para 3.3.37 and onwards]. Larger vessels with less clearance are also not certain in future owing to the running costs of such vessels and inefficient journey times when transferring crew [REP5-027, Section 2.2]. Furthermore, future windfarm locations in the southern North Sea are constrained by the limits of territorial waters and will not be more remote from the coast than they are at present [REP9-010, page 9].
- 5.8.94. From all of the above, the Applicant does not consider that the proposed bridge in terms of air draft would lead to a degree of harm that would be serious in terms of the operation of the port.

### **Proposed bridge Scheme of Operation**

- 5.8.95. The draft Scheme of Operation includes a prohibition on bridge lifts during peak road traffic hours of 08:00 to 09:00 and 17:00 to 18:00 [REP4-016 and REP11-007]. Outside of these periods, commercial operators can request a bridge lift at any time. The Applicant justifies the

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<sup>16</sup> The World Association for Waterborne Transport Infrastructure

restriction during peak hours by highway traffic benefits, particularly in terms of journey time reliability [[REP4-016](#)]. ABP has indicated that there are both practical and commercial consequences of such restrictions. In response to ABP concerns, the draft Scheme of Operation permits vessel movements in the restricted periods for those which are tidally restricted and in cases of emergency.

- 5.8.96. The existing bascule bridge separates the inner and outer harbours and has a clearance above HAT of 2.16m [[REP8-008](#), Section 5.1 and 5.2]. It has periods during the day when the movements of commercial vessels are discouraged. During the 175-day vessel survey, ABP lifted the existing bridge ten times in the discouraged periods, and these lifts related to tidally restricted vessels or emergencies [[REP8-008](#), Section 5.2].
- 5.8.97. A marked increase in vessel movements seen either side of those periods is indicative of vessels managing their transit times to avoid the discouraged periods and delay [[REP8-005](#), para 2.1.4 and [REP8-008](#), Section 5.2]. The Harbour Master has also observed CTV operators corraling in advance of a lifting of the existing bridge [[REP7-005](#), page 2].
- 5.8.98. The Applicant considers that effect of the proposed bridge restrictions should be described in terms of journey time adjustment and not delay [[REP7-005](#), page 2, [REP8-005](#), para 2.1.4 and [REP8-008](#), Section 5.2]. An adjustment could be to advance a journey time as well as to delay it. There is no evidence that non-tidally restricted vessels would be unable to advance their journey times if that would avoid a restricted period. The restricted periods would be well known to vessel operators and transit times could be planned accordingly. It is inconceivable, having regard to how vessels currently operate from the inner harbour, that they would not adjust their transit times, as they seem to do at present.
- 5.8.99. Even though the restricted periods would be extended over the existing situation, they would still represent a small proportion of time within a 24-hour period [[REP9-010](#)]. Furthermore, only limited adjustments would be required to avoid the restricted periods altogether. For vessels based at Shell Quay, the worst-case effects of the restrictions would be a 9-minute AM adjustment for outbound vessels and an 11-minute PM adjustment for inbound vessels [[REP9-010](#)].
- 5.8.100. The Applicant does not accept that the proposed peak road traffic hour restrictions would have a material, let alone a significant, effect on operations located to the west of the proposed bridge. The Applicant therefore has not accepted the ABP suggestions [[REP10-084](#) and [REP11-007](#)] which seek to match the restriction times on the proposed with the existing bridge, as:
- They do not correlate with peak road traffic hours;
  - there is no evidence that the proposed restrictions would delay vessels in the manner ABP has suggested; and

- they do not take in to account the transit time between the two bridges and so matching the restricted periods has a misplaced logic.

5.8.101. The Applicant also has not extended the exception for tidally restricted vessels or emergencies, as lifting on commercial demand nullify the restrictions. ABP's further suggestions on the Scheme of Operation have however been generally accepted [[REP10-084](#) and [REP11-007](#)]. The Applicant thus does not consider that navigation restrictions as a result of the proposed bridge scheme of operation would lead to a detriment that would be serious in terms of the operation of the port.

### **Navigational risk**

5.8.102. The submission of a preliminary NRA within an application for development consent has precedents such as on the Silvertown<sup>17</sup> and Thames Tideway<sup>18</sup> tunnels [[APP-208](#), [REP5-007](#), page 12 and [REP8-008](#), Section 7]. In responding to ABP criticisms, the Applicant considers that the NRA has been prepared in accordance with the most appropriate guidance and allowed wide stakeholder engagement [[REP10-080](#)]. It also took account of all of the data sources that were available at the time.

5.8.103. Requirement 11 of the rdDCO provides for submission of a final NRA to the SHA for its approval, and the NRA would become part of ABP's own port risk assessments, which it is required to keep up to date. The Applicant has also accepted ABP's recommendation that the SHA would be responsible for any consultation, pursuant to the Port Marine Safety Code.

5.8.104. The Applicant therefore considers that navigational safety has been appropriately considered as part of the application and the rdDCO adequately safeguards the concerns of the SHA [[APP-208](#), [REP5-007](#), page 12 and [REP8-008](#), Section 7]. These provisions would ensure that navigational safety would not be compromised [[REP8-008](#), [REP3-029](#), ExQ1 2.36 and [REP11-007](#)].

5.8.105. The Applicant has considered the risk of a large commercial vessel becoming trapped between the existing and proposed bridges. It does not consider that an emergency berth, as sought by ABP, would be necessary. This is because alternative methods of risk mitigation could be made available, such as the opening of the proposed bridge to allow the vessel to pass and berth before it entered the inner harbour. This mitigation has been included in the draft Scheme of Operation, as it would reduce risk to a level so as to be acceptable under ALARP<sup>19</sup> protocols [[REP8-008](#), [REP3-029](#), ExQ1 2.36 and [REP11-007](#)]. Moreover, any removal of this provision would be subject to the agreement of the SHA under A41 of the rdDCO.

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<sup>17</sup> Silvertown Tunnel (2018)

<sup>18</sup> Thames Tideway Tunnel (2014)

<sup>19</sup> As Low As Reasonably Possible

- 5.8.106. The Applicant therefore does not consider that navigational risk from the proposed bridge would lead to a degree of harm that would be serious in terms of the operation of the port.

### **Port security**

- 5.8.107. The Applicant considers that the physical separation of vessels from the proposed bridge, enforced by the fenders, and close circuit television would significantly mitigate the effect of the bridge on port security [REP8-008, Section 8]. The Head of Ports Security Policy in the Maritime Directorate at the DfT is of the view that the Applicant's consideration of this matter was proportionate [REP10-080]. The directorate concludes that the limitations to the setting up of Temporary Restricted Areas (TRAs) caused by the proposed bridge would accord with the positions of the bridge fenders, or the 62m of quay which would be lost. The Applicant therefore does not agree with ABP that 223m of TRA potential would be lost [REP3-024]. The Applicant accepts that the port security plan would need to be updated to reflect the presence of the bridge, but it would not have a significant impact on the port's ability to create secure areas.
- 5.8.108. The Applicant has also engaged with the Centre for the Protection of National Infrastructure, particularly in the context of vehicle borne threats. Agreement was reached that the threat would be low and mitigation measures would not be required [APP-091, para 7.3.65 and onwards and APP-092, Appendix F].

### **Applicant's conclusion**

- 5.8.109. The Applicant does not deny that the imposition of the Proposed Development over the port would cause some adverse impacts to the operation of the port. The Applicant considers however that nothing has been put forward by ABP to demonstrate that the degree of harm identified would be serious, and that the Applicant has put forward sufficient evidence to show that this would indeed not be the case.

### **Examining Authority's consideration**

- 5.8.110. ABP's case in objection during the Examination was summarised in closings [REP11-014].
- 5.8.111. We agree with ABP that the carrying on of port operations encompasses existing and future port operations together with the ability of ABP to comply with its statutory obligations and duties as SHA and CHA. We also agree with ABP that planning harm is a matter of judgement on the scale of impact on the undertaking and that the decision maker should take a holistic approach. In this case, we conclude the impact on the port as a whole should be assessed. We have considered the objection generally under the headings in the ABP closings and have considered construction disruption in Chapter 8 of this report in terms of the Temporary Possession powers sought.

## **Land and rights loss**

- 5.8.112. In this section we consider the impact of the Proposed Development on berthing and the land side of the port's estate; we consider its effect on navigation and the more general operation of the port later in this chapter.
- 5.8.113. Whilst ABP claims that the loss of berthing would be 165m, the direct loss of berthing within the area for the proposed bridge would be 62m. There is however no evidence to indicate that this berthing has any particular characteristic that is not repeated elsewhere on North Quay. It therefore cannot be said to be particularly special or important compared to other areas, and this 62m of direct loss is out of a total berth length within the inner harbour of the port of some 1,500m, as quoted by ABPmer.
- 5.8.114. The 62m is related to the powers sought within the dDCO. The proposed bridge would however be constructed within this potential bridge width, and rdDCO powers would only be exercised for the width of the structure itself plus a maintenance allowance. The actual direct loss could therefore be less than the 62m. Furthermore, berth numbering appears to us to be for referencing purposes only, and vessels occupy positions based on other factors. We therefore do not accept that the final direct loss should be extended to the next whole berth length.
- 5.8.115. To either side of this direct loss would be a berth length of 5m where rights in the lake would be sought to allow maintenance of the proposed bridge. The power to acquire these rights could however only be exercised with the reasonable consent of the SHA, which could be given subject to conditions. It would therefore be possible for the SHA, for the vast majority of the time, to secure the use of these 5m lengths for mooring line purposes.
- 5.8.116. ABP has suggested that a quay length of 10m could be required beyond the length of a vessel to accommodate necessary mooring lines. Where vessels are moored near one another, the lines could cross, meaning that such a dedicated quay length for lines beyond a vessel would not be necessary. Here though, the lines could foul the bridge fenders, and a quay length of 10m could be said to have lost its previous utility. It is however the case that not all vessels would require 10m for mooring line purposes, although a 100m vessel could require more.
- 5.8.117. To the east of the proposed bridge, North Quays 1 and 2 have a combined length of 120m. There is also a length of 4m of North Quay 3 outside of the 5m for the CA of rights. These two lengths, of 4m and 5m, would give 9m for mooring lines outside of Quays 1 and 2.
- 5.8.118. Quay 2 would be affected to some degree by the bridge structure in terms of vessel manoeuvrability. We agree however that a vessel of 100m LOA would still be able to berth on Quays 1 and 2 and we also consider that the effect on the available length and accessibility of Quay 2 for smaller vessels would be very limited. Figure 2 of the ABP Berth Utilisation Assessment and the berthing scenarios show this area in

detail and a range of angles between mooring lines and the quay edge [[REP8-013 to REP8-018](#)].

- 5.8.119. To the west of the proposed bridge, North Quays 4E and 4W are separated by a security fence. It has been said by ABP that the port is a dynamic environment, and we have taken this into account in our consideration of the operation of the port. On this basis, we do not consider the fence to be a permanent feature, and Quays 4E and 4W could be used alongside each other as is the case elsewhere on North Quay.
- 5.8.120. From what ABP has explained about mooring lines, it currently would appear to be difficult to moor a vessel directly adjacent to either side of the security fence. The removal of this fence, the cost of which would be recoverable under the rdDCO, would allow more mooring flexibility between Quays 4E and 4W. This would outweigh the limiting effect of the presence of the proposed bridge structure beyond its physical extent. It therefore follows that the loss of fully useable quay to the west of the bridge structure would be the 5m which would be subject to rights to maintain the bridge. This 5m would however be available for mooring purposes for the majority of the time.
- 5.8.121. From all of the above, the maximum absolute loss of quay would therefore be 62m, with a further 14m would be subject to the mooring arrangements of vessels in the area of the proposed bridge and the frequency and rights required for bridge maintenance. There would also be some loss of manoeuvrability in the area of the proposed bridge structure. The harm in respect of berth loss that would be likely to be caused to the operation of the port should be considered in terms of these losses. The 62m figure has however to be seen in the context that it could be reduced when the detailed design of the bridge is complete or if mooring line lengths are less than anticipated.
- 5.8.122. Land side, the Proposed Development would cross the port's land at one of its narrow points.
- 5.8.123. It is of note that the presence of this Shed 3 currently severs the land side area of the port to some extent. It generally leaves only the quayside and Commercial Road for passage to the areas of the port to the west of the shed. The single pillar of the elevated structure would generally leave a greater width for passage on the quay and Commercial Road sides of it.
- 5.8.124. The eastern door of this shed would face the single pillar. The shed could however be reconfigured, again with recoverable costs, to maintain its utility. These matters would be the main elements of harm to the land side operation of the port.
- 5.8.125. As a result of all of the above points, we consider that the Proposed Development would result in moderate, but not serious, harm to the operation of the port in terms of loss of berthing and the availability of space within the port. In coming to this view, we have taken into account

the provisions in the rdDCO and the protection that these would give to the interests of ABP.

### **Disruption from the presence and operation of the proposed bridge**

- 5.8.126. We agree with ABP that harm to the operation of the port should be assessed in a holistic manner, and we have therefore considered including navigation as a subject here under planning impacts as well as in the chapter dealing with CA matters. The proposed bridge would also place restrictions on dredging operations in the area around the proposed bridge. We have not however seen any sufficiently reasoned evidence to put such restrictions beyond having limited deleterious effect.
- 5.8.127. The proposed bridge would bisect the inner harbour, which itself is accessed from the North Sea through an existing lifting bridge. Commercial vessels are discouraged from passing through the existing bridge for 45mins after 08:15 and again after 17:00 and for 30mins after 12:30. The proposed bridge would be lifted on request, except for 1hr after 08:00 and again after 17:00.
- 5.8.128. The proposed bridge would be likely to need to be lifted for vessels having an air draft, or height above the water line, of greater than 11m at the time of HAT. For the vast majority of the time however, and the lowest astronomical high tides are 2.8m lower than HAT, some vessels with an air draft of greater than 11.5m would be able to pass without the need to lift the bridge. Indeed, spring tides are generally 0.45m lower than HAT, and they would allow a vessel with an air draft of 11.45m to pass without a bridge lift. Furthermore, in cases of emergency or for a tidally restricted vessel, the proposed bridge would be lifted on request at any time.
- 5.8.129. By comparison, the existing bridge has a clearance of 2.16m above HAT and, during the Applicant's 175-day vessel survey, it was lifted 10 times during the period where passage of the existing bridge is discouraged. Moreover, the clearance between the fenders of the proposed bridge would be 32m, which would be greater than the clearance at the existing bridge. We consider that the effect of the proposed bridge on the accessibility of the western part of the inner harbour should be assessed in the context of the existing bridge, notwithstanding ABP's contrary view. This is because the existing bridge is part of the impact baseline and there is no evidence that it would be removed in the future.
- 5.8.130. ABP has suggested that the effect of climate change, which would be to reduce the air draft available under the proposed bridge, would exacerbate any harm caused. ABP suggests that sea level rises could be 0.58m over 60 years. We consider that any such changes would be of the longer term and gradual. We have not seen evidence to convince us that such changes would be significant in the context of other changes that could take place over a 60-year period, and this factor does not cause us to change our view on air draft. In conclusion, in respect of the effects of climate change on anticipated sea levels, we agree that such an incremental increase will arise. This will in turn may result in a potential

increase in the need for the opening of the bridge, thus delaying harbour traffic and reducing the congestion benefits the structure offers. However, these effects will be both modest and incremental and we accord them only limited weight in the planning balance against the Proposed Development.

- 5.8.131. ABP has drawn particular attention to the accommodation of CTVs within the port which represent a significant part of its current and projected operations. ABP suggests that 50% of the current CTVs have an air draft of less than 11.5m, which could pass under the proposed bridge at a spring tide. 35% lie between 11.5 and 14m, which would be passable at other states of the tide. A significant proportion of current CTVs would therefore be able to pass without a proposed bridge lift, and indeed more so if masts on CTVs could be lowered, which has been said to be possible for some CTVs.
- 5.8.132. Both parties have described the corralling of CTVs prior to the opening of the existing bridge. This, to us, shows that there is some flexibility in terms of access times for such vessels. The presence of the proposed bridge should therefore be seen as a factor that would need to be taken into account in the planning of CTV access in terms of the variation of its air draft over time and the availability of lifts.
- 5.8.133. As an example, ABP sees Shell Quay, in the western part of the inner harbour and upstream of the location of the proposed bridge, as an integral part of its future planned expansion of CTV berths. We have been told that CTVs usually leave the port at the start of the normal working day and return at the end of the day. For vessels from Shell Quay, the adjustment to their departure time, at a spring tide and for vessels with an air draft of more than 11.5m, would be 9min. This has to be seen in the context that:
- A spring tide is a specific high point in the tidal cycle which would need to specifically occur around departure time to represent such a restriction;
  - air drafts of less than 11.5m would not need a bridge lift; and
  - departure times would need to be planned to avoid the restrictions on passing the existing bridge in any event.
- 5.8.134. For a return trip at the end of the day, the adjustment, under the same circumstances, would be 11min. From all of the above, the proposed bridge would have a limited detrimental impact on CTV access. We are therefore of the view that the availability of air draft under the proposed bridge, at the limited times when it could not be lifted, would not be seriously detrimental to the operation of the port.

### **Future prospects for the port**

- 5.8.135. We accept the evidence put forward to show the importance of the port to the local and regional economy. In terms of growth within the port however, there is a difference between the parties as to the extent of such growth in the area of CTVs. ABP is of the view that 20 to



30 CTVs could use the port by the mid-2020s, leading to 50 by the mid-2030s. The Applicant however forecasts 36 by the mid-2030s.

- 5.8.136. The likely difference seems to us to be the proximity tests used, in other words, from which wind farm distance would the port attract CTV business. This is very difficult to judge, as such decisions would be based on many individual operator factors unknown to us. The figures could also vary over time. For example, the East Anglia array is to be smaller now than when assessed, and this could reduce CTV numbers by six. We have therefore considered the implications of each position in order to come to a view on their relationship with the serious detriment test.
- 5.8.137. Taking the Applicant's position of 36 CTVs, 26 of these would be likely to berth in the outer harbour, being the most easily accessible. This would leave 10 to be berthed in the inner harbour, and ABP has suggested that the second choice for berthing, albeit without the proposed bridge, would be Shell Quay, which would have 18 berths. Shell Quay would also be a focus for new development within the port as the proposed East of England Energy Park, and the new development is anticipated to take place from 2025 onwards.
- 5.8.138. This would mean that ten CTVs would have to pass the proposed bridge. Using current figures, five of these could pass at any time, three more at any time under certain states of the tide and two may require a bridge lift and have to adjust their arrival and departure by between 9 and 11min. Furthermore, by the 2030s, the proposed bridge would have been in operation for a number of years and would be an understood part of the infrastructure within the port.
- 5.8.139. Taking ABP's position of 50 CTVs, the outer harbour and Shell Quay could accommodate 44 berths, and therefore a further 6 would be required. Using Shell Quay as an example, each berth on the quay would occupy 19m on average. The further 6 berths would thus require 114m of quay. North Quay 1 and 2 have a length of 120m, into which these 6 berths would appear to be able to be accommodated. There is of course the length of North Quay 3 which could accommodate mooring lines.
- 5.8.140. This would mean that 18 CTVs would have to pass the proposed bridge. Using current figures, nine of these could pass at any time, five more at any time under certain states of the tide and four may require a bridge lift and have to adjust their arrival and departure by between 9 and 11min.
- 5.8.141. We consider 50 CTVs to be very much a worst case, as even current projections are reducing this figure by six. Moreover, the 62m berthing loss that we have previously identified would equate to some 4 berths, which is less than 10% of the ABP 50 CTVs position. With so many variables at play here, we cannot say that this loss is critical to the operation of the port.
- 5.8.142. Our view therefore is that the range of CTV berths required would be likely to lie between 36 and 50 berths. It is also our view that 50 berths

would be likely to be able to be accommodated following the completion of the Proposed Development as facilitated by the rdDCO.

- 5.8.143. We acknowledge that these assessments are theoretical. They are however based on the evidence provided to us during the Examination. It allows us to consider a potential scenario in the most realistic manner available to us. The future may be different, but it would be wrong to apportion a substantial degree of planning harm or otherwise on the basis of general statements made by either party.
- 5.8.144. The party's positions on berth utilisation rates have been formulated on very different bases, and direct comparisons are therefore difficult. We do however agree with the Applicant that dedicated berths should not be assessed as having a 100% occupation when considering the efficiency of the operation of the port. This is because these berths would be extremely unlikely to be occupied at a level of 100%, or on a one out one in basis. The use of 100% therefore hides the theoretical expansion opportunity for the dedicated user of these berths within the berths themselves. They should thus either be taken out of the assessment, or given a realistic occupancy rate.
- 5.8.145. It is also of note that the direct berth loss would be 62m out of an inner harbour berth length of 1,500m. Moreover, there is no evidence of specific characteristics of the berths that would be lost that are not available elsewhere in the inner harbour. We therefore favour the Applicant's position on this matter.
- 5.8.146. We accept that there would be a perception of disruption to the efficient operation of the port by the presence of the proposed bridge, but our view is that this would be limited. This is because the actual level of disruption would be seen quickly after completion of the bridge and before the anticipated off-shore business expansion in the late 2020s and 2030s. The presence of the bridge would also be unlikely to be a major deterrent in terms of new business due to the many other factors that would influence decisions on business location.
- 5.8.147. In view of all of the above therefore, we consider that the Proposed Development would result in material harm to the future operations of the statutory undertaking. However, this harm would be limited and therefore of moderate weight when considered in the planning balance.

### **Mitigation**

- 5.8.148. In anticipation of undertaking the planning balance, we must include consideration of the benefit of the Proposed Development to the operation of the port. Indeed, the SoST's s35 Direction identifies the importance of the port and recognises the key role that the Proposed Development could have on its growth. It is in the context of this direction that we have carried out our detailed Examination.
- 5.8.149. The port relies on its land-based connections. These are primarily highway connections, and indeed ABP has drawn attention to the grain HGVs arriving at the port at relatively short notice. We consider that the

Applicant's stated benefits, which include highways matters, are realistic and have been based on conservative assumptions and subject to sensitivity testing. We consider that the emergency berth mitigation, suggested by ABP, would be unjustified as previously explained. The risk of trapping would be minimal and not at a level that would represent serious material harm. The outer harbour replacement berthing mitigation would also be unjustified as, under ABPs CTV test, there would be sufficient space available in the port, as previously explained. This suggestion also implies that there are further expansion opportunities within the outer harbour that do not feature in our growth assessment, and this would reduce the effect of the proposed bridge in this regard still further.

- 5.8.150. ABP has also suggested the provision of an indemnity, covered by an insurance policy. The Protective Provisions in the rdDCO do however provide wide ranging protection to ABP including all liabilities from the operation of the proposed bridge and the need for ABP consent, which could be conditioned, before any occupation of port land.
- 5.8.151. A wider cover to include actions by third parties and losses to third parties would place the Applicant responsible for circumstances far from any degree of its control. As an example, if a vehicle left the public highway and damaged third-party property, it would be difficult to see how the Highway Authority could be responsible if it had carried out its duties satisfactorily. Here, a similar situation should exist in relation to the elevated highway, although losses incurred by ABP would be covered under the Protective Provisions in the rdDCO. Furthermore, we have not seen any evidence of other insurance policies to secure the cover provided by rdDCO Protective Provisions. We therefore cannot see any justification for additional indemnity or an insurance policy.

### **Conclusion**

- 5.8.152. We have considered the multiple elements of the Proposed Development that will impact of the port as a whole and on the ability of the SHA to properly carry out its statutory undertakings.
- 5.8.153. In so doing we have identified a number of deleterious impacts on the operation of the port and it follows these impacts should be apportioned weight against the Proposed Development when considered in the planning balance. We have concluded there would be a loss of berth space and land within the port area. We accept that the presence and operation of the proposed third crossing would have a materially harmful effect on the operation of the port and therefore the future of the statutory undertaking.
- 5.8.154. The assessment of these impacts is with the mitigation measures put in place by the Applicant and which will be secured through provisions in the rdDCO. They have however been assessed without reference to the benefit to the port of improved highway conditions in the local area. If this is taken into account, the quantum of harm would undoubtedly be reduced.

- 5.8.155. However, it is to be noted that the positions taken by ABP are, by its own evidence, worst case scenarios. The probability of the worst case occurring in each of the areas identified by ABP at the same time must however be less than that of a single worst case occurring in one of the areas identified. The holistic extent of the harm presented by ABP is therefore, in our view, much less likely to occur than where it to be consolidated in one specific and significant area. We conclude that this interpretation of probability corroborated the degree of harm we attribute to the identified effects.
- 5.8.156. We are clear that the Proposed Development would cause material harm to the operational port. However, the extent of this harm, when considered in the context of the port operation as a whole, may be characterised as no more than moderate.

## **6. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT**

### **6.1. INTRODUCTION**

- 6.1.1. This chapter of the Report sets out our analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State (SoS) for Transport, as the competent authority, in performing their duties under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the Habitats Directive) and Council Directive 79/409/EEC on the conservation of wild birds (2009/147/EC), as transposed in the UK through The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
- 6.1.2. Regulation 63 of the Habitats Regulations states that if a plan or project is likely to have a significant effect on a European Site designated under the Habitats Regulations<sup>20</sup> (either alone or in-combination with other plans or projects), then the competent authority must undertake an appropriate assessment (AA) of the implications for that site in view of its conservation objectives. Consent can only be granted if the AA concludes that the integrity of European sites would not be adversely affected, subject to Regulation 64 (considerations of overriding public interest).
- 6.1.3. Evidence has been sought throughout the Examination from the Applicant and the relevant Interested Parties (IP) through written questions and Issue Specific Hearings, with the aim of ensuring that the SoS has such information as may reasonably be required to carry out their duties as the competent authority.
- 6.1.4. The Panel prepared a Report on the Implications for European Sites (RIES) [[PD-014](#)] during the Examination, with support from the Planning Inspectorate's Environmental Services Team. The purpose of the RIES was to compile, document and signpost information provided in the application and submitted by the Applicant and IPs during the Examination (up to and including Deadline (D)9 of the Examination (26 April 2019)) in relation to potential effects on European sites. The RIES was published on the Planning Inspectorate's website on 3 May 2019 and IPs, including Natural England, were notified. Consultation on the RIES was undertaken between 3 May 2019 and 4 June 2019.
- 6.1.5. The RIES was issued to ensure that IPs, including Natural England as the statutory nature conservation body, had been consulted formally on Habitats Regulations matters. This process may be relied upon by the

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<sup>20</sup> Sites of Community Importance (SCIs), Special Areas of Conservation (SACs), candidate SACs, Special Protection Areas (SPAs); and under UK policy, potential SPAs and listed Ramsar sites.

SoS for the purposes of Regulation 63(3) of the Habitats Regulations. No comments on the RIES were received.

## **6.2. PROJECT LOCATION**

- 6.2.1. As described in Chapter 2 above, the Proposed Development comprises a new multi-span single carriageway opening bascule bridge highway crossing, which, via associated approach roads and new roundabout junctions connecting into the existing road network, would link the areas north and south of Lake Lothing, Lowestoft.
- 6.2.2. The Order Limits of the Proposed Development do not overlap with any European site. The nearest European site (the Outer Thames Estuary Special Protection Area (SPA)) is located approximately 1.3km to the east of the Order Limits, along the coast of Norfolk and Suffolk, and extends into the Southern North Sea.
- 6.2.3. The Applicant identified European sites within 30km of the application site boundary. The Alde-Ore Estuary SPA is located over 30km away, but this site was also included in the assessment at the request of Natural England (prior to the submission of the application) and the SoS (in its Environmental Impact Assessment Scoping Opinion [[APP-165](#)]). No other European sites or features were identified by Natural England or any other IP. The Applicant did not identify any potential impacts on European sites in any other EEA States.
- 6.2.4. Accordingly, the Applicant identified seven European sites for inclusion within the HRA, as follows:
- The Broads Special Area of Conservation (SAC).
  - Broadland SPA.
  - Broadland Ramsar.
  - Southern North Sea Site of Community Importance (SCI)/candidate SAC (cSAC).
  - Outer Thames Estuary SPA.
  - Benacre to Easton Bavents SPA.
  - Alde-Ore Estuary SPA.
- 6.2.5. The Panel is satisfied that the Applicant has correctly identified all the relevant European sites and qualifying features/interests for consideration within the HRA.

## **6.3. HRA IMPLICATIONS OF THE PROJECT**

- 6.3.1. The Proposed Development is not connected with or necessary to the management for nature conservation of any of the European sites considered within the Applicant's assessment.
- 6.3.2. The Applicant provided a Habitats Regulations Assessment report (HRAR) entitled 'Lake Lothing Third Crossing Habitats Regulations Assessment Report, June 2018' (application HRAR) [[APP-206](#)] with the DCO application, together with screening matrices. The application HRAR included an assessment of the effects of the Proposed Development on

the integrity of three of the European sites considered in the report but did not include integrity matrices.

- 6.3.3. In response to s51 advice [[PD-004](#)] issued by the Planning Inspectorate (the Inspectorate) following acceptance of the application on 9 August 2018 and in order to address other points (noted below) the Applicant submitted an updated HRA report, entitled 'Lake Lothing Third Crossing Updated Habitats Regulations Assessment Report, November 2018' (Updated HRAR) [[AS-003](#)], to the ExA on 20 November 2018, prior to the start of the Examination. The Updated HRAR replaced and superseded the application HRAR [[APP-206](#)].
- 6.3.4. The Updated HRAR contained an updated assessment of the predicted effects on the Outer Thames Estuary Special Protection Area (SPA) to correctly reflect an extension to the SPA which was formally designated in 2017 (the application HRAR treated the extension as a potential SPA (pSPA)); the inclusion of integrity matrices for the designated sites that were taken forward for further assessment; and minor additional edits.
- 6.3.5. The Applicant confirmed that both the Updated HRA and the application HRAR took into account the European Union Court of Justice (CJEU) People over Wind, Peter Sweetman v Coillte Teoranta judgement (C-323/17) issued on 12 April 2018. Mitigation has accordingly been considered at the integrity assessment stage, described in Section 8 of the application HRAR and the Updated HRAR, in respect of four of the seven European sites that were considered at screening stage.
- 6.3.6. It was stated in the Updated HRAR that the effect of the CJEU Holohan judgement (C-461/17), issued on 7 November 2018, regarding the potential need to consider impacts on other species than those for which a European site is designated and on protected species outside the protected area, was under consideration by the Applicant [[AS-003](#)]. The Applicant's response to Q2.64 of the ExA's First Written Questions (ExQ1) [[PD-007](#)] indicated that it would be considered further with Natural England in the updated Statement of Common Ground (SoCG) to be submitted at D4. No explicit reference was made in the D4 SoCG [[REP4-011](#)] or the D5 SoCG [[REP5-005](#)] to the Holohan judgement, however all matters were stated to be agreed between Natural England and the Applicant in the D5 SoCG.
- 6.3.7. In response to a number of questions that we raised on HRA matters as set out in in ExQ1 [[PD-007](#)] the Applicant revised the Updated HRAR and a subsequent and final version was submitted at D3 entitled 'Lake Lothing Third Crossing Updated Habitats Regulations Assessment Report Revision 2' (HRAR R2) [[REP3-038](#)]. The revisions included an integrity matrix for the Broadland Ramsar site, which had not previously been taken forward to the integrity assessment stage.
- 6.3.8. The HRAR R2 is the report which has been used to inform this chapter, and all subsequent references to the HRAR are to this version unless otherwise stated.

## **6.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)**

- 6.4.1. The Applicant described how they determined what would constitute a 'significant effect' within Section 3.3 of their HRAR R2. This followed EC guidance on habitats assessment (EC Guidance document: 'Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (2000)' and EC Guidance document: 'Assessment of plans and projects significantly affecting Natura 2000 sites (2001)').
- 6.4.2. The Applicant addressed potential in-combination effects within Section 6.11 of the HRAR R2. The Applicant considered the categories of development set out in Planning Inspectorate Advice Note 10 and the conclusions of Chapter 20 of the ES (Cumulative Effects) [[APP-136](#)] in addition to the results of engagement with Natural England. The scope of the in-combination assessment was not disputed by Natural England.
- 6.4.3. The following projects were included in the in-combination assessment carried out by the Applicant:
- Former Sanyo Site, School Road, Lowestoft (DC/15/2004/RG3);
  - Brooke Peninsula and Jeld Wen mixed use development (DC/13/3482/OUT);
  - Lowestoft Tidal Barrier;
  - East Anglia Array Windfarm (East Anglia ONE and East Anglia THREE);
  - Great Yarmouth Third River Crossing; and
  - Sizewell C nuclear power station.
- 6.4.4. The Applicant's screening assessment (HRAR R2 Section 6) [[REP3-038](#)] concluded that the Proposed Development would have no likely significant effect, either alone or in-combination with other projects or plans, on the qualifying features of the three European sites listed below:
- Broadland SPA.
  - Benacre to Easton Bavents SPA.
  - Alde-Ore Estuary SPA.
- 6.4.5. The screening assessment concluded that, in the absence of control measures during construction, operation and decommissioning, the Proposed Development is likely to give rise to significant effects, alone or in-combination with other projects or plans, on the qualifying features of the following European sites, as described in Sections 6 and 7 of the HRAR R2:
- The Broads SAC – otters.
  - Broadland Ramsar site – otters.
  - Southern North Sea SCI/cSAC - harbour porpoise.
  - Outer Thames Estuary SPA - wintering red-throated diver.
- 6.4.6. The Applicant considered that the significant effects to site features could arise from impacts to water quality. This included consequential displacement, as a result of polluted waters, of individual otters on passage outside The Broads SAC and the Broadland Ramsar site.



- 6.4.7. In relation to the Southern North Sea SCI/cSAC the conservation objectives include a need to ensure that, subject to natural change, the supporting habitats and processes relevant to harbour porpoises and their prey are maintained or restored in the long term. Equally, the conservation objectives for the Outer Thames Estuary SPA include a need to ensure that the site contributes to achieving the aims of the Wild Birds Directive by maintaining or restoring the structure and function of the habitats of the qualifying features and the supporting processes on which those habitats rely.
- 6.4.8. The Applicant's screening conclusions in relation to each of the seven European sites and their features considered in the assessment were not disputed by any IPs during the Examination. The Panel is satisfied that the screening conclusions are appropriate.
- 6.4.9. The assessment of potential effects in the HRAR R2 is presented in the form of screening and integrity matrices. Table 6-1 of the HRAR R2 summarises the effects considered within the screening matrices for each European site. These matrices are set out in Sections 6.4 to 6.10 of HRAR R2.
- 6.4.10. The Applicant stated within Section 3.4 of the HRAR R2 that discussions with NE were taking place, during the Examination, to ascertain whether NE considered that the HRA R2 had appropriately addressed all ecological resources relevant to the conservation objectives and integrity of the European sites [[REP3-038](#), para 3.4.2] concerned.
- 6.4.11. Natural England did not submit any representations during the Examination. It was reflected in the SoCG contained in Appendix 7 of the Applicant's first SoCG Report [[AS-007](#)] that Natural England agreed that the application HRAR [[APP-206](#)] adequately assessed the risk to European sites and agreed its conclusions. The SoCG indicated that all matters were agreed. The SoCG contained in Appendix 7 of the updated SoCG Report submitted at D4 (REP4-011) repeated Natural England's agreement to the approach and conclusions of the application HRAR [[APP-206](#)] but made no reference to the Updated HRAR [[AS-003](#)] submitted prior to D1. It indicated that the HRAR R2 [[REP3-038](#)] subsequently submitted for D3 was under discussion between the Applicant and Natural England. The SoCG contained in Appendix 7 of the updated SoCG Report (February 2019) [[REP5-005](#)] submitted at D5 referenced the HRAR R2 and confirmed that all HRA matters were agreed between the Applicant and Natural England.
- 6.4.12. The SoCG between Suffolk County Council/Waveney District Council and the Applicant contained in Appendix 3 of the first SoCG Report [[AS-007](#)] confirmed that it was agreed that the HRA has been appropriately undertaken and that the conclusions contained in the application HRAR [[APP-206](#)] were agreed. This statement remained in the two subsequent versions of the SoCG and no further statements were made in relation to either the updated HRAR or the HRAR R2.

- 6.4.13. In the Environment Agency's response [[REP3-015](#)] to ExQ1 [[PD-007](#)] they stated that they deferred to Natural England for HRA matters, and also that they considered that there were no overriding factors that suggested they should deviate from that position. HRA was not referenced in any of the versions of the Environment Agency's SoCG with the Applicant.
- 6.4.14. ExQ1 contained a number of questions in relation to HRA matters (Q2.2.48 to Q2.76), to which the Applicant responded in their 'Response to the Examining Authority's First Written Questions' [[REP3-029](#)] and by providing the HRAR R2 [[REP3-038](#)].
- 6.4.15. In Appendix A of their D3 submission [[REP3-014](#)] the Marine Management Organisation (MMO) responded to ExQ1 Q2.50 and Q2.76 about the potential impacts of the Proposed Development on the European sites identified by the Applicant, and their agreement to the approach and findings of the Updated HRAR [[AS-003](#)], respectively. In respect of Q2.50 they stated that they deferred to the opinion of Natural England in relation to impacts on European sites. In their response to Q2.76 they commented that no discussions had yet taken place with the Applicant about the Updated HRAR [[AS-003](#)] so no formal agreement had yet been reached.
- 6.4.16. In Appendix A of the MMO's D4 submission [[REP4-028](#)] the MMO set out a further response to ExQ1 Q2.76. They stated that they were seeking engagement with NE about the scope and content of the Updated HRAR [[AS-003](#)], and while they would expect the Applicant to identify all sensitive receptors associated with existing European sites and consider the likely impact pathways, they deferred to the opinion of Natural England in respect of the conclusions of the HRA. They commented that where mitigation measures were required to avoid or reduce any adverse effects on site integrity, the MMO would require such measures to be attached as Deemed Marine Licence (DML) conditions or included within an approved method statement.
- 6.4.17. In Section 11.1 of the 'Applicant's Responses to Written Representations and Interested Parties Responses to Written Questions' [[REP4-014](#)] the Applicant responded to the MMO's answer to ExQ1 Q2.76 and cross-referenced to the content of the SoCG agreed between the Applicant and the MMO [[REP4-011](#)]. It was agreed therein that the MMO would defer to NE's conclusions on the HRA, and that where mitigation was necessary to control the likely impact to interest features such measures should be captured as discrete conditions within the DML as necessary. Although no reference was made to it in the MMO SoCG in relation to HRA, Appendix A to the SoCG, 'Consideration of Disposal At Sea In The Application', notes that disposal at sea was assessed in the HRAR R2 [[REP3-038](#)]. The MMO stated within the SoCG that they broadly agreed with its content, which indicated that the potential impacts associated with disposal at sea were likely to be within acceptable limits.

## **6.5. CONSERVATION OBJECTIVES**

6.5.1. The conservation objectives for the seven European sites considered in the HRA were provided by the Applicant in Section 5.6 of the HRAR.

## **6.6. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEoI)**

6.6.1. Section 8.3 of the HRAR R2 summarised the potential effects on integrity considered for The Broads SAC, the Broadland Ramsar site, the Southern North Sea SCI/SAC and the Outer Thames Estuary SPA. The integrity matrices are provided in Sections 8.5 to 8.8 of the HRAR R2. The evidence notes to the integrity matrices describe the proposed mitigation and cross-reference to information contained in the ES and other application documents as appropriate, including the draft Development Consent Order (dDCO).

6.6.2. The HRAR R2 described that the principal aim of the proposed mitigation during construction is to avoid the contamination of Lake Lothing. It would comprise measures, designed in line with best practice Pollution Prevention Guidance, which would be agreed with the Environment Agency prior to commencement of construction activities. These would include the surface water drainage strategy, which would be designed to ensure that site drainage would be controlled, and no contaminated runoff would be allowed to enter the water, and the storage of all fuels, oils and chemicals on an impermeable bunded and secured base. The measures are contained in the Interim Code of Construction Practice (CoCP) (ES Appendix 5A Revision 2) [[REP4-017](#)], which forms the framework for the full CoCP that would be prepared by the Contractor, as secured by dDCO Requirement 4 [[REP5-003](#)].

6.6.3. The proposed operational mitigation measures comprise the pollution control measures incorporated into the design of the Proposed Development as part of the Drainage Strategy (ES Appendix 18B Revision 2) [[REP5-014](#)], secured by dDCO Requirement 6 [[REP5-003](#)]. It is confirmed within the HRAR R2 that the proposed mitigation follows the measures, and provides the recommended level of protection, contained in Highways England's Design Manual for Roads and Bridges (DMRB) and the Environment Agency's current advice on good practice, and is designed to protect all potential receptors, particularly Lake Lothing, from the effects of pollution from road runoff. It is concluded in the HRAR R2 that these measures would also provide appropriate protection against pollution arising from spillage of materials onto the road carriageway, such as, for example, as a result of road traffic incidents. The SoCG between the Applicant and the EA [[REP9-007](#)] records that the Environment Agency agreed that the proposed Drainage Strategy would not pose a risk to the water environment and is appropriate for the purposes of the Proposed Development.

6.6.4. It is stated in the HRAR R2 that in the event that the Proposed Development was decommissioned, the mitigation would be broadly the same as that proposed for the construction period, but would follow

standard good practice, including those measures recommended by the EA.

6.6.5. The Applicant concluded in the HRAR R2 that with the implementation of the proposed mitigation the Proposed Development would not adversely affect the integrity of the European sites and features listed below alone or in combination with any other plan or project:

- The Broads SAC – otter.
- Broadland Ramsar – otter.
- Southern North Sea SCI/cSAC - harbour porpoise.
- Outer Thames Estuary SPA - over-wintering red-throated diver.

6.6.6. The Applicant's conclusions in relation to the sites and features listed above were not disputed by any IPs.

## **6.7. HRA CONCLUSIONS**

6.7.1. Drawing from the information provided in the application, with reference to the HRAR R2 and the ES, and taking full account of the responses to relevant questions that we raised, we summarised our understanding of HRA matters in the RIES [[PD-014](#)]. Consultation on the RIES raised no new relevant or important issues or concerns.

6.7.2. The Panel advises the SoS that on the basis of the information before us we consider that the Proposed Development would have no adverse effect, either alone or in-combination with other plans or projects, on any European site. We have reached this conclusion having applied the precautionary principle and being of the view that there is no remaining reasonable scientific doubt.

6.7.3. We are also satisfied that sufficient information has been provided by the Applicant to enable the SoS to undertake an AA, should he consider it necessary, and discharge their obligations under the Habitats Regulations.

## **7. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT**

- 7.1.1. The designated National Policy Statement for National Networks (NPSNN) and the National Policy Statement for Ports (NPSP) both provide the primary basis for making decisions on development consent applications for national networks Nationally Significant Infrastructure Projects (NSIP) in England by the Secretary of State (SoS). Our conclusions on the case for development consent set out in the application before us are therefore reached within the context of the policies contained therein.

### **7.2. MATTERS IN FAVOUR OF THE DEVELOPMENT**

- 7.2.1. The proposed Lake Lothing Third Crossing (LLTC) will form an important component of the local road network and supplement the existing A12 - A47 route, part of the Strategic Road Network (SRN) and provides a connection to and from the SRN to the TEN-T. As part of this network, the vision and strategic objectives identified in the NPSNN apply to the proposal. The Proposed Development is therefore of the sort identified in the NPSNN that would provide additional capacity to help reduce traffic congestion, improve journey times and support social and economic activity in accordance with the Government's vision and strategic objectives.

- 7.2.2. The LLTC would meet the critical need identified in the NPSNN to address road congestion to provide safe, expeditious and resilient networks that better support social and economic activity; and contribute to a transport network that is capable of stimulating and supporting economic growth. The Proposed Development would provide the enhancement to this element of the SRN required to release an identified constraint to the economy and relieve the negative impacts on the quality of life which result from traffic congestion. The Proposed Development has had an aspirational aesthetic component to its design from the outset. In delivering an iconic new work of architectural engineering to the heart of the town, the Proposed Development also achieves a key aim of NPS policy.

7.2.3. We are satisfied that the Proposed Development would be in accordance with the strategic aims of the NPSNN. It would be an enhancement of the existing local and regional road network that would provide increased capacity in Lowestoft and the surrounding area for which there is an identified need. The social, economic and cultural benefits of such provision are clearly identified in the NPSNN. Indeed, Paragraph 4.3.5 of the NPSP makes very clear that the decision-maker should give substantial weight to the positive impacts associated with economic development, in line with the policy set out in the NPS.

- 7.2.4. The compelling need for the development of the SRN, reflected in the reasons set out by the SoS in the section 35 Direction in relation to the SRN and TEN-T, to which the LLTC would specifically contribute, falls to

be considered against the generic impacts of the Proposed Development in the terms set out in the NPSNN.

- 7.2.5. For all the foregoing reasons we also conclude the Proposed Development would accord with the relevant policies of the NPSP (thus also satisfying its aims) insofar as they would demonstrably support greater access to the port and its existing and indeed future commercial activities by means of the improved national network and encourage and stimulate commercial activity in its vicinity.
- 7.2.6. The purposes of the project, pursuant to NPSNN and NPSP policies are clearly set out and evidenced in the Applicant's case for the proposals. These aims and objective, of improving the national, regional and local road network in support of economic growth, have wide support. Such support includes the host and adjacent local planning authorities as set out in their LIRs and wider community support is also evidenced in the Applicant's submitted documents [[APP-091](#)]. Indeed, whilst objections from IPs in respect of Compulsory Acquisition remain (see below in Chapter 8), the benefits of a third crossing of the harbour, or the evidence presented to support the case, are not challenged in principle, its precise location and its local effects being the outstanding issue.

### **7.3. THE IMPACTS OF THE PROPOSED DEVELOPMENT**

- 7.3.1. The topics in this section are addressed in more detail in the relevant sections of Chapter 5.

#### **Noise, air quality, flood risk, biodiversity, water quality and the historic environment**

- 7.3.2. These matters were either raised by IPs through representations during examination or by the ExA in written questions. As outlined in Chapter 5, these have all been satisfactorily addressed by the Applicant, principally through the Interim Code of Construction Practice, with the final document remaining capable of further refinement to address any minor outstanding matters. In respect of the historic environment, biodiversity, flood risk and water quality, no outstanding objections remain, and we are satisfied that the Applicant has fully met the policy expectations of both the NPSNN and NPSP. Where objections are sustained, for example in relation to noise and air quality, we conclude the mitigation proposed and limited substantive of the objections characterise these matters as non-material effects which do not weigh against the making of the Order.

#### **Traffic and transport**

- 7.3.3. Local impacts on the highway network have been identified in the Proposed Development as submitted and as modified during the examination. All the specifically identified issues have been addressed and mitigated through the provisions of the Environmental Statement and the draft Development Consent Order (dDCO). These identified improvements, modified and mitigated, may also be afforded moderate weight in favour of the Proposed Development.

## **Impact on the operation of the port and its navigation**

- 7.3.4. We have agreed that the loss of berth spaces within the port and the economic harm associated with the land and rights loss resulting from the Proposed Development would materially harm the operation of the port. More critically we also agree that the presence and operation of the bridge would have a materially harmful effect on the carrying out of that operation and that both adversely affect the future of the Statutory Harbour Authority's (SHA) statutory operation.

## **Recreational navigation matters**

- 7.3.5. The specific concerns of Interested Parties (IP) in respect of recreational navigation matters cover, consultation and representation, waiting pontoon provision and the closure of the western harbour during the construction process. The Applicant has sought to address these both in specific Articles in the dDCO and the key management tools of the draft Scheme of Operation and the draft Navigational Risk Assessment. These provisions are accepted by the IPs in closing submissions [[REP11-022](#)]. Accordingly these matters may be considered neutral in the planning balance.

## **7.4. THE PLANNING BALANCE**

- 7.4.1. With regard to the effect of the Proposed Development, both during the construction period and operation, we have taken note of the concerns of IPs in relation to the impact noise, air and water quality, historic environment, flood risk, biodiversity and recreational navigation. We conclude these have either been effectively neutralised through the provisions of the recommended dDCO or are capable of being effectively mitigated through the provisions of the same. We conclude therefore that these matters may be judged as neutral in the planning balance.
- 7.4.2. We have been clear that the Proposed Development would cause harm to the carrying out the SHA's statutory undertaking. The loss of berth space, economic harm and the presence and operation of the proposed new bridge have each, in the context of their effect on the operation of the port as a whole, been apportioned a moderate measure of weight as factors to be considered against the Proposed Development. Even when taken together however, again in the context of the operation of the port as a whole, the totality of the harm identified in respect of the operation of the port amounts to no more than a moderate measure of weight against the proposals.
- 7.4.3. With regard to the operation of the proposed crossing, the additional capacity provided by the Proposed Development would mean that this component of the SRN and TEN-T, the local and regional network overall, and thereby the community of Lowestoft and its hinterland beyond would be likely to benefit significantly from the implementation of the Proposed Development. These benefits include the increased efficiency and functionality of the network, enhanced social cohesion, greater opportunities for non-car-based transport modes and significant stimulus

to the local economy. In achieving these outcomes the proposals ensure compliance with the central objectives of both the NPSNN and the NPSP and justify the reasons set out by the SoS in the section 35 Direction. As such they merit very significant weight in favour of the Proposed Development.

- 7.4.4. Moreover, in respect of the effect of the Proposed Development in relation to the Habitats Regulations Assessment we are able to advise the SoS that that the Proposed Development would have no adverse effect, either alone or in-combination with other plans or projects, on any European site. We have reached this conclusion having applied the precautionary principle and being of the view that there is no remaining reasonable scientific doubt. We are also satisfied that sufficient information has been provided by the Applicant to enable the SoS to undertake an appropriate assessment, should they consider it necessary, and discharge their obligations under the Habitats Regulations.
- 7.4.5. Drawing all these planning considerations together therefore, we conclude that whilst we acknowledge a modest measure of harm to the operation of the port, this is clearly and demonstrably outweighed by the significant benefits the Proposed Development would bring. Such a conclusion serves to justify our recommendation to the SoS that the Order be granted.



## **8. COMPULSORY ACQUISITION AND RELATED MATTERS**

### **8.1. INTRODUCTION**

8.1.1. This chapter of the report describes the request by the Applicant for Compulsory Acquisition (CA) and Temporary Possession (TP) powers, explains the purposes for which land would be required, sets out the legislative requirements, describes the examination of the CA and TP case and gives our conclusions and recommendations.

### **8.2. THE REQUEST FOR COMPULSORY ACQUISITION AND TEMPORARY POSSESSION POWERS**

8.2.1. The application for the Development Consent Order (DCO) seeks powers for CA within the Order land and rights over, under and above areas of the Order land for the construction, operation and maintenance of the Proposed Development. The application also seeks powers for the TP of areas of the Order land for construction purposes and to allow the Applicant to extinguish and impose restrictions on private rights within the Order land.

8.2.2. The Order limits of the recommended draft DCO (rdDCO) establish the extent of the land affected by the CA and TP powers sought. The land permanently required for the Proposed Development comprises:

- Land at ground level, which may include the subsoil below and the airspace above;
- airspace above the ground; and
- subsoil, which may include the land beneath the bed of the lake.

8.2.3. The rdDCO also seeks powers to acquire rights over land, subsoil and/or airspace. This includes the right to impose restrictive covenants for the protection of the Proposed Development.

8.2.4. The nature of the Proposed Development is such that some elements of it, such as the roundabout junctions and highway improvements on the northern and southern banks of Lake Lothing, would require the acquisition of surface land. Other elements, such as the bridge piers and bridge deck, would require the acquisition of, and the acquisition of rights over, subsoil and airspace respectively, in addition to surface land.

8.2.5. A full description of the extent and existing nature of the land required by the Applicant for the construction, operation and maintenance of the Proposed Development is set out within the Environmental Statement (ES) [[APP-136](#), chapters 5 and 15].

- 8.2.6. At the commencement of the Examination, the application was accompanied by:
- A Statement of Reasons (SoR) [[APP-007](#)];
  - a Funding Statement [[APP-008](#)];
  - a Book of Reference (BoR) [[APP-009](#)];
  - a Negotiation Tracker [[APP-010](#)];
  - Land Plans, Key and Sheets 1 to 5 [[APP-016 to APP-021](#)];
  - Crown Land Plan [[APP-051.2](#)]; and
  - Rights of Way and Access, and Rights of Navigation Plans [[APP-025](#), [APP-026](#), [APP-027](#) and [APP-051.8](#)].
- 8.2.7. The Funding Statement and Crown Land Plan were not updated during the Examination, and these are not secured in the rdDCO. The Key Plan and Sheets 1 and 2 of the Land Plans were also not updated during the Examination, and these are secured in the rdDCO.
- 8.2.8. The following documents and plans accompanying the application have been revised during the course of the Examination, and the latest versions are:
- The SoR [[REP10-009](#)];
  - the BoR [[REP10-067](#)];
  - the Negotiation Tracker [[REP10-073](#)];
  - Land Plans, Sheets 3, 4 and 5 [[REP10-016](#), [REP10-017](#) and [REP10-018](#)]; and
  - Rights of Way and Access, and Rights of Navigation Plans [[REP10-021](#), [REP10-022](#), [REP10-023](#) and [REP10-047](#)]
- 8.2.9. The BoR, Sheets 3, 4 and 5 of the Land Plans and the Rights of Way and Access Plans are secured in the rdDCO. In addition to these updated documents and plans, a BoR Schedule of Changes [[REP10-069](#)] was submitted towards the end of the Examination.
- 8.2.10. The details of the powers sought in order to implement the required CA, including interference with third party rights, together with the TP of land and other compulsory powers sought are set out in Parts 3, 4 and 5 of the rdDCO. Article 22 authorises the CA of the Order land, as described in the BoR, where such land is required for the Authorised Development. Article 23 allows the CA of third party interests in Crown land, where the interests are identified in the BoR and Crown consent for the CA has been obtained.
- 8.2.11. Article 26 allows for rights over land to be acquired as well as (or instead of) the land itself, and also for new rights to be created over land. Article 27 allows the undertaker to CA land and/or new rights below the surface or in the airspace, as required for the proposed bridge and its protection from subsequent development and other conflicting events. This would be instead of acquiring all the land up to and including the surface and airspace.
- 8.2.12. Article 28 applies to extinguish private rights generally and not just rights of way. This would enable the undertaker to take land with a clear and

unencumbered title, thereby minimising impediments to the delivery of the Proposed Development. It also provides for the extinguishment of private rights over such parts of the Order land as are already owned by the undertaker, when any activity authorised by the Order interferes with those rights. Article 30 allows the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it.

- 8.2.13. Article 57 prevents entry, interference or use of Crown land under the rdDCO without the consent of the Crown Estate Commissioners or the relevant government department.
- 8.2.14. The powers sought in relation to the TP of land do not constitute CA and are provided for in separate articles in the rdDCO, albeit within the powers of acquisition section. Article 33 allows the land set out in Schedule 9 to be occupied and used temporarily while the works are carried out. This is land which is required during construction of the authorised development but not required permanently. Article 33 also allows for the temporary occupation of any of the land intended for permanent acquisition, or for the acquisition of new rights, but which has not yet been acquired.
- 8.2.15. Article 34 provides that the undertaker may take TP of land within the Order limits required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose.
- 8.2.16. The SoR sets out in more detail the above rdDCO articles together with those that relate to other compulsory powers sought [[REP10-009](#), Section 4]. The SoR also describes the land over which all these powers are sought [[REP10-009](#), Appendix A].

### **8.3. THE PURPOSES FOR WHICH LAND IS REQUIRED**

- 8.3.1. The SoR indicates that the Applicant's purpose for seeking CA is to secure the rights required to construct, operate and maintain the Proposed Development [[REP10-009](#)]. The powers sought relate to the CA of interests in land and rights over land together with the TP of land. The BoR sets out in detail four classes under which rights may be acquired permanently or land possessed temporarily [[REP10-067](#)]. These are identified by the colour of the plot on the Land Plans and by the wording used in the BoR plot description. They are as follows:

- Pink – “*All interests and rights in...*” - The CA of all interests and rights in land (including as required, subsoil, surface land or airspace) under A22.
- Blue - “*Acquisition of rights over...*” - The creation and CA of new rights (including, where necessary, a right to impose restrictive covenants to protect the new bridge structure) under A26.
- Hatched pink and blue - “*Acquisition of airspace above and acquisition of rights over...*” – The CA of airspace together with the creation and CA of new rights (including, where necessary, a right to impose

restrictive covenants to protect the new bridge structure) below that airspace under A26.

- Green - "*Temporary possession and use of...*" The TP and use of land under A33.

8.3.2. The SoR describes the proposals for the use and development of the land and the purposes for which the powers are sought in [[REP10-009](#), Sections 2 and 11]. The SoR also lists the plots within the Order Land and gives details of the purpose for which CA and TP powers are sought for each plot [[REP10-009](#), Appendix A].

### **Crown land**

8.3.3. The SoR explains that part of the land which is required for the Proposed Development comes within the definition of Crown land under the Planning Act 2008 (PA2008) and identifies the relevant plots [[REP10-009](#), Section 8.2]. The Applicant's request for Crown land consent has been passed to the Secretary of State for Transport (SoST) as the relevant government department. Matters relating to this request are addressed later in this chapter.

### **Statutory Undertakers**

8.3.4. If a Statutory Undertaker (SU) has made a representation about the CA of land or right over land which has been acquired for the purpose of their undertaking, and this is not withdrawn, s127 of PA2008 applies. In these circumstances, the DCO can only include a provision authorising the CA of that land or right if the SoS is satisfied that the land or right can be purchased without serious detriment to the carrying on of the undertaking, or that any such detriment can be made good by use of alternative land. Section 138 applies where a SU has a relevant right or relevant apparatus in land over which CA is sought. In those circumstances, the DCO can only authorise the extinguishment of the right or removal of the apparatus if the SoS is satisfied that this is necessary for the purpose of carrying out the development to which the Order relates.

8.3.5. In terms of SUs, land interests of Associated British Ports (ABP), Network Rail Infrastructure Limited (NRIL), Anglian Water Services Limited (AW), the Homes and Communities Agency (HCA), Northumbrian Water Limited (NWL) and The Royal Mail Group Limited are sought by the rdDCO [[REP10-009](#), Section 6]. Relevant Representations (RRs) have been made by ABP, NRIL and The Royal Mail Group Limited which have not been withdrawn [[RR-022](#), [RR-021](#) and [RR-034](#)], and s127 of PA2008 is therefore engaged in respect of these SUs. The representations made by NWL and AW [[RR-017](#) and [RR-013](#)], and their further representations, were withdrawn towards the end of the Examination [[AS-026](#) and [AS-024](#)]. No representations were received from the HCA. It did however communicate with the Applicant in respect of a change to the application, which included the seeking of further land from the HCA, which is dealt with elsewhere in this chapter. The communication with the Applicant did not suggest any objection to the change or land interests sought.

8.3.6. The Applicant has made representations regarding s138 of PA2008 in respect of the following SUs and communications code network operators [[REP10-009](#), Appendix B]:

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

8.3.7. RRs in relation to s138, together with further representations in some cases, were submitted by ABP, NRIL and the Royal Mail Group Limited [[RR-022](#), [RR-021](#) and [RR-034](#)]. Anglian Water, Cadent Gas Limited and NWL also submitted RRs [[RR-013](#), [RR-014](#) and [RR-017](#)] which were subsequently withdrawn [[AS-024](#), [AS-023](#) and [AS-026](#)]. No representations were received from the other SUs identified by the Applicant in respect of s138 of the PA2008. The Applicant has considered the utility diversions required to allow the Proposed Development to take place in the SoR, and considers that they are a necessary aspect of the dDCO [[REP10-009](#), Sections 6.7 and 6.8]

## **8.4. LEGISLATIVE REQUIREMENTS**

8.4.1. CA powers can only be granted if the conditions set out in s122 and s123 of PA2008 are met.

8.4.2. Section 122(2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate<sup>21</sup>. A conclusion on this matter is reached later in this chapter.

8.4.3. Section 122(3) requires that there must be a compelling case in the public interest, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land would be affected. In balancing public interest against private loss, CA must be justified in its own right. This does not mean however that the CA proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the

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<sup>21</sup> Guidance on Compulsory Purchase and the Crichel Down Rules (DCLG, 2015)

project to be carried out and there must be consistency and coherency in the decision-making process. A conclusion on this matter is reached later in this report.

- 8.4.4. Section 123 requires that one of three conditions must be met by the proposal<sup>22</sup>. The ExA is satisfied that the condition in s123(2) is met because the application for the DCO includes a request for CA of the land to be authorised.
- 8.4.5. Several general considerations also have to be addressed, either as a result of following applicable guidance or in accordance with legal duties on decision-makers. These are that:
- All reasonable alternatives to CA must be explored;
  - the Applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available; and
  - the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.
- 8.4.6. Details of the changes made to the CA powers sought by the Applicant were tracked prior to and during the Examination process. This was done in Schedules of Changes [[REP4-005](#) and [REP10-069](#)] and track changed versions of the BoR. All these changes were incorporated in the main body of the final Examination BoR submitted at Deadline (DL) 10 [[REP10-067](#)].

## **8.5. EXAMINATION OF THE COMPULSORY ACQUISITION AND TEMPORARY POSSESSION CASE**

- 8.5.1. The ExA raised First Written Questions (ExQ1) [[PD-007](#)] in relation to CA, TP and other land or rights considerations. The questions covered a range of issues to the Applicant, Affected Persons (APs) and Interested Parties (IPs). The Applicant was also requested to reconcile a CA Objections Schedule provided by the ExA with an updated version of the Negotiation Tracker [[APP-010](#)] provided with the application.
- 8.5.2. The Applicant provided responses to these questions at DL3 [[REP3-029](#)]. These responses included the updated Negotiation Tracker [[REP3-034](#)], which was subsequently updated as the Examination progressed. Responses were also provided from APs and IPs at DL2. These responses are examined in more detail when the cases of those who responded are considered later in this chapter.

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<sup>22</sup> (1) An order granting development consent may include provision authorising the CA of land only if the SoS is satisfied that one of the conditions in subsections (2) to (4) is met. (2) The condition is that the application for the order included a request for CA of the land to be authorised. (3) The condition is that all persons with an interest in the land consent to the inclusion of the provision. (4) The condition is that the prescribed procedure has been followed in relation to the land



- 8.5.3. In the light of the responses to ExQ1, other written submissions and matters raised at Hearings, the ExA asked a number of Second Written Questions (ExQ2) [[PD-012](#)]. These questions included requests for explanations of various matters within the submitted written representations (WRs) and other submissions. The Applicant provided responses to ExQ2 at DL8 [[REP8-004](#)]. APs and IPs also responded, as identified later in this chapter.
- 8.5.4. Two Compulsory Acquisition Hearings (CAHs) were held at the Ivy House Hotel, Ivy Lane, Oulton Broad, Lowestoft on 13 February and 14 May 2019. The first CAH was adjourned at 5.20pm on 13 February and resumed at 11am on 8 March 2019. At the CAHs, representations were made by a number of APs.
- 8.5.5. At the CAHs, the ExA pursued a number of matters with the Applicant and APs as set out on the agendas [[EV-007](#) and [EV-020](#)]. Written summaries of the oral cases presented at the CAHs were submitted by the Applicant at DL5, DL7, and DL10 [[REP5-010](#), [REP7-005](#) and [REP10-080](#)]. The Applicant also provided an updated Negotiation Tracker at DL3, DL5, DL8, DL9 and DL10 [[REP3-034](#), [REP5-008](#), [REP8-003](#), [REP9-006](#) and [REP10-073](#)]. The ExA also pursued a number of other matters with APs, some of whom also submitted oral case summaries, and these are addressed later in this chapter.

## **APPLICANT'S GENERAL CASE**

### **Introduction**

- 8.5.6. The Applicant's case for the grant of CA powers is set out in the final Examination SoR [[REP10-009](#)] together with the Funding Statement [[APP-008](#)] and the final Examination BoR [[REP10-067](#)].
- 8.5.7. The SoR explains that it forms part of a suite of documents accompanying the application and should be read alongside those documents [[REP10-009](#)]. These include:
- The final Examination Land Plans [[APP-016 to APP-018](#) and [REP10-016 to APP-018](#)];
  - the final Examination BoR [[REP10-067](#)];
  - the Funding Statement [[APP-008](#)]; and
  - the consideration of need and alternatives in the Case for the Scheme [[APP-091](#), Sections 4 and 5].
- 8.5.8. Additional information in relation to Crown land and SUs' land was submitted in response to the ExA's questions and in further representations submitted by the Applicant as previously described.

## **The requirement for the Compulsory Acquisition of the Order land (Section 122(2) and (3))**

- 8.5.9. The Applicant explains that the Proposed Development comprises the construction of a new multi-span lifting bridge to provide a new highway crossing of Lake Lothing in Lowestoft. This would connect Riverside Road to the south of the lake with Peto Way to the north of the lake. It would include associated connections into the existing highway network and the provision of new local access roads in the vicinity. The Proposed Development is needed to complete the connection of the regional highway network between the north and south of the town. This would effectively bypass the older parts of the town and would solve various issues of congestion and severance within the town.
- 8.5.10. Lake Lothing, as it is called, is effectively an estuarial waterway connection between the Norfolk Broads and the North Sea. It is wide and protected from the North Sea by a narrow bascule bridged entrance. It has historically been, and is currently, used as an inner harbour area for the port of Lowestoft with quays to its north and south sides. Quays to the north side are generally in the ownership of ABP, and those to the south are in a variety of ownerships.
- 8.5.11. The powers sought for the purposes of the Proposed Development are to:
- Acquire land compulsorily;
  - create and acquire compulsorily new rights over land;
  - extinguish or override existing rights over land; and
  - possess and use land temporarily.
- 8.5.12. The Applicant explains, in the SoR, its proposals for the use of the CA and TP land, the scope of the powers required for the Proposed Development and purpose for which the powers are sought [[REP10-009](#), Sections 2, 4 and 11]. The Applicant asserts that all of the CA and TP land, shown on the Land Plans and described in the BoR, is required either for the purposes of the project, to facilitate it or for purposes incidental thereto.

### **General justification for the extent of the Order land**

- 8.5.13. The Applicant requires powers to acquire land and new rights, as set out in the final BoR and on the final Land Plans. Changes to these documents were required because, during the Examination, the Applicant requested various, what it termed, non-material changes (NMCs) to the application [[REP4-013](#)]. The ExA accepted these changes into the Examination [[PD-015](#)].
- 8.5.14. NMC1 includes the additional permanent CA of a small area of land for a new turning head on Canning Road. Within the application, this land was included within the Order limits as land on which new rights were sought. The Applicant contacted all those with an interest in the additional land and the parties involved have provided written confirmation of their



consent to the inclusion in the application of the additional land [[REP7-003](#) and [REP9-001](#)].

- 8.5.15. The Applicant considers that, at this stage, all the land included in the Order land is necessary to enable the delivery of the Proposed Development. However, parts of the Order land may not eventually be required. This could be 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 such cases, CA powers would not be exercised in respect of that land because such exercise would not be necessary or justified.

### **Alternatives to Compulsory Acquisition**

- 8.5.16. The Applicant explains that, order to operate and maintain the Proposed Development, land and rights in the ownership of parties other than the Applicant would need to be acquired [[REP10-009](#), Section 12.4]. Any practicable alternative location for the Proposed Development would similarly require the acquisition and/or use of third party land. Acquisition in relation to third party land therefore cannot be avoided. The Applicant has also sought to use powers of TP rather than CA of rights as a more proportionate measure where the permanent acquisition of rights would not be required.
- 8.5.17. The Applicant has made progress in acquiring some interests in land and will continue to seek to acquire all the interests it needs by voluntary agreement, subject to the dDCO being made [[REP10-073](#)]. It has undergone extensive consultation with all persons with an interest in the relevant land in order to try to avoid the need for CA in accordance with the CA Guidance (DCLG, 2015)<sup>23</sup> [[APP-052](#)].
- 8.5.18. Notwithstanding completing voluntary agreements, the Applicant still seeks to compulsorily acquire land and rights through the dDCO. This is because the CA powers would enable it to deliver its statutory and contractual duties without potential delay, if for any reason the voluntary acquisition of land or rights is ultimately unsuccessful. The Applicant considers that, without the powers of acquisition being compulsory, the urgent national need for the Proposed Development could not be met. This is because the land and rights required within the Order land might not be assembled, uncertainty could then exist as to construction and the Applicant's objectives may not be achieved.

### **Alternatives to the Proposed Development**

- 8.5.19. 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. This considered a broad range of crossing options, and these options are set out in the Case for the Scheme,

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<sup>23</sup> Guidance on Compulsory Purchase and the Criche Down Rules (DCLG, 2015)

ES and Design Report [[APP-091](#) Section 5, [APP-136](#) Chapter 3 and [APP-123](#) Section 7.2].

8.5.20. In outline, they included:

- Various bridge types (floating and fixed span with lifting or opening options) and tunnels;
- eastern, central and western locations within the lake; and
- non-crossing alternatives such as junction improvements and smarter choices such as reducing reliance on private car travel, encouraging modal shift and road-pricing options.

8.5.21. In addition to the options assessment, a detailed assessment process was undertaken to identify the land and rights needed to deliver the Proposed Development. A range of engineering and design alternatives were considered, in the context of the constraints affecting those alternatives. Engagement with landowners and occupiers was ongoing and influenced the selection process, and a synopsis of that engagement is included in the CA Negotiations Tracker [[REP10-073](#)].

8.5.22. From 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. The Applicant has made efforts to acquire the necessary land through negotiated private treaty and agreement. It has however accepted that the application for development consent needed to include a request for the authorisation of CA powers. This is to ensure delivery, within a reasonable timescale, of the Proposed Development and of the public benefits which would flow from it.

8.5.23. In terms of land-take, the need for a reasonable degree of flexibility for implementation was taken into account by the Applicant, along with the need to reduce the amount of land required as far as possible. This was in order to minimise its impact on surrounding land uses. The Order limits have therefore been drawn as tightly as possible 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.

8.5.24. The Applicant adds that, order to build further consideration of CA alternatives into the implementation process, the dDCO includes terms which would enable it to exercise a lesser power. This would be where such lesser power, such as the acquisition of rights or TP, was deemed sufficient.

### **Availability and adequacy of funds**

8.5.25. The Applicant's current cost estimate for the Proposed Development is £91.7 million [[APP-008](#) and [APP-107](#)]. This cost estimate includes construction costs, preparation costs since 2015/16, supervision costs and land acquisition costs. This is an estimate of the anticipated outturn cost and therefore includes an allowance for inflation. The capital costs

would be jointly funded by the Department for Transport (DfT) and the Applicant.

- 8.5.26. The Applicant has been awarded £75.39m provisional funding from DfT through The Local Growth Fund. The final grant is subject to the satisfactory completion of all remaining statutory processes and the approval of a Full Business Case (FBC). Suffolk County Council's (SCC's) cabinet has agreed to underwrite the shortfall of £18.3m, which comprises the additional £16.3m required to meet the estimated scheme cost of £91.7m and a further £2m funding towards outline business case costs.
- 8.5.27. £10m of the £18.3m has been earmarked from SCC's capital programme, with the remaining £8.3m anticipated to come from local contributions [[APP-008](#), Appendix B]. This is on the basis that the Applicant and the New Anglia Local Enterprise Partnership have committed to funding 20% of the total cost of the Proposed Development [[APP-107](#), Appendix M]. If such monies cannot be drawn down from other sources, SCC would seek to borrow the monies or draw on its reserves if required to do so.
- 8.5.28. The Applicant adds that, in June 2018, SCC's cabinet acknowledged that a recent cost projection suggested that there is an upward pressure of up to £8m on the original estimate for property costs [[APP-008](#), Appendix C]. It agreed that further funding of £8m would be made available if it is needed, but deferred any final decision on any additional funding until Autumn 2019. By this time, the Applicant expected to have awarded a Stage 2 construction contract and be able to make a more accurate cost projection, as part of its final business case to be submitted to the DfT.
- 8.5.29. This further £8m is included in SCC's capital budget, as is the underwriting of the £8.3m local contribution [[REP4-014](#), Appendix E]. The estimate for property costs includes an allowance for material detriment claims. This is formulated on the basis of quantified risk and material detriment ordinarily falling within the standard heads of claim applied for CA.
- 8.5.30. Further detail of the Applicant's position is included within the Applicant's Written Summaries of Oral Submissions at the first CAH [[REP5-010](#), pages 40 to 41 and Appendices 1 and 2]. The Applicant therefore considers that it has evidenced that it has access to sufficient funds to implement the Proposed Development. Furthermore, it has made appropriate allowances for liabilities associated with claims under the compensation code.

### **Whether there is a compelling case in the public interest for Compulsory Acquisition (Section 122(3))**

- 8.5.31. The Applicant considers that there is a real need for the Proposed Development to be delivered [[APP-091](#), Sections 4 and 5] and that it is in the public interest for it to be delivered. In terms of public interest, a number of public benefits would arise from the Proposed Development.

These public benefits are closely aligned to the objectives of the Proposed Development [[APP-091](#), Section 4.8 and [APP-107](#)] and to the reasons for which the SoST granted a s35 Direction [[APP-092](#), Appendix B].

8.5.32. In parallel with considering the public benefits to which the Proposed Development would give rise, the Applicant has also considered the private loss that those affected by powers of CA would or might suffer, in terms of:

- The loss of land through CA;
- the extinguishment of rights through CA;
- potential restrictions through restrictive covenants; and
- the loss of land through temporary (though possibly long-term) possession.

8.5.33. The Applicant considers that such private losses may be fairly compensated through the payment of statutory compensation under the Compensation Code. Section 125 of PA2008 applies the Compulsory Purchase Act 1965 to the dDCO, which makes provision for the payment of such compensation. The Applicant is therefore of the view that the public benefits would outweigh the private losses, and that there is a compelling case in the public interest which would justify the use of CA to deliver the Proposed Development in a timely manner.

8.5.34. In light of all of the above, the Applicant considers that there is a compelling case in the public interest for the construction, operation and maintenance of the Proposed Development, which would justify the CA of land identified in the dDCO and that, as a result, the condition in s122(3) is met.

## **Human Rights**

8.5.35. The Applicant advises that the Human Rights Act 1998 incorporated the European Convention on Human Rights (ECHR) into domestic law. 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 Proposed Development [[REP10-009](#)]. 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 its CA powers; and
- any interference with a Convention right is proportionate to the legitimate aim served.

8.5.36. In compliance with Article 6 of the ECHR, the DCO process is lawful and provides opportunities for the public to make representations. In determining whether interference with ECHR (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 private rights.

8.5.37. In striking to seek that balance, the Applicant has had regard to:

- The need for the Proposed Development and the public benefits it would bring [[APP-091](#) and [REP10-009](#), Section 2]; and
- the nature of any interference with private rights [[REP10-009](#), Section 12].

8.5.38. The Applicant does not consider that any single affected interest is of such importance as to outweigh the important public benefits which the Proposed Development is forecast to deliver [[REP10-009](#), Section 10.2]. Furthermore, the Applicant does not consider that the cumulative private loss would be of such magnitude or severity as to outweigh the importance of the public benefits which have been identified.

8.5.39. For these reasons, the Applicant considers that the inclusion of powers of CA would not breach the Convention rights of those who are affected.

### **Equality Act 2010**

8.5.40. The Applicant has carried out a screening assessment to ascertain whether a full equalities impact assessment was required to discharge its duties under the Equality Act 2010 [[APP-209](#) and [REP10-009](#), Section 10.3]. SCC has confirmed that the assessment was sufficient to demonstrate that the potential impacts of the Proposed Development on the protected characteristics had been considered. It has also confirmed that there was no evidence of the need for a full assessment.

### **Applicant's conclusion on the general case for the grant of Compulsory Acquisition powers and related matters**

8.5.41. For the above reasons, the Applicant considers that the inclusion of powers of CA and related matters within the dDCO, as set out in the BoR [[REP10-067](#)] and shown on the Land Plans [[APP-016 to APP-018](#) and [REP10-016 to REP-018](#)], is justified.

### **APPLICANT'S CASE IN RELATION TO CROWN LAND (SECTION 135)**

8.5.42. The Applicant advises that the Order limits include an area of land which is understood to be Crown land [[REP10-009](#), Section 8.2 and [APP-051.2](#)]. As Crown land is protected from CA, the Applicant has sought the consent of the appropriate Crown authority, the SoST. The land is Crown land because there is an interest in the land belonging to the DfT (s227(2)(b) of PA2008). The appropriate Crown authority (s227(5)(b)) is the government department having the management of the land. In this case, the land is managed on behalf of the SoST by Highways England Historical Railways Estate (HEHRE) and was previously owned by the British Railways Board (Residuary) Limited (BRBR). BRBR formerly owned residual railway land arising from rail privatisation.

8.5.43. The Applicant wrote to HEHRE on 25 June 2018, prior to the submission of the application, and then to the Estates team at the DfT [[REP8-004](#), ExQ2 1.6]. HEHRE had referred the matter directly to the DfT's Estates

team, advising the Applicant that the DfT is the appropriate body to issue the consent. This advice has subsequently been confirmed by the DfT's Transport and Works Act Orders Unit.

- 8.5.44. The Applicant has yet to receive the consent sought, despite having made repeated requests by email and telephone during the period between June 2018 and May 2019. On 29 May 2019 the Applicant received an email from the DfT's Estates team advising that it had requested valuation advice from its professional advisers and that the advice sought was expected to be received "at the end of July". The Crown land consent sought by the Applicant was therefore not granted prior to the close of the Examination.
- 8.5.45. The ExA's dDCO [[PD-016](#)] included two new articles: A23, Crown land; and A57, Crown rights. The Applicant acknowledges the need for these articles, given that it has not been possible to secure Crown land consent. Accordingly, the Applicant has accepted the ExA's proposed drafting in its final dDCO, subject to the addition of some proposed minor drafting amendments aimed at clarifying the position in the context of s135 and s227 of PA2008 [[REP11-003](#)]. The key point of the amendments is a distinction between "interests in Crown land" and "non-Crown interests in Crown land". The CA of the latter is permitted when Crown land consent is granted by the appropriate Crown authority. The Applicant has therefore proposed that A23 be re-titled "Acquisition of non-Crown interests in Crown land".
- 8.5.46. If the dDCO to be made includes the Crown land on the Crown Land Plan [[APP-051.2](#)], then the necessary Crown land consent will still need to be secured, irrespective of the addition of A57, Crown rights. The Applicant will therefore continue to pursue the Crown land consent originally applied for in June 2018 and requested repeatedly thereafter.
- 8.5.47. As the DfT's Estates team's advice is due to be received "at the end of July", the Applicant will endeavour to secure the necessary consent by the close of the ExA's reporting period [[REP11-010](#)]. The aim is to provide the SoST, at the start of his decision-making period, with confirmation that the requirements of s135 of the PA2008 are satisfied and that the DCO can therefore be made in the form applied for.

## **OBJECTIONS RECEIVED TO THE COMPULSORY ACQUISITION, RELATED MATTERS AND PROPOSALS, THE APPLICANT'S RESPONSE AND THE EXAMINING AUTHORITY'S CONSIDERATION OF OBJECTIONS**

### **Introduction**

- 8.5.48. In this part of the report, we consider representations made by SUs under s127 and s138 of PA2008 and from Affected Persons. We have also only identified the points we consider to be material when reporting on the representations and the Applicant's responses. The SU numbering is



taken from the Applicant's CA Negotiations & Objections Tracker [[REP10-073](#)]. Our considerations on each of these objections then go forward to inform our finding on the general case in respect of the relevant plots.

## **Statutory Undertakers' (Sections 127 and 138)**

### **Associated British Ports (Tracker Reference 20)**

#### ***Representations***

##### *Introduction*

- 8.5.49. ABP has set out its final position in its Closing Submission [[REP11-014](#)]. ABP is the owner and operator of the Port of Lowestoft. It is also the Statutory Harbour Authority (SHA) for the harbour area, which includes responsibility for vessel traffic management, safe navigation and channel depth maintenance [[REP3-024](#), paras 2.6 to 2.56 and Annex 1A and 1B]. It is also the Competent Harbour Authority (CHA) with respect to pilotage, which includes all the navigable waters within the port and the seaward approaches. As statutory port undertaker, ABP is able to undertake certain defined port related development within the statutory port estate [[REP3-024](#), Annex 3].
- 8.5.50. ABP submitted some 65 documents during the course of the Examination. Its representations are generally summarised in its Comment on the Applicant's Response to ABP's DL5 and Oral Submissions at 7 and 8 March 2019 Hearings [[REP8-012](#)], closing submissions [[REP11-014](#)] and letter to SoST dated 31 May 2019 [[REP11-015](#)]. The gist of ABP's representations relating to CA is set out below, and further detail is set out in Chapter 5 of this report.

##### *Land and rights loss*

- 8.5.51. This matter covers the loss of: berthing and quayside; land side areas; and the bed of the lake. This loss generally comprises: the permanent acquisition of some 3,000m<sup>2</sup> of land side and bed of the lake under the bridge piers; some 2,500m<sup>2</sup> of airspace and rights under bridge decks; and some 4,500m<sup>2</sup> of rights over the only access to the port. The TP of some 40,500 m<sup>2</sup> of land and water within the port estate is also sought for construction purposes.
- 8.5.52. ABP claims that there would be a direct loss of some 165m of berthing, measured in whole berths, as a result of the Proposed Development [[REP8-012](#), pages 13 and 14 and [REP8-013 to REP-018](#)]. The representations consider this in some detail [[REP3-024](#), Section 10 Table 2, [REP4-029](#), Annex 1, [REP5-023](#), paras 3.9 to 3.17 and 6.10 to 6.45, [REP5-026](#), Annex 1, [REP5-027](#), [REP5-030](#) and [REP8-011](#) and [REP8-014](#)]. Each length of quay within the inner harbour also has its own distinct characteristics. The loss of the berths would therefore also have a restrictive impact on vessel assignment.
- 8.5.53. In terms of the bed of the lake, the CA powers would allow the construction of the proposed bridge, located in the middle of the Port of

Lowestoft's operational inner harbour. The Port of Lowestoft's inner harbour would effectively be cut in half by the CA powers. In relation to land loss therefore, the CA powers sought would have a seriously detrimental effect on the carrying on of the statutory undertaking in the port.

*Disruption from construction*

- 8.5.54. ABP considers that disruption from construction within land that would be temporarily possessed would similarly affect berthing and quayside, land side areas and the lake [[REP5-023](#), paras 9.6 to 9.19 and [REP5-024](#), paras 9, 13 to 15, 17 and 26]. An additional factor however would be the effect of the closure of Commercial Road, which provides the only vehicular access to the quays and port to the west of the proposed bridge [[REP5-023](#), paras 9.3 to 9.5, [REP5-024](#), paras 16 to 21 and [REP11-014](#), page 93]. The Applicant has underestimated the impact of any closure of the road, and the suggested diversion during construction is over operational quays, which is no legal remedy.
- 8.5.55. Furthermore, grain vessels can arrive with as little as 12 hrs notice. The arrival of grain laden HGVs, which currently use an area that would be subject to TP, is not under the control of the Harbour Master. In relation to construction disruption therefore, impacts of the TP powers would underline the significance of the serious detriment that would be experienced by the port.

*Disruption from the presence and operation of the proposed bridge*

- 8.5.56. ABP is of the view that the disruption caused by the 11m safety clearance restriction of the low-level bridge would be compounded by the 32m clearance between the fenders for the bridge piers. Furthermore, over time, global climate change sea level rises could amount to between 0.41 to 0.58m over 60 years, which would reduce the safety clearance.
- 8.5.57. The heart of the inner harbour split by the proposed bridge. This would be a novel aspect of the development apart from its similarities with the Welsh Government's M4 Relief Road proposals in South Wales and the impact of its bridge section on the Port of Newport [[REP7-007](#)]. In that case, the Welsh Government agreed that the serious detriment to ABP, as a SU, required mitigation for equivalence together with an indemnity to ABP for all losses and liabilities falling to them. The mitigation included some re-design, accommodation works, collision prevention engineering measures and the ongoing review of monitoring and management measures. The mitigation was secured by agreement letters between the parties.
- 8.5.58. In the Port of Lowestoft, the existing A47 bascule bridge must be passed to enter the inner harbour [[REP3-024](#), Section 4, [REP5-023](#), Sections 4 and 5 and [REP7-006](#), paras 1.7 and 1.8]. ABP considers that the presence of this bridge does not serve to reduce the impact of the proposed bridge, and the representations consider this in some detail [[REP4-032](#), ExQ1 2.24 and [REP5-023](#), paras 2.8 to 2.13 and Appendix 6].



- 8.5.59. As the design of the proposed bridge is not complete, there are a number of critical factors which remain unresolved. These are said to compound the serious detriment to ABP as a SU and are exacerbated by questions as to the suitability of and qualifications held by the advisors appointed by the Applicant. Moreover, the control of the proposed bridge would lie with a third party, to the serious detriment of ABP as the relevant SU.
- 8.5.60. The fact that vessels exceeding the safety clearance would not be able to pass the bridge without it lifting would be a serious constraint on the operation of the inner harbour. The representations consider this in some detail [[REP5-023](#) paras 3.66 to 3.76, [REP5-028](#) and [REP8-021](#), [REP8-027](#) and [REP8-028](#)].
- 8.5.61. The proposed bridge, with its low level and single leaf, would therefore represent a dangerous safety hazard, in relation to which ABP seeks an indemnity. This is on the basis that the protections offered in the dDCO are extremely limited. The indemnity sought would cover any direct and indirect loss or damage, without limitation, from circumstances which would not have occurred without the Proposed Development. It would also cover any claims whatsoever made against ABP and any ABP liability, without limitation, to SCC or third parties from the same circumstances. The indemnity provided should include the risks being covered by insurance. If this indemnity is not provided, then ABP would be corporately liable for the actions of others over which it had no control.
- 8.5.62. It is also said that the proposed bridge would obstruct ABP in carrying out its statutory duties. The representations consider this in some detail [[REP3-024](#), Sections 12 and 13, [REP5-023](#) and [REP8-011](#) and [REP8-034](#)]. Furthermore, future port security issues and compliance with the International Ship and Port Facility Security Code are difficult to address at this stage [[REP3-024](#), Section 19 and [REP5-023](#), paras 8.1 and 8.2]. A reduction in the port's ability to accommodate such vessels would be detrimental.
- 8.5.63. In relation to disruption from the presence and operation of the proposed bridge therefore, ABP considers that the CA powers sought would have a seriously detrimental effect on the carrying on of the statutory undertaking in the port.

*Impact on the overall business of the port*

- 8.5.64. ABP's position is that the location, height and operational restrictions, as already described, would be seriously detrimental to the viability of the port [[REP5-023](#), paras 3.19 to 3.24]. The representations consider this in some detail [[REP3-024](#), [REP5-023](#), paras 3.29 to 3.53 and 3.72 to 3.76, [REP5-026](#), [REP5-027](#) and [REP8-020](#) and [REP8-021](#)]. The importance of the port is also recognised in the SoST's s35 Direction [[APP-092](#), Appendix B]. Furthermore, ABP states that the Applicant wrongly rejected the western option for the Lake Lothing Crossing [[REP5-024](#) and [REP5-032](#)]. The Applicant's reliance on the analysis in its Economics Report [[APP-106](#)] is also questioned.

- 8.5.65. The concerns over berthing access delays from the new bridge are real to ABP. The representations consider this in some detail [[REP5-023](#), paras 3.25 to 3.27 and 3.86 to 3.88]. Furthermore, the land loss, both permanent and temporary, would affect the permitted development (PD) rights which the port has the benefit of and can use to attract new business [[REP5-023](#), paras 2.21 to 2.27, [REP7-007](#) and [REP8-012](#), page 11].
- 8.5.66. ABP argues that all of the above would represent a material constraint on the ability of the port to be competitive in carrying on its business. Such a constraint would then have an adverse effect on the port in making it difficult to find the necessary investment funding to secure its future. The effect of these constraints would also be felt outside the port, as the significance of its economic contribution to the local area would be seriously damaged. Furthermore, the contribution of the port to the renewable energy market generally would also be severely impeded.
- 8.5.67. In relation to impact on the overall business of the port therefore, ABP considers that the CA powers sought would have a seriously detrimental effect on the carrying on of the statutory undertaking in the port.

*Mitigation to offset serious detriment*

- 8.5.68. ABP is of the opinion that the effects of the CA would be materially adverse and of serious detriment to the carrying on of the statutory undertaking at the port. Berthing, which is essential to the operational utility and flexibility of the port would be lost in terms of current and future operations. This must be considered in terms of the operation of the port as a whole, and this requires a holistic approach to its consideration.
- 8.5.69. The height restriction from the proposed bridge would be the only such operational port constraint in the UK. The CA of land and the bed of the lake would impact on the operation of the port. Both of these matters would be a deterrent to existing and future commercial operations. The failure to mitigate these impacts or to indemnify ABP against the impact of them results in serious detriment which would touch on the future viability of the port and the local and regional economy.
- 8.5.70. ABP has however considered the potential for mitigation throughout the Examination. In this regard it has considered the following matters as a mechanism to maintain equivalence in respect of the port in terms of the before and after situations. These mitigation matters are:
- The provision of an emergency berth, which would be located between the two bridges for any trapped vessels [[REP3-024](#), Section 18, [REP4-032](#), page 12 ExQ1 2.36 and [REP5-023](#), paras 7.19 to 7.26];
  - replacement berthing in the outer harbour, which would be outside of the bridges; and
  - an indemnity, as has been described.
- 8.5.71. Moreover, it is said that the Applicant has also failed to satisfactorily account for additional land acquisition, mitigation and compensation

costs [[REP3-024](#), paras 23.11 to 23.15 and Section 23 and [REP5-025](#)]. This is in part because there is significant uncertainty over the additional property costs, bearing in mind the large number of affected parties, and the capital programme contribution from SCC. Even if the funding was to be found, it would represent a waste of public money on an infeasible option.

- 8.5.72. The tests that should be applied under s127 of PA2008 relate to the carrying on of the statutory undertaking. Here they relate to ABP carrying out its statutory obligations as operator of the port and its statutory obligations and duties as SHA. ABP believes that the CA would seriously impact on the ability of ABP to comply with these duties.
- 8.5.73. The tests also suggest that replacement land could be made available to the statutory undertaking to avoid serious detriment. Here, the port's estate is physically and geographically constrained, and the port's expansion land to the west of the Proposed Development is required for the East of England Energy Park, amongst other things. Land replacement is therefore not an option in this Examination.
- 8.5.74. ABP considers that the CA required for the Proposed Development would therefore be of serious detriment to the carrying on of ABP's statutory undertaking as operator of the Port of Lowestoft and SHA. Recent Nationally Significant Infrastructure Project (NSIP) Examinations for the Hinckley Point C Connection<sup>24</sup> and the Richborough Connection<sup>25</sup> are relevant to this Examination. At Hinckley, a small area of the Port of Bristol would be affected, but this particular location was an important part of the resources of the port and serious detriment was found. At Hinckley and Richborough, current and future operations were deemed to be within the scope of the serious detriment test and evidence was presented by those who were properly qualified and technically competent. Serious detriment was also found to be greater than just detrimental and needed to be important or significant in the carrying on of the undertaking.

*ABP 31 May 2019 letter to the Secretary of State for Transport*

- 8.5.75. ABP has written to the SoST, in some length and with appendices, expressing concern about serious detriment and has drawn attention to a number of impacts set out previously in this chapter [[REP11-015 to REP-021](#)]. Of particular note are:
- The effective severance of the inner harbour by the proposed bridge;
  - the sensibility of other bridge location options;
  - serious detriment to existing port operations; and
  - escalating and cumulative impact in terms of future commercial operations, operator perception, proposed port expansion and the port's consequential inability to meet the needs of an off-shore energy

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<sup>24</sup> Hinckley Point C Connection (2016)

<sup>25</sup> Richborough Connection Project (2017)

market which Government has recognised as being of critical importance to the UK economy.

8.5.76. ABP had expected the Applicant to either withdraw the application and pursue a more sensible option or offer measures to mitigate the serious detriment. The Applicant has failed to do either. ABP suggests that it has demonstrated that, if the Proposed Development is allowed to proceed, the SoST should not approve the CA of land and rights within the port estate.

8.5.77. The letter then proceeds to explain the following aspect of ABP's case, which has already been set out in this report. Its coverage of serious detriment is split into the following elements:

- CA of the statutory port estate;
- loss of berthing and berthing utility and flexibility;
- obstruction and impediment;
- impact on existing operations;
- impact on future flexibility;
- impact on commercial perception of the port and its ability to secure future business;
- failure to mitigate;
- lack of an indemnity;
- s35 Direction; and
- conclusions and a "*minded to*" determination.

8.5.78. On the final point, ABP suggests that the SoST indicates to all parties that he is "*minded to*" refuse to approve the CA of ABP's land. This would provide the Applicant with the opportunity to approach ABP with a meaningful package of mitigation measures, including an acceptably termed indemnity.

*ABP conclusion*

8.5.79. From the evidence submitted, ABP says that it is clear that the CA of land and rights leading to the introduction of a new bascule bridge in an operational port, would have serious consequences for the port. This would be of a sufficient magnitude to engage and surpass the test of serious detriment set out in s127 of PA2008.

8.5.80. ABP does not oppose the principle of a third crossing of Lake Lothing. ABP's original objection was to the location of the bridge through the middle of the operational port. If the applicant had approached the formulation of its application in a properly considered way, that would have readily demonstrated that the selected location for the crossing now being promoted is operationally indefensible.

8.5.81. ABP, as the owner and operator of the port and the SHA, cannot, for the reasons detailed above, accept the location of the bridge as currently proposed if the serious detriment that would be caused by the Proposed Development is not mitigated. To date, the applicant has refused to acknowledge the serious detriment that its Proposed Development would cause and has refused to discuss any meaningful mitigation measures

with ABP. The application, as proposed, should therefore not be confirmed.

- 8.5.82. That is clearly regrettable, given the large amount of public money that has already been expended. However, in a spirit of pragmatism, ABP has indicated to the SoST that it may still be prepared to withdraw its objections to the application, if the applicant would be prepared to provide a genuine package of measures to mitigate the serious detriment that would otherwise be caused. ABP has suggested to the SoS that if he were to indicate that he would be minded to refuse the CA of ABP's land, that would provide the applicant with the opportunity to approach ABP with a meaningful package of mitigation measures, including an acceptably termed indemnity.
- 8.5.83. That constructive considered approach has not been advanced lightly by ABP. Nonetheless, for the purposes of the Examination, ABP's position remains one of regretful opposition and it invites the ExA to recommend that the dDCO not be made.

### ***Applicant's Response***

#### *Introduction*

- 8.5.84. The Applicant's response is set out in its Closing Submission (ABP) [[REP11-009](#)]. The Applicant has benefited from relevant technical expert advice and has used this advice throughout the development of the application and during the course of the Examination [[REP10-080](#), Appendix A]. The Case for the Scheme provides a comprehensive narrative on the need for the Proposed Development and its evolution [[APP-091](#)]. The SoR concludes that there is a compelling case in the public interest for the acquisition of the port land sought and that this can be acquired without serious detriment to carrying on of ABP's undertaking [[REP10-009](#)]. The gist of the Applicant's response relating to CA and ABP is set out below, and further detail is set out in Chapter 5 of this report.

#### *Benefit to the Port of Lowestoft*

- 8.5.85. The Applicant considers that the expansion of the port, as anticipated by ABP, would result in more intense use of the surrounding highway network. Without the Proposed Development, such journeys would be susceptible to weaknesses in the existing network, particularly existing bridge openings which would increase [[REP4-016](#), Section 2]. The port relies on its land-based connections, and the Proposed Development would benefit all highway users due to savings in time and vehicle operating costs [[APP-106](#), [REP7-005](#) and [REP8-008](#), Section 3.3]. The SoST also recognised that the Proposed Development has a key role to play in the growth of the Port of Lowestoft in the s35 Direction [[APP-092](#), Appendix B]. Indeed, ABP recognises the reliance of a port's success on adequate terrestrial infrastructure serving it [[REP3-024](#), Annex 7].

#### *A Western Alternative*

8.5.86. The Applicant has undertaken a full options appraisal process [[APP-136](#), Chapter 3]. The Applicant has also reported on the relative performance of the western option against the central option during the Examination and whether the earlier conclusions remained valid [[REP4-014](#), page 5 and Appendix B]. The Applicant also reviewed the transport assessment and the relevant WebTag guidance [[REP5-007](#), Appendix B and [REP7-005](#), page 30]. The western option remained less satisfactory in a number of important respects, including that:

- It would be up to 17% more expensive than the Proposed Development;
- it would provide less relief to the A47 bascule bridge;
- its southern landing point was not well related to Tom Crisp Way, increasing traffic on unsuitable residential roads;
- it would have a lower Benefit Cost Ratio (BCR); and
- it would require a greater land take from ABP due to the width of its landholding, and this would include land at Shell Quay.

8.5.87. The Applicant therefore remains satisfied that the central option remains the optimal choice.

*Vessel survey and highway benefit*

8.5.88. The Applicant undertook a nine-month vessel movement survey, in three phases, spanning just over a year for seasonal variation, and it was updated with a third tranche of survey data [[APP-208](#), [REP3-060](#), [REP7-005](#), pages 9 to 11 and [REP8-008](#)]. The representations consider this and bridge lifts in some detail [[APP-106](#), [REP3-056](#), Table 4-1, [REP4-016](#)]. Collectively, the Applicant has reported on the basis of a conservative estimate of the benefit of the Proposed Development.

8.5.89. The Applicant has also undertaken a sensitivity test on the BCR, doubling the number of lifts for the two bridges, thereby reducing further the highway benefit of the Proposed Development [[REP4-016](#)]. The effect of the future growth scenario and the doubling of bridge lifts had a very limited effect on the BCR and did not alter the Proposed Development from being High Value for Money. The Applicant is therefore satisfied that its BCR output remains robust under port growth scenarios that could reduce the highway benefit of the Proposed Development.

*Vessel simulation*

8.5.90. The Applicant's vessel simulation was a three-stage process which involved ABP's Harbour Master and its Marine Manager in the simulation runs [[APP-198](#)]. The representations consider this in some detail [[REP10-080](#)]. The preliminary NRA confirms that refinements to the design have been incorporated following the simulations to effectively reduce the risks created by the Proposed Development [[APP-208](#), para 7.1.1 and Appendix B Section 4.2].

8.5.91. The Applicant's considers that the vessel simulation is robust and has appropriately informed both the design and preliminary NRA. In response to ABP's concerns, the Applicant has included Requirement 11 (R11)



in the dDCO. This requires the final NRA to be submitted to ABP for approval, and for that NRA to be informed by further vessel simulation [[REP7-005](#), Page 17].

*Future prospects for the port*

- 8.5.92. ABP has commissioned a number of reports on this subject, and further detail on the Applicant's positions in relation to these reports is set out in Chapter 5 of this report. The Edge Economics Report, commissioned by ABP, translates the current economic significance of the port to future economic performance [[REP3-024](#) annexes 4A and 4B]. The Applicant does not agree with the central assumptions applied by Edge Economics [[REP8-008](#), para 3.3.41].
- 8.5.93. ABP commissioned BVG to assess the opportunities for the port [[REP5-027](#), Annex 2]. The Applicant does not agree with the BVG conclusions in this regard [[APP-091](#), para 4.6.13, [REP7-005](#), page 6, [REP9-010](#), page 5, [REP8-018](#), page 21 and [REP9-012](#), Annex 1 Figure 15]. ABP also commissioned ABPmer to assess the usage of berths between 2015 and 2017, the effect of the Proposed Development on this use in current terms and in the future [[REP5-026](#), Annex 1 and [REP8-018](#), Annex 3]. The Applicant has fundamental concerns with the methodology used in this report.
- 8.5.94. The Applicant agrees that the port is well-positioned to capture business associated with the growing offshore energy sector. PD rights would also be able to be returned if the bridge was ever dismantled [[REP8-007](#), [REP9-009](#) and [REP10-080](#)]. However, the Applicant considers that the impact of the Proposed Development should not be based the certainty of future growth in the port. The BVG report and the port masterplan frame demand as being between 30 and 50 Crew Transfer Vessels (CTVs). The ABPmer report however only uses 50 CTVs in its analysis. This gives insufficient regard to the uncertainties of growth.
- 8.5.95. Furthermore, the Applicant believes that the impact on locating at Shell Quay should be interpreted on the basis that for 22 hours per day there would be no impediment from the proposed bridge, rising to 24 hours per day if the vessel does not require a bridge lift. Even for the two hours where lift restrictions would be in place, the practical consequence would be a minor adjustment to vessel transit times. The Applicant therefore does not consider that the CA sought would prove the critical driver for an operation choosing not to locate in Lowestoft.

*Impact on berthing*

- 8.5.96. The Applicant states that the direct loss of berthing associated with the Proposed Development would be the 62m within the land subject to CA [[REP7-005](#), pages 32 and 35, [REP8-005](#), [REP8-008](#), para 6.1.5, 6 and 8 onwards, [REP9-010](#), page 2 and [REP10-080](#)]. The Applicant's detailed position on this matter is set out in Chapter 5 of this report.
- 8.5.97. In summary, the direct loss of quay would be 62m, compared with 2,100m of quay in the inner harbour. Whilst the functionality of

North Quay 1 and 2 would be materially affected, they could continue to accommodate vessels up to a combined, or individual, LOA of 100m. North Quay 4 East should not be written off, as minor accommodation works could retain the residual length as a functioning quay.

- 8.5.98. The Applicant considers that the effect of the Proposed Development on berth utilisation should be approached on that basis, and then berth occupancy remains less than 60% in the inner harbour. It is only when a series of assumptions are layered into the assessment by ABPmer that berth utilisation exceeds desirable levels. The Applicant disagrees with ABPmer's higher figure [[REP5-026](#), [REP8-005](#), [REP8-018](#) and [REP9-010](#), page 6]. ABPmer's assumptions relate to: the certainty of future business opportunities; a particular berth dedication and reassignment process; and pessimistic forecasts on the effect of the Proposed Development in terms of berthing loss [[REP8-005](#), [REP8-018](#), Table 6 and [REP10-088](#)].
- 8.5.99. The Applicant therefore suggests that, given the significant uncertainty in future forecasts, proportionate weight should be given to such assertions of impact based on this analysis.

*Air draft*

- 8.5.100. The Applicant chose an air draft of 11.5m at HAT to provide a working safety margin below the structure of the proposed bridge for vessels transiting without a bridge lift. The Applicant accepts that a future NRA may require a safety margin of 1m, which would give an air draft of 11m at HAT [[REP7-005](#), page 5 and [REP8-008](#), para 5.2.16]. The Applicant has taken into account PIANC<sup>26</sup> air draft guidance [[REP7-005](#), page 5, [REP9-010](#), page 8 and [REP11-007](#)].
- 8.5.101. There would only be restrictions on commercial vessels requiring bridge lifts during peak road traffic hours [[REP7-005](#) and [REP8-005](#)]. Moreover, a large proportion of the CTVs identified by ABP would not require a bridge lift at any state of the tide below HAT, and this is still likely to be the case in the future [[REP5-027](#), Section 2.2, , page 6, [REP8-008](#), para 3.3.37 and onwards, REP8-021 and [REP9-010](#), page 9].
- 8.5.102. From all of the above, the Applicant does not consider that the CA of airspace sought in terms of air draft would lead to a detriment that would be serious in terms of the operation of the port.

*Proposed bridge Scheme of Operation*

- 8.5.103. The draft Scheme of Operation includes a prohibition on lifts of the proposed bridge during peak road traffic hours of 08:00 to 09:00 and 17:00 to 18:00 [[REP4-016](#) and [REP11-007](#)]. The existing bascule bridge separates the inner and outer harbours and has a clearance above HAT of 2.16m [[REP8-008](#), Section 5.1 and 5.2]. It has periods during the day when the movements of commercial vessels are discouraged.

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<sup>26</sup> The World Association for Waterborne Transport Infrastructure



8.5.104. Even though the restricted periods would be extended over the existing situation, they would still represent a small proportion of time within a 24-hour period [[REP9-010](#)]. Moreover, the Applicant considers that effect of the proposed bridge restrictions should be described in terms of journey time adjustment and not delay [[REP7-005](#), page 2 [REP8-005](#), para 2.1.4 and [REP8-008](#), Section 5.2]. The Applicant therefore has not accepted the ABP suggestions on the Scheme of Operation [[REP10-084](#) and [REP11-007](#)].

8.5.105. The Applicant thus does not consider that the CA of airspace sought in terms of the proposed bridge scheme of operation would lead to a detriment that would be serious in terms of the operation of the port.

*Navigational risk*

8.5.106. The Applicant considers that navigational safety has been appropriately considered as part of the application and the dDCO adequately safeguards the concerns of the SHA [[APP-208](#), [REP5-007](#), page 12 and [REP8-008](#), Section 7]. Provisions would ensure that navigational safety would not be compromised [[REP8-008](#), [REP3-029](#), ExQ2 2.36 and [REP11-007](#)].

8.5.107. The Applicant therefore does not consider that the CA sought in terms of the proposed bridge and navigational risk would lead to a detriment that would be serious in terms of the operation of the port.

*Port security*

8.5.108. The Applicant considers that the physical separation of vessels from the proposed bridge, enforced by the fenders, and close circuit television would significantly mitigate the effect of the bridge on port security [[REP8-008](#), Section 8].

8.5.109. The Applicant therefore does not consider that the CA sought in terms of the port security would lead to a detriment that would be serious in terms of the operation of the port.

*Construction*

8.5.110. Although detailed design is yet to take place, construction of the Proposed Development is anticipated to take approximately two years to complete [[APP-136](#) plate 5-2]. Land beyond the footprint of the development is required to support its construction, and the extent of this land has been determined in conjunction with the Applicant's contractor [[REP7-005](#), Appendix A and [REP10-009](#), Section 4.4 and Appendix A]. The Applicant however advises that it is unlikely that all of the TP would be required for the duration of construction.

8.5.111. The extent of water-based TP plots reflects those on the land side [[REP9-010](#), page 2]. Suspension of navigation is also subject to dDCO A20 which requires the consent of the SHA and the Applicant to limit such closures. TP would also be subject to compensation and the consent of the SHA [[REP9-010](#), page 2 and A32(6) [REP11-003](#), Schedule 13 para 54].

- 8.5.112. The Interim Code of Construction Practice (CoCP) provides that the layout of the construction compounds must ensure that access is maintained for port operations at all times along Commercial Road [[REP7-005](#), Appendix A and [REP10-078](#), para 2.4.7]. The Applicant therefore cannot implement a closure of Commercial Road, required to accommodate the positioning of the span over Commercial Road, without the agreement of the SHA to a diversion route.
- 8.5.113. The approaches for this route could be outside of the Order limits and flexible to accommodate prevailing construction and port requirements, as envisaged under dDCO A11 [[REP11-003](#)]. The Applicant sought ABP's permission to engage with its tenants directly, but this was declined. A potential route has however been identified by ABP, although traffic management would be required to avoid a suspended quay [[REP3-024](#), Annex 5 and [REP5-023](#), para 9.5].
- 8.5.114. The Applicant maintains that the diversion of Commercial Road is practicable. It agrees to ABP's requests for pre- and post-condition surveys, health and safety risk assessments, the provision of traffic management and a formal agreement for the occupation of this land. All these matters could be dealt under dDCO A11 and the Protective Provisions for the SHA.
- 8.5.115. Traffic management on Commercial Road would be required for movements around the Dudman grain site, which may include vehicle marshalling and temporary traffic regulation measures under dDCO A52 [[REP8-007](#) and [REP9-010](#), page 16]. Additionally, the Applicant considers that vehicles could be corralled elsewhere in the port, if it is safer and more efficient to do so. These are all reasonable conditions that could be imposed under the SHA's Protective Provisions. Such mitigation measures would vary according to the prevailing requirements of both the Applicant and Dudman in relation to the land proposed to be used for construction purposes.
- 8.5.116. Access to Shed 3 through its eastern door, which would lie in close proximity to the proposed bridge, would be impeded during construction. The costs of works to permit the continued use of the building would however be recoverable from the Applicant. If works are required to secure continued use after construction, they would again be recoverable from the Applicant [[REP8-008](#), Section 9.4].
- 8.5.117. The Applicant recognises that ABP has outstanding concerns in relation to the construction activities. The Applicant has however sought to address these points through the drafting of the Order and outlining potential mitigation measures. It also sought to provide additional clarity and comfort to ABP in a Side Agreement which has not been completed. The Applicant does not consider that ABP has identified any issues which cannot be overcome through further liaison in the development of the construction programme, and appropriate mitigation measures or compensation. The Applicant therefore considers that the TP powers sought in terms of construction would not lead to a detriment that would be serious in terms of the operation of the port.

### *Mitigation*

- 8.5.118. ABP has suggested the following mitigation measures that it believed would be necessary to mitigate the impact of the Proposed Development [[REP3-024](#), Sections 15 to 19]. The Applicant has already found an emergency berth between the existing and proposed bridges to be unnecessary. Similarly, using the Applicant's projections, replacement berthing in the outer harbour has also been found to be unnecessary. The Applicant has also agreed to cover new or additional costs relating to a number of other mitigation measures [[REP10-076](#)].
- 8.5.119. The Applicant advises that a side agreement with ABP has not yet been completed. Matters relating to the other mitigation measures noted above would however require an ABP approval or would have costs covered under the dDCO Protective Provisions [[REP11-003](#), Schedule 3].

### *Compulsory Acquisition and Serious Detriment*

- 8.5.120. In terms of CA, the Applicant considers that it has demonstrated that each plot is required for a specific part of the Proposed Development, taking account of the current stage of design [[REP7-005](#), page 24 onwards and [REP10-009](#)]. This justification has also extended to plots where the CA of rights is required, or where only the CA of airspace is required. The compelling case in the public interest flows directly from the benefits of the Proposed Development previously identified. When the benefits are weighed against the inevitable interferences with the rights of ABP, the Applicant maintains that the public interest strongly outweighs those interferences. Such interferences would also be eligible for compensation in accordance with the Compensation Code.
- 8.5.121. The Applicant has sought to leave CA as a matter of last resort by pursuing a side agreement with ABP where attempts have been made to negotiate first [[REP8-007](#)]. Moreover, whilst a long lease is an acceptable option to the Applicant, provided there is a clear commitment by ABP to dedication of the relevant land as highway, CA powers would still be necessary in case a lease is not agreed in time to facilitate the implementation.
- 8.5.122. The dDCO Protective Provisions also provide a lock on the exercise of CA powers over port land, where ABP consent would be required, subject to any reasonable ABP conditions [[REP11-003](#), Schedule 3 para 54]. This would give ABP a considerable degree of control over CA which could affect its statutory undertaking. The Applicant considers that there would therefore be no reason why the CA should cause undue interference with the continued successful operation of the port.
- 8.5.123. There is also a lock within the drafting of dDCO A22, which gives the Applicant the power to CA land only as is required for the authorised development. This means that, once the Proposed Development is refined through the detailed design process, the dDCO would not authorise the CA of land that is not so required. Furthermore, sufficient funding is in place [[APP-008](#), [REP3-029](#), ExQ1 3.7 to 3.10, [REP4-014](#), [REP5-010](#), Appendix 1 and [REP7-005](#), page 37].

- 8.5.124. The Applicant believes that the lock therefore needs to be seen in the context that, by the time the Applicant would come to ABP for consent under their Protective Provisions, the SoST would already have determined that the CA powers are justified. The focus of that consent would therefore relate to how the CA powers should be used [[REP8-007](#), page 9]. The Applicant therefore considers that the lock would be a practical, and very well established, way to manage the fully justified powers to ensure that impacts to ABP could be minimised.
- 8.5.125. In terms of serious detriment, the s127 test can prevent schemes where a compelling case has otherwise been proven. This underscores the need to demonstrate that the adverse effects would be seriously detrimental to the carrying on of the undertaking rather than merely disadvantageous. The Applicant considers that the test of serious detriment should not be applied to parties with whom the undertaker has entered into contracts, such as ABP's port tenants. This is because ABP's undertaking does not extend as far as the success or failure of its tenant's businesses.
- 8.5.126. The Applicant accepts that future business prospects do not have to be certain to be included within the test. The less certain the prospects are however, the less likely their loss would have seriously detrimental consequences for the undertaking. This matter requires a realistic view.
- 8.5.127. The Applicant states that TP powers are not subject to the s122 and 127 tests as they are not CA powers [[REP8-007](#)]. Even if this is not accepted, the Applicant considers that no serious detriment would be caused [[REP10-080](#)]. In view of all of the above, the ExA and the SoST should apply the tests in a holistic and objective manner.
- 8.5.128. ABP has sought to claim serious detriment under five broad issues:
- Loss of berth space and impact on current and future operations;
  - physical presence of the proposed bridge in terms of navigational risk and safety together with loss of permitted development rights;
  - operation of the bridge in terms of the timing of lift restrictions, the delay this would cause, and the consequential effect on the attractiveness of the port to future operators;
  - inability of ABP to comply with its statutory duties as a result of the provisions of the dDCO; and
  - costs and losses that could be caused by the presence of the bridge that therefore need to be indemnified.
- 8.5.129. The Applicant agrees that these factors are all inter-related and need to be considered holistically together in determining whether a serious detriment to the carrying on of ABP's undertaking is caused. The Applicant considers that no individual element of these factors, or if they are taken together in any form of combination, would lead to a detriment that would be serious because:
- In the context of the port as a whole, the berth loss caused by the Proposed Development would be small both now, and in the future;
  - navigational risk would be able to be mitigated through the full NRA, approved by ABP, security concerns would be able to be dealt with,

- and PD rights would be able to be returned if the bridge is ever dismantled;
- vessel operators would be able to modify their timings to meet the timings of the existing and new bridges and the Harbour Master could prevent vessels getting trapped between the bridges, thus reducing any potential unattractiveness;
- ABP has not identified any specific statutory duty that it would be unable to discharge if the Proposed Development was in place, and ABP's duty to provide an open port is not compromised by the existing bridge; and
- an appropriate indemnity is in place within the provisions of the dDCO.

*ABP 31 May 2019 letter to the Secretary of State for Transport*

- 8.5.130. ABP has sought to persuade the SoST that serious detriment to its statutory undertaking is caused by the Proposed Development [[REP11-015](#)]. The vast majority of it is a repeat of what ABP has set out in its Examination submissions.
- 8.5.131. This letter has been sent directly to the SoST on the basis of ABP's view that the SoST is required to issue a certificate under the provisions of s127 of PA2008 that the CA of its land would not lead to serious detriment. This however is not required following the Growth and Infrastructure Act 2013
- 8.5.132. The Applicant therefore considers that it is entirely inappropriate for the letter to have been sent to the Secretary of State outside of the Examination process. It is also disappointing to learn that ABP has been proceeding on a patently incorrect legal basis in putting forward that letter.
- 8.5.133. There are however the following specific points to which the Applicant feels it is necessary to additionally respond:
- The Applicant has consistently recognised that the test of serious detriment is a wide and holistic one, including ABP's statutory and commercial operations [[REP11-015](#), para 7.5]. The Applicant does not however agree that the commercial performance of ABP's tenants should be included in the test.
  - Paragraph 17.3 of the letter suggests that the Applicant is "*not prepared to offer any form of indemnity to ABP during the bridge's operation*". The Applicant has been clear throughout the Examination that it is not prepared to indemnify ABP for all risks arising from the fact that the Proposed Development would exist in the chosen location [[REP11-015](#), para 17.3]. The risks of costs and losses arising from its operation as a lifting bridge would however be indemnified by the Protective Provisions in the dDCO.
  - The approach of equivalence, adopted by ABP and which would leave the port neither better nor worse off as a result of mitigation works, is fundamentally incorrect [[REP11-015](#), para 16.3]. The s127 test is whether serious detriment is caused, and any mitigation must seek to

avoid that level of detriment. The test is not to leave the port in a “no better nor worse” position.

- 8.5.134. The Applicant is disappointed that the letter has been put forward by ABP at all. It believes however that it has demonstrated that the SoST can be satisfied that sufficient provisions are included within the dDCO to authorise the CA of ABP's land. This is because they would not cause serious detriment to the carrying on of ABP's undertaking.
- 8.5.135. The Applicant does not deny that the imposition of the Proposed Development over the port would cause some adverse impacts to the statutory undertaking. The Applicant considers however that nothing has been put forward by ABP to demonstrate that the detriment would be serious, and that the Applicant has put forward sufficient evidence to show that this would indeed not be the case. The Applicant therefore considers that the SoST is able to include a provision in the DCO authorising the CA of ABP's land.

### ***Examining Authority's consideration***

- 8.5.136. The ABP representations about the application have not been withdrawn, and we have therefore considered them under s127 of PA2008. ABP's case in objection during the Examination was summarised in closings [[REP11-014](#)] and in the letter to the SoST [[REP11-015](#)]. We are satisfied that ABP is a SU and that the land which would be the subject of the proposed CA has been acquired by ABP for the purposes of its undertaking, in accordance with s127(1)(a).
- 8.5.137. There has been no suggestion that replacement land could be provided. Also, there has been no suggestion that, if there was serious detriment from the CA of rights, this could be made good by the use of other land belonging to, or available for acquisition by, the Applicant. We have therefore considered the matter of serious detriment to the carrying on of the undertaking in this context.
- 8.5.138. We agree with ABP that the carrying on of port operations encompasses existing and future port operations together with the ability of ABP to comply with its statutory obligations and duties as SHA and CHA. We also agree with ABP that serious detriment is a matter of judgement on the scale of impact on the undertaking and that the decision maker should take a holistic approach. In this case, the impact on the port as a whole should be assessed. We also agree with ABP that, for serious detriment to occur, the impact would have to be serious, but not necessarily severe. We have considered the objection generally under the headings in the ABP closings.

### ***Land and rights loss***

- 8.5.139. In this section we consider the impact of the CA sought on berthing and the land side of the port's estate. We consider the impact of CA on navigation and the more general operation of the port later in this chapter.



- 8.5.140. We have already found, in Chapter 5, that the maximum absolute loss of quay would be 62m. A further 14m would be subject to the mooring arrangements of vessels in the area of the proposed bridge and the frequency and rights required for bridge maintenance. There would also be some loss of manoeuvrability in the area of the proposed bridge structure. The detriment in respect of berth loss that would be likely to be caused to ABP's undertaking should be considered in terms of these losses. The 62m figure has however to be seen in the context that it could be reduced when the detailed design of the bridge is complete or if mooring line lengths are less than anticipated.
- 8.5.141. Land side, the Proposed Development would cross the port's land at one of its narrow points. This again is with a maximum land and airspace CA width of some 65m along the route of the elevated structure and maintenance rights widths of some 5m to either side. This area of CA would lie in close proximity to Shed 3 within the port.
- 8.5.142. It is of note that the presence of this Shed 3 currently severs the land side area of the port to some extent. It generally leaves only the quayside and Commercial Road for passage to the areas of the port to the west of the shed. The single area of permanent CA, for a pillar of the elevated structure, would generally leave a greater width for passage on the quay and Commercial Road sides of it.
- 8.5.143. The eastern door of this shed would face the single area of permanent CA. The shed could however be reconfigured, again with recoverable costs, to maintain its utility. These matters would be the main elements of detriment to the land side operation of the port. We do not consider that the CA of rights over Commercial Road would have any material impact on ABP's undertaking.
- 8.5.144. As a result of all of the above points, we consider that the CA sought would result in moderate, but not serious, detriment to ABP's statutory undertaking in terms of loss of berthing and land within the port. In coming to this view, we have taken into account the provisions in the rdDCO and the protection that these would give to the interests of ABP. In terms of the land and rights sought in the lake, we have considered these under the presence and operation of the proposed bridge.

*Disruption from construction and Temporary Possession*

- 8.5.145. Construction would require the TP of significant areas within the port to either side of the areas of permanent CA and rights sought. Although not subject to the tests in s127 of PA2008 we have considered the impacts of TP on ABP's undertaking. The extent of these areas for TP is generally a consequence of the fact that the Proposed Development would be threaded through this locality and would have to cross several obstacles. Examples of these are the lake itself, the operational port including Commercial Road and a timetabled rail line.

- 8.5.146. Construction would take place in phases, and the phases would be very different in the nature of the work being undertaken and the type of plant required. We accept that the detail of this complex construction cannot be fully addressed until detail design is undertaken by the appointed contractor. Each of the competing contractors would also have their own approach to address these complexities.
- 8.5.147. It would not be in the public interest to stymie the innovation which could be offered by contractors by being overly prescriptive at this stage. Such prescription includes the time limiting of areas for TP, as well as the extent of these areas. The Applicant has however used a contractor to advise on what the likely methods of construction could be, to arrive at the areas and locations put forward for TP. We consider this to be a correct, realistic and reasonable approach.
- 8.5.148. Construction would take some two years, within which different phases of construction would take place. It is therefore reasonable to presume that the whole areas for TP would not be required for the entire two years, although a specific and shorter time should not be prescribed at this stage.
- 8.5.149. The temporary possession is subject to a demonstrable need. The occupation of land within the port is however also subject to the prior consent of the SHA, and any such consent could be given subject to reasonable conditions. Such conditions could relate to part plot and time limited occupation, or indeed co-existent operations.
- 8.5.150. All of this is however impractical to predict at this stage of the consent process, as it would be based on the successful contractor's detailed approach. Examples of the effect a detailed approach are:
- The water areas required for the type of water-based plant and pontoons to be used;
  - the lengths of bridge deck to be assembled on-shore; and
  - whether rotational construction is the most effective means of crossing obstacles.
- 8.5.151. These matters have been considered in some detail by the Applicant and, at our request, submitted to the Examination. As a result, we consider that the Applicant's suggested mechanism for and extent of TP would be likely to be the least detrimental for ABP's statutory undertaking whilst allowing the Proposed Development to proceed.
- 8.5.152. Commercial Road is an imperative in accessing the western part of the inner harbour. We are satisfied however that it would require temporary closure at some stage during construction. During any closure, a diversion would be required, and the Applicant has provided an example of such a diversion to the Examination. The appointed contractor may though choose to put forward a different solution, or indeed the dynamic port environment may require a different solution at that time. In this regard, it is of note that the nearby live rail line would also have to be crossed.



- 8.5.153. Part of the Applicant's example diversion would lie outside of the Order land. We are however satisfied that the Proposed Development could be constructed, and the continued use of Commercial Road accommodated, within the land and powers sought in the rdDCO. We believe though that this could cause unnecessary detriment, although not serious due to its limited duration, to ABP's undertaking and would not minimise disruption to ABP and the appointed contractor.
- 8.5.154. We consider that this unnecessary detriment could be avoided by the use of the Applicant's example diversion, following agreement with ABP. Another different and better solution could however be possible at the time of construction. Details of a solution to the closure of Commercial Road and the corresponding consent from the SHA would therefore be better left until the appointed contractor is in place to make the appropriate arrangements.
- 8.5.155. We consider that a limit to the Order land which encompassed all the reasonable options for a diversion could not be justified because of the unknowns in term of construction and future port requirements. We therefore consider that the TP and rights sought in association with the use of Commercial Road are a balance which is sufficient and justified, in that they would facilitate construction of the Proposed Development.
- 8.5.156. The TP powers sought also include an area behind North Quay which is currently used for the marshalling of heavy goods vehicles (HGVs) before their discharge of grain, and this area can be occupied by 30 HGVs. The Applicant has considered such a situation in terms of vehicle tracking. We are satisfied that, with appropriate conditions from the SHA prior to possession, the marshalling of HGVs could continue either within or outside of the area identified for TP powers. Any detriment would therefore not be serious. Again, the nature of the solution would be very much dependent on the appointed contractor's methodology and the needs of port operations at that time.
- 8.5.157. From all of the above, we are satisfied that the TP powers included with the rdDCO are justified. In the specific areas of the port where there would be detriment to ABP from construction activities, this would be of limited to moderate magnitude. Although TP is not subject to the s127 tests under PA2008, its impact would not be sufficiently important or significant to cause serious detriment to the carrying on of the undertaking of ABP at the Post of Lowestoft.

*Disruption from the presence and operation of the proposed bridge*

- 8.5.158. Over the bed of the lake, the CA sought would follow a similar pattern in terms of permanent land and airspace with rights below CA, all of which would be surrounded by a maintenance rights strip. ABP suggests that these elements of the CA sought, particularly where they would facilitate the presence and operation of the lifting element of the proposed bridge, would result in restrictions to navigation. ABP believe that these

restrictions would be seriously detrimental to the current operation of the port.

- 8.5.159. We agree with ABP that serious detriment to the carrying on of its undertaking should be assessed in a holistic manner, including navigation even though it could be seen as a subject under planning impacts. The CA sought would also place restrictions on dredging operations in the area around the proposed bridge. We have not however seen any sufficiently reasoned evidence to put such restrictions beyond having limited detrimental effect.
- 8.5.160. ABP has suggested that the effect of climate change, which would be to reduce the air draft available under the proposed bridge, would exacerbate any serious detriment caused. We have already found, in Chapter 5, that such changes do not cause us to change our view on air draft.
- 8.5.161. We have already found that the proposed bridge would have a limited detrimental impact on general vessel, and particularly CTV, access. We are therefore of the view that the availability of air draft under the proposed bridge, at the limited times when it could not be lifted, would not be seriously detrimental to the operation of the port.
- 8.5.162. ABP has suggested the following factors which it considers would exacerbate any serious detriment caused by the proposed bridge.
- 8.5.163. ABP suggests that the future use of larger, and taller, CTVs would exacerbate any serious detriment caused. Decisions on the types of CTVs to be used in the future would however be subject to many competing factors, and we are therefore not convinced that this prediction has sufficient certainty to be a material factor in this case.
- 8.5.164. The specified target for proposed bridge maintenance or failure time is 8hrs/yr whereas, on average, the existing bridge is closed 20 times every year. We accept that the new bridge's unavailability would be in addition to the downtime for the existing bridge. It would however not be for a significant length of time, would only affect part of the port and, once steadily operational, would be more related to planned maintenance rather than unplanned failure of the new equipment.
- 8.5.165. ABP suggests that the imposition of the proposed bridge over an operational harbour is only replicated by the previously proposed M4 Relief Road crossing of the port of Newport. In that case, the promoter accepted that there was serious detriment to the operation of the port, but that mitigation could be put in place to maintain equivalence in respect of that operation and avoid serious detriment. Much of the detail of that mitigation appears to us to be included within a side agreement between ABP and the promoter. A copy of this agreement, or indeed related evidence to the Inquiry into that proposal, has not been provided to the Examination. It is therefore difficult for us to compare the proposals and their effects, and we do not consider that the Newport case supports ABP's position here.

- 8.5.166. The Applicant has taken into account the advice of PIANC in developing the proposal. A preliminary NRA was submitted with the application, as has been the case in other DCO Examinations, on the basis that further refinement of the NRA can only be carried out in tandem with detailed design. The Applicant has undertaken vessel simulation, and we accept that this is sufficiently robust to inform the preliminary NRA.
- 8.5.167. The final NRA would be subject to the approval of the SHA, as would the final Scheme of Operation for the proposed bridge. The SHA would also be responsible for consultation prior to the finalisation of the NRA. The NRA would then effectively become an ABP document as part of the port's documentation, and any necessary changes would then be made by ABP.
- 8.5.168. In terms of the Scheme of Operation, the proposed bridge may be under the daily control of a third party. This control could however only be exercised under the approved Scheme of Operation, and the SHA's consent would be required for any variation to that scheme. In terms of port security, the Applicant has sought and followed guidance from appropriate sources. There is no evidence that there would be any significant impact in this regard.
- 8.5.169. ABP is concerned about the risk of vessels becoming trapped between the two bridges and then not having any mooring facility. ABP considers that an emergency berth should be provided to cover this eventuality. It would be the case however that, in the case of an emergency, the proposed bridge would be lifted to allow a vessel to pass to safety in the western part of the inner harbour. Furthermore, the Scheme of Operation, prior to its approval by the SHA, could require the proposed bridge to be in the lifted position until such a risk had reduced to an acceptable level. We can thus see no need for the provision of an emergency berth at the present time. Should circumstances change during detailed design though, we believe that risk reduction mechanisms could be introduced as safety mitigation, in the same way as an air draft monitoring system.
- 8.5.170. ABP, as the SHA, has a duty to keep the harbour open, has health and safety liabilities and is responsible for security. Having considered the evidence relating to these matters, we are satisfied that there is nothing in the application that would obstruct ABP in the carrying out of these duties.
- 8.5.171. We are therefore of the view that these factors, suggested by ABP, would not lead to serious detriment in terms of the operation of the port. As a result of all of the above, we consider that the presence and operation of the proposed bridge which would result from the CA powers sought would have a disruptive and detrimental effect on the operation of the port. We are however satisfied that this would be limited in extent in terms of its impact and duration and not seriously detrimental to the operation of the port.

*Future prospects for the port*

- 8.5.172. We accept the evidence put forward to show the importance of the port to the local and regional economy. We have already found, in Chapter 5, that the range of CTV berths required in the foreseeable future would be likely to lie between 36 and 50 berths. It is also our view that 50 berths would be likely to be able to be accommodated following the exercise of the CA powers in the rdDCO.
- 8.5.173. We acknowledge that these assessments are theoretical. They are however based on the evidence provided to us during the Examination. It allows us to consider a potential scenario in the most realistic manner available to us. The future may, and indeed possibly will, be different, but it would not be right to consider the serious detriment test on the basis of general statements made by either party.
- 8.5.174. The party's positions on berth utilisation rates have been formulated on very different bases, and direct comparisons are therefore difficult. We have already, in Chapter 5, agreed with the Applicant that dedicated berths should not be assessed as having a 100% occupation when considering the efficiency of the operation of the port.
- 8.5.175. It is also of note that the direct berth loss would be 62m out of an inner harbour berth length of 1,500m. Moreover, there is no evidence of specific characteristics of the berths that would be lost that are not available elsewhere in the inner harbour. We therefore favour the Applicant's position on this matter.
- 8.5.176. We accept that there would be a perception of disruption to the efficient operation of the port by the presence of the proposed bridge, but we have already found, in Chapter 5, that this would be limited. The presence of the bridge would also be unlikely to be a major deterrent in terms of new business due to the many other factors that would influence decisions on business location.
- 8.5.177. In view of all of the above points, we consider that the CA powers sought would have a detrimental but limited effect on the future of the statutory undertaking.

#### *Mitigation*

- 8.5.178. In the context of serious detriment, we must include the benefit of the Proposed Development to the operation of the port. Indeed, the SoST's s35 Direction identifies the importance of the port and recognises the key role that the Proposed Development could have on its growth. It is in the context of this direction that we have carried out our detailed Examination.
- 8.5.179. The port relies on its land-based connections. These are primarily highway connections, and indeed ABP has drawn attention to the grain HGVs arriving at the port at relatively short notice. We consider that the Applicant's stated benefits, which include highways matters, are realistic and have been based on conservative assumptions and subject to sensitivity testing.

- 8.5.180. There has been a lack of agreement between the parties on many issues during the Examination. ABP has however suggested mitigation that it considers would avoid serious detriment and maintain equivalency for the port in terms of the before and after situations. We do not think that the principle of equivalence is relevant to making a judgment on "*serious detriment*" in the context of s127 and securing "*equivalency*" is not necessary. The SoST could agree that there was some detriment to ABP's undertaking as a result of the CA but could still lawfully authorise the CA so long as the detriment was not serious.
- 8.5.181. We consider that the emergency berth mitigation, suggested by ABP, would be unjustified as previously explained. The risk of trapping would be minimal and not at a level that would represent serious detriment.
- 8.5.182. The outer harbour replacement berthing mitigation would also be unjustified as, under ABPs CTV test, there would be sufficient space available in the port, as previously explained. This suggestion also implies that there are further expansion opportunities within the outer harbour that do not feature in our growth assessment, and this would reduce the effect of the proposed bridge in this regard still further.
- 8.5.183. ABP has also suggested the provision of an indemnity, covered by an insurance policy. The Protective Provisions in the recommended dDCO do however provide wide ranging protection to ABP including all liabilities from the operation of the proposed bridge and the need for ABP consent, which could be conditioned, before any occupation of port land.
- 8.5.184. A wider cover to include actions by third parties and losses to third parties would place the Applicant responsible for circumstances far from any degree of its control. As an example, if a vehicle left the public highway and damaged third-party property, it would be difficult to see how the Highway Authority could be responsible if it had carried out its duties satisfactorily. Here, a similar situation should exist in relation to the elevated highway, although losses incurred by ABP would be covered under the Protective Provisions in the dDCO. Furthermore, we have not seen any evidence of other insurance policies to secure the cover provided by DCO Protective Provisions. We therefore cannot see any justification for additional indemnity or an insurance policy.
- 8.5.185. ABP has also questioned the availability of funding for compensation. We are however content that the required funding is sufficiently secure bearing in mind the consent stage that the Proposed Development is at.
- 8.5.186. Our attention has been drawn to the Hinckley and Richborough DCOs and the circumstances around them. We accept that serious detriment should be considered in relation to the undertaking as a whole. Each case should however be considered on its own circumstances, and comparisons between schemes can be somewhat contrived or anecdotal and therefore difficult to judge on a representative basis.
- 8.5.187. We agree that for serious detriment to occur, the impact should be important and significant. This does not however say that important and

significant impacts always lead to serious detriment, it may just be detriment. Furthermore, the requirement for replacement land would only come into play if serious detriment was found.

- 8.5.188. The importance of the location of the impact could also be a factor, as was the case at Hinckley. Here, the impacts may be, in places, important and significant in terms of the integration of the operation of the proposed bridge into the operation of the port. It is however the consequences in the round to the carrying on of the undertaking which need to be judged in terms of serious detriment.

*Conclusion on Examining Authority's consideration*

- 8.5.189. Having identified various areas of detriment, it is now necessary to combine these impacts and consider their detriment against the operation of the port as a whole. In carrying out this task, for the sake of completeness, we have included the effect of TP, even though this does not come within the scope of the s127 test in PA2008.
- 8.5.190. We have found that the CA and TP powers sought would result in moderate detriment to ABP's statutory undertaking in terms of loss of berthing and land within the port. We consider that the presence and operation of the proposed bridge that would result from the CA and TP powers sought would have a detrimental but limited effect on the operation of the port and the future of the statutory undertaking.
- 8.5.191. The assessment of these impacts is with the mitigation measures put in place by the Applicant. They have however been assessed without reference to the benefit to the port of improved highway conditions in the local area. If this is taken into account, the detriment would undoubtedly be reduced.
- 8.5.192. Furthermore, it is of note that the positions taken by ABP are, by its own evidence, worst case scenarios. The probability of the worst case occurring in each of the areas identified by ABP at the same time must however be less than that of a single worst case occurring in one of the areas identified. The holistic extent of detriment put forward by ABP is therefore, in our view, much less likely to occur than detriment in one specific area. We consider that this interpretation of probability adds weight to our views on the levels of detriment.
- 8.5.193. There is no doubt in our minds at all that the CA would be detrimental to the carrying out of ABP's statutory undertaking and that the mitigation measures would not restore equivalence. This detriment would not however be serious. We therefore, in the context of s127 of PA2008, do not consider that the CA and TP powers sought would result in serious detriment to the carrying on of the statutory undertaking at the Port of Lowestoft.
- 8.5.194. We have already considered the extent of land and rights to be taken, and we are satisfied that these are necessary for the Proposed Development. We also consider, in the context of s138 of PA2008, that work to the apparatus of ABP, within the scope of the rdDCO and

Protective Provisions, within the Order land would be necessary for the purpose of carrying out the Proposed Development.

8.5.195. The letter to the SoST from ABP dated 31 May 2019 does not add anything further to the case made by ABP during the Examination and has already been considered, apart from the "*minded to*" suggestion. For ease of reference however we now relate the material points made in the letter to our considerations above:

- CA of the statutory port estate – moderate detriment;
- loss of berthing and berthing utility and flexibility – moderate detriment;
- obstruction and impediment - limited detriment;
- impact on existing operations - limited detriment;
- impact on future flexibility - limited detriment;
- impact on commercial perception of the port and its ability to secure future business - limited detriment;
- failure to mitigate – not accepted and therefore no material detriment;
- lack of an indemnity - not accepted and therefore no material detriment;
- s35 Direction – provides the context for the need for the Examination; and
- conclusions and a "*minded to*" determination – this is considered below.

8.5.196. ABP's "*minded to*" suggestion did not form a major part of the Examination. The Applicant has however had the opportunity to respond to it. When considered in the light of our conclusions of no serious detriment above, there would seem little need to adopt the suggestion. Furthermore, there would appear to be no evidence that parties would engage with each other any more during such a period of time than they had done during the Examination. We also doubt that any such period of time would result in an agreement.

8.5.197. From all of the above, the ABP letter of 31 May 2019 does not alter our conclusion that the CA and TP powers sought would not result in serious detriment to the carrying on of the statutory undertaking.

## **Network Rail Infrastructure Limited (Tracker Reference 19)**

### ***Representations***

8.5.198. Network Rail Infrastructure Limited (NRIL) made representations to the Examination [[RR-021](#), [REP3-020](#) and [REP3-021](#) and [REP11-024](#)]. Matters have been agreed with the Applicant, including what both parties consider to be the final amendment to the dDCO Protective Provisions. The NRIL representations however have not been withdrawn.

### ***Applicant's response***

8.5.199. At D10, the Applicant understood that all dDCO drafting points, including Protective Provisions, were agreed with NRIL [[REP10-080](#)]. NRIL has however subsequently sought a further change to the Protective

Provisions, which has now been agreed and included in the dDCO [[REP11-003](#)]. NRIL has indicated that it cannot formally withdraw its representations until the requisite legal agreements are completed, and this will be after the close of the Examination.

### ***Examining Authority's consideration***

- 8.5.200. On the basis that the NRIL representations have not yet been withdrawn, we must consider them against s127 of PA2008. Our consideration does however take into account that all of matters within NRIL's representations have been incorporated in the rdDCO to the satisfaction of NRIL. We therefore, in the context of s127 of PA2008, do not consider that the CA or TP powers sought would result in serious detriment to the carrying on of the statutory undertaking of NRIL. We also consider, in the context of s138 of PA2008, that work to the apparatus of NRIL, within the scope of the rdDCO and Protective Provisions, would be necessary for the purpose of carrying out the Proposed Development.

### **Royal Mail Group Limited (Tracker Reference 24)**

#### ***Representation***

- 8.5.201. The Royal Mail Group Limited is concerned about disruption to the highway network and its services [[RR-034](#)].

#### ***Applicant's response***

- 8.5.202. The Royal Mail Group Limited's land interest is limited to a Category 2 interest in respect of a post-box situated on Waveney Drive. Royal Mail's RR focussed particularly on impacts during construction. The Applicant does not consider there are outstanding matters with respect to the negotiation of Royal Mail's interest in land affected by the CA or TP [[AS-013](#) and [REP10-073](#)].

### ***Examining Authority's consideration***

- 8.5.203. The BoR shows Royal Mail having a Category 1 interest in respect of the post box. We are satisfied that the removal of the post-box would be necessary for the purpose of carrying out the Proposed Development. We are also satisfied that its removal would not cause serious detriment to the carrying on of the undertaking. We therefore, in the context of s127 and s138 of PA2008, cannot see anything in this objection that would prevent the grant of the CA or TP powers sought.

## **Affected Persons and persons with an interest in land**

### **Introduction**

- 8.5.204. We now turn to consider individual objections made in relation to specific plots and the rights and powers sought. Our considerations on each of these objections then go forward to inform our finding on the general case in respect of the relevant plots.



- 8.5.205. The ExA has considered all the objections received. Many of the issues raised by objectors have also been considered in earlier parts of this report when considering the planning issues arising in relation to the Proposed Development. The objections are considered here in the context of the application for the grant of CA powers and for the grant of powers of TP.
- 8.5.206. In relation to the CA objections, the ExA has examined them against the tests set out in s122 and s123 of PA2008, having regard to the CA guidance<sup>27</sup> and with regard to the provisions of the Human Rights Act 1998. We have also considered objections to the application for powers of TP under A33 and A34 of the rdDCO and by those who may be able to make a claim under s10 of the Compulsory Purchase Act 1965 or Part I of the Land Compensation Act 1973. Similarly, we have had regard to the Human Rights Act in considering the application for the grant of powers of TP and also the need and justification for such powers.
- 8.5.207. In considering these objections, we have taken into account the CA Negotiation and Objections Tracker provided by the Applicant at the end of the Examination. This identifies the objection, where made, and the plots concerned [[REP10-073](#)]. We have only reported on the objections made and not withdrawn before the end of the Examination, and we have considered the situation of the other affected persons under our general assessment of CA. We have also only identified the points we consider to be material when reporting on the representations and the Applicant's responses.

### **Cara Jane Robinson (Tracker Reference 3)**

#### ***Representations***

- 8.5.208. Ms Robinson runs a beauty business from her property, which would be subject to CA [[RR-015](#) and [REP3-022](#)]. Ms Robinson lives with her family in their house, which they own, immediately adjacent to the business property. The CA would affect her business property, business and established way of working in the business premises close to her home, whilst providing support for her family.

#### ***Applicant's response***

- 8.5.209. The Applicant has agreed to acquire Ms Robinson's house and compensation for business disturbance would be made [[REP5-010](#)]. Heads of Terms (HoT) are now agreed as set out in the Compulsory Acquisition Negotiation and Objections Tracker [[REP11-010](#)].

#### ***Examining Authority's consideration***

- 8.5.210. Compensation for business disruption can be settled in the manner set out in the rdDCO. We consider that the acquisition of Ms Robinson's house in an agreed manner would satisfactorily mitigate any harm to her

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<sup>27</sup> Guidance on Compulsory Purchase and the Cichel Down Rules (DCLG, 2015)

family circumstances. Moreover, the public benefit from the Proposed Development would outweigh any private loss in terms of human rights.

- 8.5.211. There are references to Ms Robinson's house and valuations in emails between the parties, and these appear in the Applicant's Tracker, before and after the second CAH. Relevant statements were also made before Ms Robinson at the first CAH. The agreement of HoT has been reported to the Examination, and no contrary evidence has been provided. We are therefore satisfied that this acquisition has been sufficiently secured.
- 8.5.212. In view of these points, we cannot see anything in this objection that would prevent the grant of the CA or TP powers sought. We are therefore satisfied that land within the Order limits is required and proportionate for the Proposed Development and that there is a compelling case for the CA powers sought and that the TP powers are justified.

### **PFK Ling Limited (Tracker Reference 7)**

#### ***Representations***

- 8.5.213. PFK Ling Limited (Lings) operates a car and motorcycle retailing business on a site which would adjoin the Proposed Development. Part of the frontage of the site would be subject to CA. Parts of the site would also be subject to the CA of rights for construction and maintenance purposes and others subject to TP for construction purposes.
- 8.5.214. Lings believe that the CA sought would have the following impacts on its business at the site [[RR-012](#), [AS-019](#), [REP3-023](#), [REP5-018](#) and [REP-019](#), [REP10-064](#) and [REP11-026](#)]:
- Substantial areas of external display would be lost;
  - the CA to accommodate a revised site access would result in the loss of further display and storage land and operational space to rear of workshop, would prevent a planned workshop extension, could affect the integrity of a nearby quay wall outside of the Order land and would obstruct the retail use of land and parts of the main showroom building;
  - the Enterprise car rental franchise on the site would be likely to be lost, including the cross-selling, servicing and repair opportunities for Lings itself;
  - site servicing difficulties would arise and would be particularly hazardous for articulated car transporters;
  - increased vehicle queuing would occur at the revised access;
  - there would be a significantly increased risk of accidents at the revised access; and
  - there would be severe business disruption during construction and lasting harm to trade thereafter.
- 8.5.215. As a result of all of the above, Lings is of the view that it would have to relocate. It does however also have the following concerns about the CA sought:

- The CA of certain plots and rights over land within the Lings site would not be necessary to deliver the Proposed Development. Indeed, Lings has proposed an alternative which would avoid CA.
- With the exception of a single site, in the Applicant's ownership, there are no relocation sites available.
- The DCO application is unviable. The Applicant's compensation liability to Lings alone would exceed its total land acquisition budget as set out in its Outline Business Case [[APP-107](#)]. Indeed, the Applicant's reluctance to consider alternative arrangements to avoid CA supports Lings' view on viability [[REP11-026](#)]. As a result, the application does not meet the two conditions in s122 of PA2008.
- The CA sought from Lings is not the least intrusive in terms of business and financial impact. The CA is therefore not an appropriate use of public funds.
- There has been no proper: traffic assessment of the revised access and servicing arrangements; assessment of the extent of lost retail space within the site; or assessment of the impact of the CA on Lings. As a result, the Applicant has failed to properly consult with Lings and failed to engage in meaningful negotiations contrary to Government guidance<sup>28</sup>.

8.5.216. For the above reasons, Lings considers that the adverse impact on its operations outweighs the public interest in favour of the CA and urges the SoST not to approve the application.

***Applicant's response***

8.5.217. Following the Relevant Representation by Lings, the Applicant procured an expert witness report into the effect of the Proposed Development on the Lings' site, including vehicle tracking for car transporters [[AS-013](#), [REP4-022](#) and [REP11-010](#)]. This found that the proposed revised access would not generally be more circuitous than the present situation and would avoid passing through a signalised junction. Moreover, there are also other points on the site where vehicle clearances are currently tight. The Applicant has also amended the revised access during the Examination to improve vehicle tracking [[REP4-013](#), NMC7 and [PD-015](#)]. The access onto the public highway has also performed satisfactorily under a Stage 1 Road Safety Audit [[APP-131](#), Appendix 8].

8.5.218. The Applicant acknowledges that, whilst there would be a loss of display and forecourt space, opportunities would remain to mitigate that loss by use of a vacant and prominent area of the frontage of the Lings site. This area is near to the existing Waveney Drive roundabout. Moreover, the maximum proportion of the site, excluding the Enterprise area, which would be permanently lost would be some 8.5% and not so significant [[AS-013](#)]. This could also be reduced following detailed design, as would also be the case where rights only are sought. Moreover, the Applicant has considered the general impact of CA on the Lings' site in some detail [[AS-027](#) and [REP4-014](#)]. Furthermore, the

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<sup>28</sup> Guidance on Compulsory Purchase and the Cichel Down Rules (DCLG, 2015)

Proposed Development would substantially increase traffic past the site, which would increase the profile of the site to potential customers.

- 8.5.219. Plots 3-58 and 5-37 are owned by Lings, but occupied by Enterprise. The description of the land interest to be subject to CA in the BoR clearly excludes any interests or rights held by Lings, and the CA therefore relates to the leasehold interest owned by Enterprise [[REP10-006](#)]. The dDCO would return the land currently occupied by Enterprise to Lings. Provisions would then facilitate accommodation works to alter the internal circulation of the site to reflect the new access point and include the land currently occupied by Enterprise [[REP4-014](#)].
- 8.5.220. The dDCO would also secure, through the CoCP, traffic management measures and continuous access to the Lings' site. The Applicant therefore considers that the impacts of the CA could be adequately mitigated. The Applicant is in discussion with Lings about the accommodation and reconfiguration works, and the principle of them is agreed.
- 8.5.221. Furthermore, the Applicant has sought the TP of adjacent land to the north of the Lings' site to provide additional space for Lings' operations during construction. This would mitigate the effect of land take during construction. The Applicant has responded in detail to Lings' plot-related representations [[REP4-014](#), page 25, [REP5-010](#), page 22 and [REP8-006](#), page 12].
- 8.5.222. The Applicant considers it has appropriately justified all the land included within the Order limits as being required either directly for, or incidental to, the Proposed Development. The rights sought by the Applicant would be necessary to inspect and maintain the Proposed Development and for the diversion of SUs' apparatus. The Applicant does not consider that Lings needs to be relocated.
- 8.5.223. Lings has made a number of representations relating to funding, as have other parties. The Applicant considers its Funding Statement to be clear, accurate and robust [[APP-008](#) and [REP3-029](#), ExQ1 3.7 to 3.10].
- 8.5.224. The additional £8m, identified in June 2018, which may be required to fund the Proposed Development, has been accounted for in SCC's capital budget. That sum includes the cost of land acquisition and compensation, and this was confirmed by SCC [[REP4-014](#), Appendix E]. The £8.3m local contribution, identified in the Outline Business Case, has also been underwritten by the SCC in advance of contributions being confirmed from other local sources. The Applicant's property cost estimate includes for material detriment claims. This has been calculated on the basis of quantified risk and the standard heads of claim applied in CA. This was explained at CAH1 [[REP5-010](#), pages 40 to 41 and Appendices 1 and 2].
- 8.5.225. In view of all of the above, the Applicant has shown that it has access to sufficient funds to implement the Proposed Development. It has also made appropriate allowances for liabilities associated with claims under the compensation code.

8.5.226. The Applicant continues to negotiate with Lings, to resolve its concerns by way of a side agreement. The Applicant however considers that the dDCO and associated documents would address the representations made by Lings. Furthermore, outstanding issues could be dealt with by reference to the compensation code.

***Examining Authority's consideration***

8.5.227. The Applicant has considered the general impact of CA on the Lings site in some detail and, from this, we do not consider that substantial areas of external display would be lost. Indeed, the proportion of site lost would be quite small and the site would generally retain the frontage length that it has at the present time. Furthermore, the prominence of the site would increase from the growth in passing traffic and it does not appear to us that Lings use all of their available frontage at the present time.

8.5.228. The CA of new rights to the rear of the Lings building would be in respect of SUs' apparatus. The operational space to the rear of the workshop would not be lost, although there could be some disruption to its use, which could be the subject of compensation. We cannot see how this would affect the integrity of the quay wall in this area due to the extent of land outside of the Order limits which would be undisturbed. This area is currently used for access within the Lings site, and we cannot see how new rights for services in this access would prevent a workshop extension.

8.5.229. We accept that the Enterprise franchise would probably leave the Lings' site following the CA of its lease. Both Enterprise and Lings would however have access to compensation for loss as a result. Should either of these parties arrive at a solution which would allow Enterprise to remain, we are content that this could be secured within any agreement between the parties and the Applicant. It is also of note that TP of the north of the Lings' site would have been secured, partly for the use of Lings to mitigate disturbance during construction.

8.5.230. In our view, particularly with internal site amendments that could be funded by compensation where appropriate, site servicing following the CA and mitigation would be different. It would not however be necessarily more difficult than at present. We also do not see that it would be particularly hazardous for car transporters, on the basis of the vehicle tracking exercises that have been undertaken and the changes made during the Examination. Furthermore, in view of the safety audit work carried out at the revised access, we do not consider that there would be any excessive queuing or significantly increased risk of accidents at the revised access.

8.5.231. There would be business disruption due to the CA and TP powers sought. We do not however believe that it would be severe or any reason to justify the relocation of the Lings business. Moreover, the need for each of the plots within the Order limits has been justified to our satisfaction, and we cannot see any reasoned evidence of a less intrusive arrangement.

During construction, the CoCP would ensure that continuous and appropriate access is maintained to the Lings site.

- 8.5.232. Lings has questioned the viability of the DCO application in terms of the availability of funding. We have addressed the matters raised later in this chapter of our report.
- 8.5.233. In view of all of the above points, we cannot see anything in this objection that would prevent the grant of the CA or TP powers sought. We are therefore satisfied that land within the Order limits is required and proportionate for the Proposed Development and that there is a compelling case for the CA powers sought and that the TP powers are justified.

### **The Nexen Group (Tracker Reference 9)**

#### ***Representations***

- 8.5.234. The Nexen Group comprises: Overseas Interests Inc; Waveney Fork Trucks Limited; Lift Truck Rentals Limited; Nexen Lift Trucks Limited; Oakes Recruitment Limited; Team Oakes Limited; and Hitech Grand Prix Limited. All of these affected persons have submitted separate representations prior to the start of the Examination, but have made combined representations during the Examination. The individual representations have generally been made in respect of the same plots. We report on these representations in the same combined manner that they have been presented during the Examination.
- 8.5.235. The Nexen Group undertakes various business activities on land in close proximity to the Proposed Development. The access to this land would be compulsorily acquired and part of the land would be subject to the CA of rights for construction and maintenance access. Part of the land having development potential would also be subject to TP for construction purposes. The Group has concerns about the following matters [[RR-023](#), [RR-037](#), [RR-027](#), [RR-029](#), [RR-031](#), [RR-036](#) and [RR-026](#), [REP5-020](#), [REP8-030](#) and [REP8-031](#), [REP9-016](#), [REP10-090](#) and [REP11-025](#)].
- 8.5.236. The CA sought would sever the Group's land from the local highway network and an alternative access would be provided. The Group however believes that access to its retained land, both within and outside of the Order limits, may be interrupted during the construction or maintenance, including for emergencies, of the Proposed Development. This disruption would result from the rights being sought. The exercise of these rights could interrupt the operation of the existing businesses on the Group's land which rely on critical delivery times. The impact could be severe and irreparable, and the Group does not consider that the CA of its land or rights over its land is, or has been justified as, necessary to allow the Proposed Development to proceed.
- 8.5.237. The proposed access to the Group's land, following the CA of its existing access, would include a restrictive underpass and the relocation of utilities. The Group is disappointed that an access has not been provided through the site to the south of its land, owned by PFK Ling Limited,



and to the east of the current Motorlings showroom. Such an access would avoid these restrictions.

- 8.5.238. The CA of its existing access would limit the Group's ability to service an area identified for future development within its land. The Group has suggested a non-HGV access to this land. This area for future development would also be subject to TP, where the extent and the timing and condition on return are unknown. These circumstances would limit the use of this area to mitigate construction impact on the existing businesses and could also restrict future development on this area. The permanent CA of land for the proposed pontoon mooring for vessels awaiting the proposed bridge opening, Work No. 7 on Plots 3-52 and 3-53, would also restrict the use of the Group's mooring quay.
- 8.5.239. As a result of all of the above points, the Group is of the view that the impact of the CA and related powers would be severe and permanent. Against this background and that of public interest, their necessity has not been justified and alternatives to this CA have not been sufficiently explored.

***Applicant's response***

- 8.5.240. Access to the Nexen Group's land during construction would be secured under the CoCP [[REP10-078](#)]. Following representations by the Group, the Applicant has brought forward a non-material change, NMC6, to provide a second Private Means of Access (PMA) to the Group's land [[REP4-013](#)]. This would be in addition to the revised access arrangement originally proposed, which would essentially maintain the Group's existing site access with a standard headroom of 5.3m. The NMC6 PMA (NMC6) would have a headroom of 6.5m for oversize vehicles [[REP10-041](#), note 7]. Compliance with these clearances is secured by rdDCO A5 under the mainline long section Limits of Deviation. It is of note that a telecoms cable on Riverside Road imposes an existing height restriction of 6.1m [[AS-013](#)].
- 8.5.241. Furthermore, this second access would facilitate the separation of existing operation HGV traffic from that for the Group's development land [[REP7-003](#), Appendix K]. The acceptability of both accesses has been supported by vehicular tracking information [[REP7-003](#), Appendix L and [REP9-009](#), page 3].
- 8.5.242. The Applicant has considered and ruled out the access alternatives suggested by the Group. A more northerly second access point would require additional CA of land, accommodation work to a quay wall [[REP7-003](#), para K.13]. Access through the Lings' site would represent a disproportionate use of CA powers and would have an adverse effect on their land [[REP7-003](#), para K.19 and [REP9-009](#), page 27].
- 8.5.243. The TP of the site for future development would be for the short term, and its possession and return would be subject to compensation provisions. The retained existing access would be capable of servicing future development [[REP5-005](#), item 53 and [REP9-009](#), page 27]. The Applicant has justified the nature of, and purpose for, the rights sought

[[REP4-014](#), page 52]. It also considers that the ongoing impact of these would be negligible considering the infrequency of their related use for maintenance.

- 8.5.244. The bed of the lake at the Group's quay wall dries at low water and it has a berth length of some 60m behind the proposed pontoon. There is however no evidence of bollards along its length. A similar berth length to the west of that which would be lost would still be available with better land side space considering the HGVs which use this area. This matter, along with others, would be a subject for consideration under compensation provisions.
- 8.5.245. The Applicant continues to negotiate with the Group to resolve its outstanding concerns through a side agreement [[REP11-010](#)]. If agreement cannot be reached however, the Applicant is content that adequate mitigation to ensure that the Group can continue to operate during construction and thereafter would be secured within the dDCO. This would also apply to development land.

***Examining Authority's consideration***

- 8.5.246. The CA of all interests and rights in land at the existing entrance to the Nexen Group's site would sever the site from the public highway. This access would however be relocated a short distance into the site from where it currently exists and a further access would be provided to the site. The relocated access would have a standard headroom restriction on its approach, due to the proposed bridge. The corresponding but higher headroom restriction relating to the further access would however exceed a restriction on the approach to the existing access to the Group's site.
- 8.5.247. It also has been suggested that the further access would cause conflict with a door to the Group's building on the site. Vehicles travelling to the yard at the rear of the site, where we saw HGVs at our visit, currently have to pass this door in close proximity, and we cannot see any additional conflict that would occur. Vehicles using the relocated access could continue to use the weighbridge in its existing location. Oversize vehicles needing to use the weighbridge would have to reverse within the site. The need to reverse would therefore be limited to the number of oversize vehicles needing to use the weighbridge. From all of these points, we consider that the impact of the CA at the existing access has been adequately mitigated.
- 8.5.248. The CA also seeks new rights within the Group's site between its western boundary and the building on the site. Whilst there would be no access around the building on its western side outside of the area over which rights would be sought, the rights sought would be for construction, maintenance and emergencies. Any construction disruption would be minimised and mitigated through the CoCP. The future use of rights would be infrequent and likely to maintain access around the building in some form and could be a subject for compensation. Whilst the access to and on the Group's site could be interrupted, we do not consider that the



extent of interruption would be significant in terms of duration or frequency.

- 8.5.249. It has been suggested that the further access should be relocated towards the north and quayside. The quayside has a value to the local economy and environment in terms of its comprehensive development. To route an access to the Group's site through this area would be significantly detrimental to its development potential. We can see no reason why such an option should be investigated in any more detail than has already been done.
- 8.5.250. The CA and TP powers would be sought on a part of the Group's site which has been identified for future development. We are satisfied this part of the Group's site should lie entirely within the Order limits for the purposes set out in the application. In terms of the TP powers sought, this would be the only sizeable area to the east of the southern approach. It is therefore reasonable that it could be required for construction purposes or by the users of nearby sites to mitigate the effects of construction disruption.
- 8.5.251. We recognise that the powers within the rdDCO would limit the extent and delay the timing of future development on this part of the Group's site. Notwithstanding that this part of the site would seem to be appropriate for development, it would not appear to be imminent and the period of any delay would reduce as construction took place. This part of the site could be accessed from a private road to the south of it. The private road would however lose its private means of access to the public highway under the Permitted Development. Although this part of the Group's site could be accessed from the relocated access to the Group's site, this access could well be less efficient in terms of future development. Such matters could have an effect on the value of the site and be reflected in compensation.
- 8.5.252. It has been suggested that the future development site could be accessed through the Lings site to the south of the private road. Lings has objected to the suggestion and it would require CA to implement. Firstly, the Lings site is already quite intensively used, and any such access would have a significant impact on the use of the Lings site. Secondly, the use of CA powers to maintain the potential development efficiency of the future development site would be difficult to justify.
- 8.5.253. The CA of land for the construction, operation and maintenance of a new mooring within some 5m of part of a quay in the group's site would effectively prevent the use of this part of the quay. There are however other lengths of quay that would not be so affected. The length of quay which would be affected has elements of the building on the site within 20m of the quayside whereas the lengths which would be unaffected have far greater land side space.
- 8.5.254. In view of all of the above points, we cannot see anything in this objection that would prevent the grant of the CA or TP powers sought. We are therefore satisfied that land within the Order limits is required

and proportionate for the Proposed Development and that there is a compelling case for the CA powers sought and that the TP powers are justified.

## **Nwes Property Services Limited (Tracker Reference 10)**

### ***Representations***

- 8.5.255. Nwes is a not-for-profit enterprise agency providing business support across the East of England, London and the East Midlands [[REP3-009](#), [REP7-012](#) and [REP8-033](#)]. It owns the Riverside Business Centre which is situated in close proximity to the Proposed Development and provides office space for start-up and established businesses. The current average occupancy rate is 81% since May 2009 and 77% at January 2019. The CA and TP sought would include outdoor areas around the business centre building but not the building itself. There are 62 car parking spaces on-site, and some 8 of them would be within the area subject to the CA of all interests.
- 8.5.256. Nwes raised a number of objections to the Proposed Development during the Examination. These were supported by their occupiers who, in a survey, had the following views:
- 58% said that traffic resulting from the development would have a highly negative impact;
  - 50% said that the development, increased noise from it and the access proposals would have a highly negative impact on the site and their business; and
  - 42% said that reduced visibility would have a highly negative effect.
- 8.5.257. There were also concerns raised regarding parking and fumes. Should the Proposed Development proceed, 42% of occupiers said that they would consider relocation and 55% said that they would not be willing to pay the same level of rent.
- 8.5.258. If all the occupiers who indicated that they would consider relocation did so, the occupancy rate would drop to 62%, which would be below the break-even point of 73%. The continued operation of the business centre would no longer be viable. Closure of the centre would be hugely disruptive to Nwes, the business community of the centre and the wider Lowestoft economy.

### ***Applicant's response***

- 8.5.259. The Applicant is aware of the tight financial constraints within which Nwes operates [[REP7-004](#)]. The CoCP includes provisions for engagement with local businesses whereby affected parties can liaise with and provide feedback to the Applicant's contractor [[REP4-014](#)]. Heads of terms are now agreed [[REP11-010](#)].

### ***Examining Authority's consideration***

- 8.5.260. A number of concerns raised by Nwes relate to matters not directly associated with CA and, in this chapter of our report, we have therefore

only considered impacts relating to CA and TP. The material points are the potential loss of some parking, internal access road/hardstanding and boundary landscaping areas.

- 8.5.261. We consider that replacement parking spaces could be provided elsewhere on the Nwes site. Whilst some disruption would occur, the necessary accommodation works and other rights sought would not be seriously disruptive to the occupiers. We also note that HoT appear to have been agreed in respect of the voluntary acquisition of the required land, rights and TP from Nwes. The agreement of HoT has been reported to the Examination, and no contrary evidence has been provided.
- 8.5.262. In terms of boundary landscaping, it is not continuous along the eastern boundary in any event, and the loss of boundary landscaping would not be unusual for the site. The business centre would also be more prominent in the locality due to the visibility of a significant corner elevation of the building from a proposed roundabout on a new route through the area.
- 8.5.263. In view of all of these points, we cannot see anything in this objection that would prevent the grant of CA or TP powers. We are therefore satisfied that land within the Order limits is required and proportionate for the Proposed Development and that there is a compelling case for the CA powers sought and that the TP powers are justified.

#### **Statuslist Limited (Tracker Reference 14)**

##### ***Representations***

- 8.5.264. Statuslist is the registered proprietor of freehold land which would be subject to CA for a new access road under the rdDCO [[RR-018](#) and [REP8-035](#)]. The land is currently vacant but was formally used for industrial and warehousing purposes and is intended to be subject to future commercial and residential development. Statuslist is concerned that the Applicant has failed to demonstrate that the use of the land is in fact required for the road. There is no evidence that the Applicant has considered alternative options that would not impact on the land owned by Statuslist. The road would bisect the land, would impact on the current and future use of the land and is not considered optimal [[APP-123](#), page 107].
- 8.5.265. The industrial and commercial use of land located to the west of the Statuslist land requires access for a car transporter. This would significantly increase the road geometry requirements, over and above what would normally be required for emergency or servicing vehicles with a negative effect on the Statuslist land. Statuslist is also concerned that the road would bring increased through traffic, most significantly HGVs and other commercial traffic, through the land. This would limit the options for the use and development of those areas of the land fronting onto the road. Furthermore, Statuslist is concerned that the temporary acquisition of part of its land would have a detrimental impact on the use of those parts of the land in terms of its own use and the wider development of the land.

8.5.266. Statuslist however accept that good progress has been made on an agreement between the parties [[REP5-017](#)].

***Applicant's response***

8.5.267. Alternatives to the new access road were presented in the Preliminary Environmental Information Report and are also included in the ES [[AS-013](#) and [APP-136](#), paras 3.7.18 to 3.7.23].

8.5.268. Prior to making the application, the Applicant repositioned the road to accommodate the Statuslist request to some extent. Further repositioning would require the CA of neighbouring land for visibility splays, which was not considered proportionate. Moreover, the nature and scale of the road that is being proposed would be comparable to that which the landowner would otherwise need to provide themselves. It is also not envisaged that access to a nearby car showroom would use the new road and the relevant authorities have confirmed that the design of the road is appropriate.

8.5.269. HoT are now at an advanced stage [[REP11-010](#)]. Statuslist confirmed that it would not be attending CAH1 or ISH1, and noted that positive discussions were ongoing with the Applicant [[REP5-017](#)]. Statuslist has not attended any subsequent Hearings, which is indicative of the progress made in negotiations between the parties.

***Examining Authority's consideration***

8.5.270. Land owned by Statuslist would be subject to CA for a new access road, to replace existing accesses which would be stopped up by the approach to the new bridge, and TP for construction purposes. There would also be CA of new rights to provide highway visibility. We are satisfied that the road is required to replace the accesses and that, in crossing undeveloped land, the road would have least impact. We are also satisfied that the specific location of the road is constrained by visibility splays required at its junction with Waveney Drive. In our opinion therefore, the need for the CA is justified.

8.5.271. We do not consider that the future use of the road has led to an excessive land take. Indeed, the suggested use by car transporters by Lings would not take place, as their access would be elsewhere. The extent of the CA is therefore justified. It is also of note that the new access road could reduce the need to provide highway access infrastructure within the Statuslist land holding.

8.5.272. The proposed bridge could require significant launch areas, and those available at the northern approach to the bridge would be restricted by the port and railway operations. It is therefore reasonable that land at the southern approach to the proposed bridge, which is not in a current use, should be made available for construction purposes. We consider that the land owned by Statuslist, behind the quayside and in the vicinity of the new access road, lies within this category.

8.5.273. In view of all of these points, we cannot see anything in this objection that would prevent the grant of the CA or TP powers sought. We are therefore satisfied that land within the Order limits is required and proportionate for the Proposed Development and that there is a compelling case for the CA powers sought and that the TP powers are justified.

### **B. S. Pension Fund Limited (Tracker Reference 18)**

#### ***Representations***

8.5.274. The B. S. Pension Fund Limited owns land which would be subject to the CA of all interests [[RR-011](#), [AS-001](#) and [REP3-017](#)]. This land, and that in its immediate vicinity, is let to Wickes Building Supplies Limited. The CA of this land would have the potential to adversely affect access to the unit let to Wickes by customers on foot and in vehicles. It would also have the potential to adversely affect delivery and other service access to the unit by small and large vehicles.

8.5.275. The Fund does not consider that the Applicant has taken sufficient steps to acquire the land by agreement and that there is no compelling case for CA. The Fund would be prepared to enter into a voluntary agreement to enable the land to be acquired, subject to the agreement of appropriate terms. Limited progress has however been made in this regard.

#### ***Applicant's response***

8.5.276. The CA sought would not materially affect or change the access to Wickes or any other part of the Fund's interest [[AS-013](#) and [REP4-014](#)]. Progress has been made on voluntary acquisition [[REP10-073](#)]. Heads of terms have been agreed and a draft legal agreement has been issued.

#### ***Examining Authority's consideration***

8.5.277. The CA of land owned by the B. S. Pension Fund Limited would comprise part of a grassed area alongside Peto Way, which lies outside of the compounds to the rear of the Wickes building. We therefore consider that the impact of the CA on the operation of the site would be negligible. The Fund also has rights within the area of the public highway that would be subject to CA, although no representations have been made in this specific regard. Traffic levels on Peto Way would increase as a result of the Proposed Development, but this impact is considered elsewhere in our report.

8.5.278. In view of all of these points, we cannot see anything in this objection that would prevent the grant of the CA powers sought. We are therefore satisfied that land within the Order limits is required and proportionate for the Proposed Development and that there is a compelling case for the CA powers sought and that the TP powers are justified.

### **SMS (Lowestoft) Limited (Tracker Reference 22)**

#### ***Representation***

- 8.5.279. SMS Group Lowestoft Shipyard would like to determine the effect the Proposed Development would have on its business [[RR-006](#)].

***Applicant's response***

- 8.5.280. SMS operates from a dry dock to the east of the proposed bridge and outside the Order limits [[AS-013](#) and [REP10-073](#)]. Its interest is limited to a Category 2 interest in respect of a right of access, which will not be removed. The Applicant has met with SMS and provided responses to a number of points of clarification that SMS sought. It is understood there are no outstanding matters to be resolved with this party.

***Examining Authority's consideration***

- 8.5.281. The CA sought would include rights over Commercial Road alongside those held by others, including SMS. Matters relating to Commercial Road have been the subject of detailed discussions during the Examination as a result of the representations made by ABP. As a result of these representations and the responses from the Appellant, we consider that this CA is justified. We also consider that the use of Commercial Road by those who have a right to do so would not be unreasonably restricted. We have also taken a similar view in relation to the TP sought in respect of sections of Commercial Road.
- 8.5.282. In view of all of these points, we cannot see anything in this objection that would prevent the grant of the CA or TP powers sought. We are therefore satisfied that land within the Order limits is required and proportionate for the Proposed Development and that there is a compelling case for the CA powers sought and that the TP powers are justified.

**Broadland Housing Association Limited (Tracker Reference 23)**

***Representation***

- 8.5.283. Broadland Housing Association Limited's (BHAL's) interest is the subsoil up to the half width in respect of unregistered highway land, and BHAL is identified as a Category 3 person. BHAL would also welcome the opportunity for a specific resident community group to be implemented to engage with the process [[RR-023](#)].

***Applicant's response***

- 8.5.284. BHAL's representation focussed on impacts during construction. The Applicant does not consider there are outstanding matters with respect to BHAL's interest in land affected by CA [[AS-013](#) and [REP10-073](#)].

***Examining Authority's consideration***

- 8.5.285. In view of all of these points, we agree with the Applicant and cannot see anything in this objection that would prevent the grant of the CA or TP powers sought. We are therefore satisfied that land within the Order limits is required and proportionate for the Proposed Development and

that there is a compelling case for the CA powers sought and that the TP powers are justified.

## **8.6. EXAMINING AUTHORITY'S CONSIDERATIONS**

### **General case**

#### **Examining Authority's approach**

- 8.6.1. The ExA's approach to the question of whether and what CA powers it should recommend to the SoST to grant has been to seek to apply: the relevant sections of PA2008, notably s122 and s123; the Guidance<sup>29</sup>; and the Human Rights Act 1998. The ExA's approach has also been, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 8.6.2. There are representations from SUs which have not been withdrawn and, therefore, s127 of PA2008 is engaged in the consideration of the application. There are also relevant SU rights and apparatus on land that is the subject of CA of new rights under the dDCO. Section 138 of PA2008 is, therefore, also engaged, and we have considered the application, and representations, accordingly.
- 8.6.3. The ExA also understands that the rdDCO deals with the Proposed Development, itself and CA powers. The case for CA powers cannot properly be considered unless, and until, the ExA has formed a view on the case for the Proposed Development overall, and the consideration of the CA issues must be consistent with that view.
- 8.6.4. The ExA has shown in the conclusions to the preceding chapter that it has reached the view that development consent should be granted. The question therefore that we address here is the extent to which, in the light of the factors set out above, the case is made for the CA and TP powers necessary to enable the development to proceed.
- 8.6.5. In these conclusions, we shall first consider a number of general matters relating to the Applicant's case for CA and TP which are also pertinent to points raised by a number of objectors. We have already considered the cases for objectors and have found that none of them would give any reason to override a general conclusion on the Applicant's case for CA and TP. We have also concluded on SUs' land and found that, where representations have not been withdrawn, there would be no serious detriment to the carrying on of the undertaking. We then consider SUs' apparatus, Crown land, the tests set out in s122(2) and s122(3) and human rights issues. Apart from Crown land, there is no special category land that would be affected by the application.
- 8.6.6. Although we have specifically referred to objections raised by APs, we appreciate that this represents only a proportion of the 145 or so parcels

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<sup>29</sup> Planning Act 2008, Guidance related to procedures for compulsory acquisition (DCLG, 2013)



of land that would be affected [[REP10-006](#)]. Even though a specific objection may not have been raised in relation to a particular plot of land, we have nevertheless applied the relevant tests to the whole of the land that would be subject to powers of CA or TP in reaching our overall conclusions.

### **Associated Development**

- 8.6.7. Section 122(2) of PA2008 sets out the purposes for which CA may be authorised. The DCLG Guidance<sup>30</sup> explains that, in the light of s122, applicants must be prepared to justify their proposals for the CA of any land to the satisfaction of the Secretary of State.
- 8.6.8. Section 115 of PA2008 provides that, in addition to the development for which development consent is required under Part 3 of PA2008 (the principal development), consent may also be granted for Associated Development. PA2008 defines Associated Development as development which is associated with the principal development.
- 8.6.9. We are of the view that the Associated Development in Schedule 1 of the rdDCO comprises development for which development consent is sought in accordance with DCLG Guidance<sup>31</sup>. The land required for this Associated Development can therefore, in principle, be compulsorily acquired pursuant to s122(2)(a) of PA2008. We shall consider later in this chapter whether all of the land in respect of which CA and TP powers are sought is, in fact, required for the development.

### **Public benefit**

- 8.6.10. The need for new nationally significant road infrastructure projects is recognised by the National Policy Statement for National Networks (NPSNN) [[APP-091](#)]. The NPPF acknowledges the pre-eminence of NPSs in policy terms when considering NSIPs. It is clear from the relevant NPS that there is a national need for new road infrastructure of the type that is the subject of the application. The s35 direction also draws attention to the potential benefits of the Proposed Development on the wider network.
- 8.6.11. The application sets out the need case for the Proposed Development [[REP10-009](#), Section 5]. We have already concluded in this report that there is an urgent need for the Proposed Development. We have also concluded that the benefits, including this need, outweigh any harm to such an extent that development consent should be granted. In terms of CA, we rely on this conclusion that development consent should be granted. From what we have found in relation to the Proposed Development, we also consider that there is sufficient certainty regarding the identified need and that now is the right time to request the CA powers that are sought. All of these matters lead us to the view that

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<sup>30</sup> Planning Act 2008, Guidance related to procedures for compulsory acquisition (DCLG, 2013)

<sup>31</sup> Planning Act 2008 Guidance on associated development applications for major infrastructure projects (DCLG, 2013)



there is significant public benefit to be weighed in the balance concerning the compelling case for CA.

### **Private loss**

- 8.6.12. The Applicant has not assessed in detail the effect upon individual APs and their private loss that would result from the exercise of CA powers in each case. Any private loss suffered by an individual AP may become the subject matter of a claim for compensation, with any claim determined by the Upper Tribunal of the Lands Chamber [[REP10-009](#)].
- 8.6.13. The Applicant has also taken a number of steps to limit the exercise of compulsory powers in respect of each plot and each individual AP [[REP10-009](#), Sections 11 and 12]. These steps include:
- keeping the areas of land affected to a minimum;
  - seeking wherever possible to rely on TP of land rather than CA; and
  - engaging with all persons with an interest in land affected with a view to reaching a voluntary agreement.
- 8.6.14. The Applicant carried out an options assessment process together with a detailed assessment of the land and rights needed to deliver the Proposed Development [[APP-091](#) and 123]. Landowners and occupiers were involved throughout the process [[REP9-006](#)].
- 8.6.15. We recognise that the Proposed Development has been designed so that the Order limits have been brought in as far as possible to minimise interference with private rights as set out above. Furthermore, the Applicant has sought to use powers of TP wherever possible. The extent of any private loss has therefore been mitigated through the use of CA powers only after the detailed design has been completed. All of these factors would inherently reduce the extent of the private loss experienced by those affected by CA.

### **Alternatives**

- 8.6.16. Three suitable corridors for the crossing of Lake Lothing were considered [[APP-107](#)]. These were situated in three distinct locations at western, central and eastern crossings. The eastern crossing was close to the existing bridge.
- 8.6.17. The different option corridors were costed and BCRs calculated to provide a comparison. The preferred central option generated the highest BCR, was feasible and offered value for money and was preferred [[APP-107](#), Appendix A]. We consider that the assessment was robust and can see no reason to disagree with it.
- 8.6.18. The consideration of alternative arrangements within the central corridor were constrained by a number of parameters including the existence of a service tunnel, minimum clearance requirements for a rail line, minimum clearance requirements for vessels, existing ground levels, carriageway gradient and bend radius and keeping land take to a minimum. These constraints resulted in a very narrow horizontal and vertical

corridor in which the Proposed Development could be constructed [[APP-136](#)]. We agree that this demonstrates that there are no viable main alternatives to the location of the Proposed Development.

### **Temporary Possession**

- 8.6.19. In some instances, TP has been sought as an alternative to CA. The rdDCO contains powers for TP which we consider would be appropriate for inclusion to support the delivery of the Proposed Development in respect of all plots noted for TP in the final Land Plans and BoR.
- 8.6.20. These powers are not CA powers, and accordingly the tests under s122 and s123 of PA2008 are not applicable. However, the request for the powers in order to enable the Proposed Development to be implemented and maintained must be justified. The inevitable interference with human rights must be justified, and there must be adequate compensation provisions in place for those whose land is affected.
- 8.6.21. We have considered the objections raised by those persons affected by the application for the permanent acquisition of land and the permanent acquisition of rights in land where they are directly or indirectly related to TP. We have also taken all relevant objections into account in reaching our conclusions on the application for TP powers in the same way as for permanent acquisition.
- 8.6.22. We are satisfied that the TP powers sought would be needed to facilitate implementation of the Proposed Development. We are also satisfied that adequate compensation provisions are in place in the rdDCO.

### **Conclusion on the general case**

- 8.6.23. From all of the above, we conclude that the Applicant has made a case sufficient to justify its general request for CA and related powers. We now move on to consider whether there are specific matters relating to objections, SUs, Crown land and the Human Rights 1998 and Equality 2010 Acts that would outweigh our finding on the general case in any regard.

### **Objections**

- 8.6.24. We have considered all of the objections as set out above. None of these objections leads us to the view that our conclusion in relation to the Applicant's general case in relation to CA and TP should be changed in any way. We therefore recommend the grant of CA and TP powers in each individual case as set out in the CA Negotiation and Objections Tracker.

### **Statutory Undertakers**

- 8.6.25. We have considered all the representations associated with s127 of PA2008. In all cases, we find that the CA of land and rights sought within the rdDCO can be purchased without serious detriment to the carrying on of the undertaking concerned. In relation to s138 of PA2008, we are

satisfied that, throughout the scope of the rdDCO, the extinguishment and the removal of apparatus under the rdDCO would be necessary for the purpose of carrying out the Proposed Development.

## **Crown land**

- 8.6.26. The only Special Category land that would be affected by the Proposed Development would be Crown land at Plots 2-08, 10, 12 and 25. This land is held by HEHRE and not by the Crown. Consent for CA is required under s135(1) of PA2008. We have considered the representations on this matter made by the Applicant [[REP11-010](#)].
- 8.6.27. We have raised the matter of HEHRE consent at various stages during the Examination. The Applicant has made contact with both HEHRE and the DfT's Transport and Works Act (TWA) Orders Unit, but we have not seen any such consent. The TWA Unit appears to be more involved with the consent process at this stage. The Applicant's final position is given in its Closing Submissions (Other Interested parties). The rdDCO cannot be made without this consent.
- 8.6.28. If, subject to the SoST being content with the remainder of the rdDCO, this consent cannot be obtained before the SoST is in a position to make the Order, then the following option appears to us to be available.
- 8.6.29. This is to exclude the CA within Plots 2-08, 10, 12 and 25 from the DCO, which is the matter that would require HEHRE consent. The CA sought in both plots is similar in its scope, that is the acquisition of all interests and rights for the construction, operation and maintenance of the approach road to the proposed bridge. There has been nothing put to us to suggest that consent would be more likely on one plot than the other, and HEHRE ownership appears to have arisen in the same manner at the same time. This option would allow the Applicant to pursue the matter with HEHRE and DfT, as it has said that it will do following the closure of the Examination.
- 8.6.30. The necessary changes to the rdDCO to facilitate the second option are described in Chapter 9 of this report. We consider that it is important to stress that the rdDCO cannot be made without the consent of DfT in the context of the above option.

## **Human Rights**

- 8.6.31. In assessing whether there is a compelling case in the public interest for the land to be acquired compulsorily, it is necessary to consider the interference with human rights which would occur, if CA and TP powers were granted. We agree with the Applicant that the rdDCO would engage Article 1 of the First Protocol and Article 8 of the ECHR.
- 8.6.32. Article 1 provides a right to the protection of property, which can include the peaceful enjoyment of property or possessions or any effect of development on property values. Article 8 provides a right to respect for private and family life, which can include interference with home life through disturbance. These rights are however qualified and can be

interfered with in certain circumstances, such as if it is necessary to protect the legitimate interests of the wider community.

8.6.33. In this case, we have attributed substantial weight to the need described in the NPSNN for new road infrastructure and how the project would assist in meeting this need. This is a legitimate interest of the wider community. In this context, it is also relevant that those affected would be entitled to compensation. Moreover, the Applicant has taken a number of steps to ensure its approach to land acquisition is proportionate and would not give rise to interference with private rights beyond what is absolutely necessary.

8.6.34. The Applicant has varied the Order limits to ensure that the land affected has been kept to a minimum, and the detailed route choice has avoided key infrastructure and development. Reliance has also been placed upon TP wherever possible, rather than permanent acquisition. The Applicant has also sought to reach voluntary agreements with all persons with an interest in the land affected.

8.6.35. We are therefore satisfied that the powers sought would be no more than is required to secure the interests of the wider community. We are also satisfied that they would not be likely to place an excessive burden on those whose human rights could be affected. We therefore consider that there would be no violation of Articles 1 and 8.

8.6.36. We also agree with the Applicant that the rdDCO engages Article 6 of the ECHR which relates to the need for a fair hearing. The application and its Examination procedurally accord with PA2008 and related guidance. There is therefore nothing to suggest that parties have not had a reasonable chance to put their case or been put at a substantial disadvantage in relation to other parties. We therefore consider that there has been no violation of Article 6.

8.6.37. Finally, in terms of the overarching aims of the Human Rights Act 1998, DCLG Guidance and the required balancing exercise, we are satisfied that the public benefit from the Proposed Development would clearly outweigh any interference with the human rights of those with an interest in the land affected.

8.6.38. We therefore consider that any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest.

## **Equality Act 2010**

8.6.39. Section 149 of the Equality Act requires a public authority, in the exercise of its functions, to: have due regard to the need to eliminate discrimination harassment and victimisation and any other conduct prohibited by or under the Act; 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.

The protected characteristics are: age; gender; gender reassignment; disability; pregnancy and maternity; religion and belief; and race.

- 8.6.40. There is no evidence that the Proposed Development would have any specific impact in relation to persons who share a protected characteristic as compared to persons who do not. Moreover, and this is a view shared by SCC, allowing the Proposed Development would not have any harmful equality implications.

### **Funding adequacy**

- 8.6.41. The Funding Statement, which accompanied the application, indicated that the total cost of the Proposed Development was £91.7m plus a further £2m in respect of outline business case costs. The Applicant has been awarded £75.39m provisional funding from DfT and has agreed to underwrite the remainder of the £93.7m cost. The Applicant has also acknowledged that there is an upward pressure of up to £8m on the original estimate for property costs and has agreed that the further funding of £8m would be made available if it is needed.
- 8.6.42. We can see no reason to doubt the validity of these estimates, particularly as various project related cost risks have been the subject of a Quantified Risk Assessment to produce the £91.7m estimate. This is described in the Applicant's Outline Business Case. The business case and property costs have also been subject to further review.
- 8.6.43. A final decision on additional funding would be made by the Applicant following the initial appointment of a contractor. Bearing in mind the stage at which the design is at and the ability of the Applicant, as a Highway Authority, to provide, and also seek sources for, funding, we consider this to be a realistic and reasonable approach. We have no reason to doubt that the Applicant is of sound financial standing and that the necessary funds would become available to finance the project, including CA.

## **8.7. CONCLUSIONS**

### **S122(2) - THE PURPOSE FOR WHICH COMPULSORY ACQUISITION IS SOUGHT**

- 8.7.1. We are satisfied that the CA sought in all the plots of land included in the final BoR and shown on the final Land Plans [[REP10-067](#), [APP-017](#) and [APP-018](#) and [REP10-016](#), [REP10-017](#) and [REP10-018](#)] would be required and is proportionate for, or to facilitate or be incidental to, the Proposed Development to which the development consent relates. Both the principal development and the associated development identified by the application would be needed for that purpose. The final BoR includes additional land, the CA of which is necessary for NMC1. The requirements of s122(2)(a) and (b) of PA2008 are therefore met.

### **S122(3) - WHETHER THERE IS A COMPELLING CASE IN THE PUBLIC INTEREST**

- 8.7.2. We have had regard to the objections raised by all APs. Furthermore, the ExA is satisfied that consent has been received from all those with an identified interest in the additional land. Notwithstanding the objections, we conclude that the public benefits associated with the Proposed Development would strongly outweigh the private loss which would be suffered by those whose land would be affected by CA powers to enable the construction, operation and maintenance of the project.
- 8.7.3. We have also taken into account the particular points made by objectors in relation to alternatives. We are however satisfied that the Applicant has explored all reasonable alternatives to CA, including modifications to the Proposed Development. The objections raised do not dissuade us from the conclusion that there are no alternatives to the CA powers sought which ought to be preferred.
- 8.7.4. The Applicant has demonstrated a clear idea of how it intends to use the land rights which it proposes to acquire. It has shown that there is a reasonable prospect of the requisite funds, both for acquiring the land and implementing the project, becoming available.
- 8.7.5. We conclude that:
- The development for which the land is sought would be in accordance with national policy as set out in the relevant NPSs and development consent should be granted;
  - the NPSNN identifies a national need for new road infrastructure of the type that is the subject of the application;
  - the need to secure the land and rights required and to construct the development within a reasonable timeframe represent a significant public benefit to weigh in the balance;
  - the private loss to those affected has been mitigated through the selection of the application land, and the extent of the land, rights and interests proposed to be acquired and would be outweighed by the public benefit derived from the CA;
  - the Applicant has explored all reasonable alternatives to the CA of the rights and interests sought, and there are no alternatives which ought to be preferred; and
  - adequate and secure funding would be available to enable the CA within the statutory period following the Order being made.
- 8.7.6. Taking these various factors together, we consider that there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the final Land Plans. The proposal would thus comply with s122(3) of PA2008.

## **S120(5)(A) AND S126 - THE INCORPORATION OF OTHER STATUTORY POWERS**

- 8.7.7. The rdDCO seeks, in a number of instances, to apply s120(5)(a) of PA2008 and apply, modify or exclude a statutory provision. Since the rdDCO is in the form of a statutory instrument, it would comply with s117(4) of PA2008. Furthermore, no provision would contravene the

provisions of s126 of PA2008 which relates to the modification or exclusion of a compensation provision.

### **S127 AND S138**

- 8.7.8. Section 127 and s138 representations have been made and not withdrawn. These representations have been considered as set out above. In the case of each s127 representation, we conclude that the SoST can be satisfied that there would be no serious detriment caused to the carrying on of the undertaking of the SU in question should the CA powers sought be granted. In the case of s138, we are satisfied that the extinguishment of the relevant rights, or the removal of the relevant apparatus, would be necessary for the purpose of carrying out the development to which the Order relates.

### **S135 - CROWN LAND**

- 8.7.9. We consider that the SoST must obtain s135(1) consent from the Crown authority before any Order is made authorising the CA of the interests in Crown land that are held otherwise than by or on behalf of the Crown as set out in the BoR. If this consent is not forthcoming these plots should be excluded from the scope of CA authorised by the rdDCO.

### **TEMPORARY POSSESSION**

- 8.7.10. We are satisfied that the TP powers sought are necessary both to facilitate implementation of the Proposed Development and to maintain it and that adequate compensation provisions are in place in the rdDCO.

### **HUMAN RIGHTS ACT 1998 AND THE EQUALITY ACT 2010**

- 8.7.11. We are satisfied that, in relation to the inclusion of CA and TP powers in the rdDCO, any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest. We are also satisfied that there is no evidence that the Proposed Development would not accord with s149 of the Equality Act 2010.

### **ADEQUACY OF FUNDING**

- 8.7.12. The identified sources of funding do not provide us with any cause for concern or reason to doubt that the Proposed Development would, in fact, be implemented, if granted consent.

### **EXAMINING AUTHORITY RECOMMENDATIONS ON THE GRANTING OF COMPULSORY ACQUISITION AND TEMPORARY POSSESSION POWERS**

- 8.7.13. In the event that the SoST is minded to grant development consent for the Proposed Development, we recommend that:

- The CA powers included in the rdDCO be granted, subject to the matters as set out below in relation to Crown land;
- the TP powers included in the rdDCO be granted;
- **the CA powers sought in respect of Crown land should not be granted until the necessary consent from the Crown authority has been obtained;**
- the powers authorising the CA of SUs' land and rights over land included in the rdDCO be granted;
- the powers authorising the extinguishment of rights and removal of apparatus of SUs included in the rdDCO be granted; and
- the powers included in the rdDCO to apply, modify or exclude a statutory provision be granted.



## **9. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

### **9.1. INTRODUCTION**

- 9.1.1. A dDCO [[APP-005](#)] was submitted by the Applicant as a part of the application for development consent. We raised questions on the content of the dDCO in our First Written Questions (ExQ1) which accompanied the Rule 8 letter [[PD-005](#)].
- 9.1.2. At Deadline (D)3, the Applicant submitted a further revised dDCO [[REP3-030](#) and [REP3-031](#)] and an explanatory note [[REP3-032](#)]. An Issue Specific Hearing (ISH) on the dDCO [[EV-009](#)] was held on 13 February 2019 which included discussion of these proposals.
- 9.1.3. A further iteration of the dDCO was submitted by the Applicant at D4, again accompanied by an explanatory note [[REP4-007](#), [REP4-008](#) and [REP4-009](#)]. This was in turn speeded by a further dDCO submitted by the Applicant at D5 [[REP5-003](#) and [REP5-004](#)] again with accompanying explanatory note [[REP5-037](#)].
- 9.1.4. This process continued with the submission of a further revised dDCO at D9 [[REP9-003](#) and [REP9-004](#)] with an explanation of changes [[REP9-005](#)]. D10 saw a further revision [[REP10-004](#) and [REP10-005](#)] with an explanation of the changes [[REP10-072](#)]. These changes reflected the NMCs submitted by the Applicant and as a result of ongoing discussions with IPs. Following the publication of the ExA's dDCO published on the 29 May 2019 [[PD-016](#)] the Applicant submitted a further version of the dDCO on the 4 June 2019, which included 'final changes' to the document and responded to the changes undertaken by the ExA. These submissions also included an updated Explanatory Memorandum, reflecting the changes.
- 9.1.5. Subsequent to this and immediately prior to the closure of the Examination, the Applicant submitted their final version of the dDCO on the 5 June 2019 [[AS-030](#) and [AS-031](#)]. This document has not been the subject of consultation and other Interested Parties (IP) have not had the opportunity to make representations to it. Nevertheless, a summary of the changes set out therein is included for consideration of the Secretary of State (SoS).

### **9.2. CHANGES DURING EXAMINATION**

- 9.2.1. Given the number of iterations of the dDCO set out above it is evident there have been considerable changes to it. Although no change was made such that would constitute a material amendment to the Proposed Development itself, the Applicant proposed a number of non-material changes (NMCs) that have been considered and accepted by the ExA. We list the main changes below, however, we do not discuss every change made to the DCO where there has been agreement. Nor do we duplicate discussion where significant issues and implications for the dDCO have been subject to substantive consideration in other chapters above.

9.2.2. In summarising the changes, we refer to the differences between the dDCO [[APP-005](#)] submitted with the application and the recommended draft DCO (rdDCO) as submitted to the SoS (Appendix D). We do not include amendments made to correct drafting errors.

### **9.3. STRUCTURE OF THE DRAFT DCO**

9.3.1. The dDCO comprises 5 Parts and 14 Schedules as follows:

#### *Parts 1-7*

- Part 1- contains the preliminary provisions providing for commencement, citation, interpretation and disapplication of legislation.
- Part 2 – under Works Provisions, sets out the principal powers within Articles (A)4 to 21. There was discussion as to the extent of the powers sought, in particular under Articles 5 and 20 which have been amended in agreement with the Applicant.
- Part 3 – A22 to A40 sets out powers of acquisition and possession of land. The ExA sought the inclusion of two additional Articles in respect of Crown land (A22-23) which have been accepted by the Applicant. As set out in Chapter 8 above, there has been an extensive exploration of the CA issues in respect of a number of IPs.
- Part 4- A41-47 address operational provisions, covering the operation of the bridge, its maintenance and protections against dredging. There remains disagreement over the scope of some of these provisions, specifically in relation to the operation of the bridge, secured through the dSoO and these are addressed below in respect of the specific Articles.
- Part 5- A48-63 cover miscellaneous and general provisions such as the benefits of the order, planning permission, statutory nuisance through to deemed marine licences, Crown rights, protective provisions and arbitration. Again, specific Articles, specifically relating to protective provisions, were and remain the subject of objection from IPs, and these are in turn addressed below.

#### *Schedules*

- Schedule 1 identifies the development for which authorisation is sought.
- Schedule 2 (parts 1 and 2) address Requirements and procedures for their discharge.
- Schedule 3 (parts 1 and 2) deal specifically with Trunk and other roads.
- Schedule 4 (parts 1 to 6) address the stopping-up of highways and means of private access and related matters.
- Schedule 5 deals with trees which are the subject of Tree Preservation Orders.
- Schedule 6 (parts 1 and 2) addresses matters relating to land on which only new rights may be acquired and those relating to statutory undertakers (Cadent Gas Ltd).
- Schedule 7 deals with modification of compensation in relation to compulsory purchase.

- Schedule 8 concerns land in which only air space and new rights may be acquired.
- Schedule 9 concerns land in which only Temporary Possession may be taken.
- Schedule 10 (parts 1 to 4) addresses by laws, covering conduct and behaviour, access, traffic and general matters.
- Schedule 11 (parts 1 to 2) covers traffic regulations including speed limits.
- Schedule 12 (parts 1 to 2) covers addresses the DML, covering construction activities, dredging and maintenance.
- Schedule 13 (parts 1 to 7) address protective provisions, covering the Environment Agency, utility undertakers, railway interests, water companies, the aforementioned Cadent Gas Ltd and the Harbour Authority. Again, these provisions were explored at length during the examination and certain of them, specifically as they relate to the Harbour Authority, remain the subject of objection. These detailed matters are addressed below.
- Schedule 14 identified the documents to be certified in the event the Order is made.

## **9.4. THE EXAMINING AUTHORITY'S EXAMINATION OF THE DRAFT DCO**

### **ARTICLES**

9.4.1. There was an extensive discussion on a range of the Articles set out in the initially submitted dDCO and a number were resolved in the course of the Examination. A summary of the changes, by numerical order, is set out below:

- Article 2 Definitions of 'harbour authority' and 'Lowestoft Harbour' were agreed.
- Article 3 the disapplication of port byelaws, all but byelaw 25 are agreed as deleted.
- Article 5 (9) Limits of deviation (ABP approval of dredging depths). As the Applicant clarifies in their Deadline 10 response [[REP10-080](#)] dredging has approval under harbour authority's Protective Provisions as a 'specified work'. As there is no useful purpose in having two separate approval regimes running in parallel (under Article 5 and under the Protective Provisions) this sub-clause is deleted from the Article in the dDCO.
- Articles 8 and 11 (Stopping up of streets) This has been agreed and the dDCO amended.
- Article 20 (Temporary suspension of navigation) this has been agreed with all IPs, with an extended notification period.
- Article 21 (Removal of vessels) has been agreed.
- Article 23 (Crown land) The Applicant's Deadline 11 dDCO offered changes to Article 23, in respect of Crown land. Amendments include the omission of a reference to the 2008 Act and the term 'for the time being' in clause (b). We included rdDCO Articles 23 and 57 in our published dDCO [[PD-016](#)]. The Applicant accepted these in principle, and they were included in its subsequent dDCOs. The Applicant did

however change the title for A23 [[REP11-004](#)]. We do not agree with this, on the basis that DCOs should have a consistency between them where possible, and the rdDCO reverts to our title. The Applicant also changed the sub-paragraph arrangement in A57 to read correctly and which we accept.

- Article 41 (Operation of the bridge) The essential framework is agreed between the Applicant and IPs, although there remains disagreement in areas on the precise wording. The Applicant advises that 'either party' or 'relevant party' be replaced by the 'undertaker or the harbour authority (as applicable)'. As this makes more explicit the parties concerned, thus adding clarity, we have accepted this amendment and the Article is duly amended in the attached rdDCO.
- Article 42 (Extinguishment of right of navigation within Lake Lothing in connection with authorised development) is agreed.
- Article 45 (Protection against dredging) have been agreed.
- Article 46 (Byelaws) This has agreement save paragraph 6 additional Byelaw 37G. Here the Applicant seeks an additional general Byelaw to secure compliance with the SoO. We consider this a reasonable provision as the final SoO includes a number of responsibilities on vessel masters who will not be subject to Article 41 (1), as this applies only to the undertaker. The attached rdDCO is duly amended to reflect this.
- Article 57 (Crown Rights) This Article was included, along with Article 23, by the ExA. The Applicant in their D11 submission offered a revised version with minor alterations to wording for clarity which we accept.
- Article 62 (Arbitration) The wording of this Article has been amended to reflect the changes to paragraph 52 of the Protective Provisions accommodating changes sought by Network Rail.

## **SCHEDULES**

### **Schedule 2 – Requirements**

- 9.4.2. Through the course of the Examination there was an ongoing process of discussion and refinement of the Requirements. We set out below the background to specific Requirements where particular issues have been raised.
- 9.4.3. In our consideration of the proposed Requirements, we have had regard to the advice and tests set out in Planning Practice Guidance on 'Use of Planning Conditions', the principles of which are applicable to the imposition of Requirements.
- Requirements 4 and 7 are agreed.
  - Requirement 8 This relates to ground water contamination The final wording of the Requirement confirms that in the event of contamination or its discovery this must be reported as soon as reasonably practicable to the county planning authority, the local planning authority, the Environment Agency, and, in the event of any contaminated land, including groundwater, being found within

Lowestoft Harbour, the harbour authority. We consider the scope of notification here to be proportionate and reasonable.

- Requirement 11 As the Applicant identifies in their post-Deadline 11 submissions [[AS-027](#)], the matter of dispute resolution arises because of the obligation under Requirement 11(5) for the undertaker to comply with the NRA in the future as subsequently incorporated into the harbour authority's harbour-wide NRA (of which any updates will therefore be of their choice, not that of the Undertaker). It is necessary therefore that the Undertaker be able to refer disputes for resolution, and it is more appropriate for the arbitration procedure applying to the Protective Provisions to apply to such disputes as opposed to the appeals process set out in Schedule 2. This is because the latter is more concerned with planning-related matters, whereas disputes in relation to the NRA are likely to be similar to disputes arising under the Protective Provisions. The Harbour Authority'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 the Applicant's view that the dispute resolution process applying under the Protective Provisions is the more appropriate process for such matters arising under Requirement 11(3). We agree, and the wording of paragraphs (6) and (7) of the Requirement have been revised in the rdDCO to reflect this. As ABP and other IPs have not had the chance to comment on this the SoS may wish to consider further consultation on this prior to determining the Order. Such a consideration is not however determinant on the recommendation as this is a matter of which method of redress is appropriate rather than whether a means of address is available to the Undertaker.

### **Schedule 2, Part 2 - Procedure for discharging Requirements**

- 9.4.4. The application dDCO made provision for Requirements to be discharged by the county planning authority. Relevant planning authority is defined in Schedule 2 (1) of the dDCO as 'Suffolk County Council in its role as county planning authority for the county of Suffolk under section 1(1)(a) of the Town and Country Planning Act 1990(a)'.

### **Schedule 12 – Deemed Marine Licence**

- 9.4.5. There was also discussion on a range on Schedule 12 set out in the initially submitted dDCO and a number of its components were resolved in the course of the Examination. An explanation is set out below:
- Schedule 12 (paragraph 11) Deemed Maritime Licence. As the Applicant sets out in their Deadline 10 response [[REP10-080](#)], the same point on duplication arises as in relation to Article 5 (see above). The harbour authority would be able to impose appropriate controls and monitoring in relation to such specific matters as specified coatings and treatments (to the structure) if it felt necessary pursuant to approvals given under its protective provisions. We agree, and as such the need for specific referral to the harbour authority under this Schedule is indeed a duplication, and therefore unnecessary.

## **Schedule 13 - Protective Provisions**

- 9.4.6. Articles 34 and 55 (A34 and A55) in the application dDCO set out provisions for the protection of the interests of various parties. They are in six parts:
- Part 1 - Electricity, gas, water, and sewerage undertakers.
  - Part 2 - Operators of electronic communications code networks.
  - Part 3 - The Environment Agency.
  - Part 4 - Railway Interests.
  - Part 5 - The Harbour Authority.
  - Part 6 - Anglian Water.
- 9.4.7. The Protective Provisions in the application dDCO (Revision 0 or R0) [[APP-005](#)] were subject to the Applicant's amendments during the Examination. Clean and track changed copies and some explanations of changes were submitted at:
- D3 (R1) [[REP3-030](#), clean and [REP3-031](#), track changed].
  - D4 (R2) [[REP4-007](#), clean and [REP4-008](#), track changed and [REP4-009](#), explanation of changes].
  - D5 (R3) [[REP5-003](#), [REP5-004](#) and [REP5-037](#)].
  - D9 (R4) [[REP9-003](#), [REP9-004](#) and [REP9-005](#)].
  - D10 (R5) [[REP10-004](#), clean and [REP10-005](#), track changed] and (R6) [[REP10-070](#), clean, [REP10-071](#), track changed and [REP10-072](#), explanation of changes].
  - D11 (R7) [[REP11-003](#), clean and [REP11-004](#), track changed].
- 9.4.8. The ExA published its dDCO between D10 and D11 [[PD-016](#)]. The Applicant's D11 (R7) dDCO, its final allocated dDCO submission in the Examination timetable, repeated some of the amendments to the Applicant's D10 (R5) made in the ExA's dDCO. At D11, the Applicant also submitted a track changed version of its dDCO to show all the amendments up to that point in the Examination [[REP11-006](#)].
- 9.4.9. The Applicant however submitted a further dDCO in the final minutes of the Examination (R8) [[AS-030](#), clean and [AS-031](#), track changed], after the final deadline, D11. Other parties therefore did not have the opportunity to comment on this version of the dDCO. At this stage, the Applicant also submitted a further track changed version of its dDCO to show all the amendments up to that point in the Examination [[AS-029](#)].
- 9.4.10. The Protective Provisions in the rdDCO would be exercised under A35 and A58. The Applicant added a Part 6 to the Protective Provisions, for the benefit of Cadent Gas, at D3 (R1). The Protective Provisions in Schedule 13 of the rdDCO are agreed with the relevant Statutory Undertakers apart from Part 5 relating to ABP, the Harbour Authority. We have considered these outstanding matters below.

### **Part 5 - The Harbour Authority**

- 9.4.11. The Protective Provisions relating to the Harbour Authority are not agreed with ABP [[REP10-080](#)].



- 9.4.12. Paragraph 63(4) in the rdDCO is not agreed between the Applicant and ABP. The Applicant considers that a dispute under this paragraph should be subject to arbitration and ABP disagrees. We concur with the Applicant that paragraph 63(2), and possibly other powers of the Statutory Harbour Authority, would allow ABP to address safety matters directly [[REP10-080](#)]. There would therefore be no safety critical delay period and the reasonableness of actions undertaken could then be determined retrospectively by the arbitration.
- 9.4.13. Furthermore, the Applicant adds that the inclusion of such a provision for a harbour authority is not unusual in a DCO, and indeed ABP accepted this wording on the Swansea Bay Tidal Lagoon DCO. It is also of note that, at various stages during the Examination, the Applicant has moved towards ABP's position on paragraph 63. This includes the restoration of works, even where the management and operation of them has been approved by the Harbour Authority [[REP11-004](#)]. We consider that these factors add weight to our position on this matter.
- 9.4.14. Paragraph 64 in the rdDCO is not agreed between the Applicant and ABP. In paragraph 64(1)(c), the Applicant considers that the indemnity in respect of the Navigation Risk Assessment should be related to the Scheme of Operation [[REP10-080](#)]. This is rather than just to Requirement 11 as sought by ABP.
- 9.4.15. The Applicant has however subsequently moved towards ABP's position [[REP11-013](#)] by including the operation of the new bridge generally [[AS-031](#)]. This has not been subject to comment by ABP, as this version of the dDCO was submitted after the final timetable deadline. We agree however with the Applicant's final position, on the basis that this element of the indemnity should relate to the effect of the operation of the proposed bridge on navigation.
- 9.4.16. In paragraph 64(1)(f) and (g), the Applicant does not agree with ABP that operation should be included in this element of the indemnity, as this would include losses from the new bridge simply being there [[REP10-080](#)]. The indemnity should be restricted to losses which are the result of the acts or omissions of the undertaker. This would not be unusual and the Applicant considers that indemnity for appropriate and relevant aspects of operation already exist in other parts of paragraph 64. We agree with the Applicant, on the basis that the bridge would be a properly consented development, for which land related compensation would have been paid. Furthermore, it would be unusual for a Highway Authority to indemnify adjoining landowners in such a manner.
- 9.4.17. We also cannot see a need for the inclusion of consultation, consent or a description of example losses in paragraph 64. This is because such matters would be determined at the time of the loss, within the indemnity that we have already found to be sufficiently comprehensive.
- 9.4.18. Other parties have not had the opportunity to comment on matters within the Applicant's dDCO submitted after the final Examination deadline. We cannot see any amendments to the Protective Provisions

that go beyond the positions of the Applicant and ABP at D11. Indeed, the amendments to paragraphs 56(4) and 64(1)(e) accord with ABP requests and those at paragraph 64(1)(c) seem to us to move towards ABP's position. The SoST may however wish to give other parties the opportunity to respond more generally to the Applicant's final dDCO [[AS-030](#)], but we do not see this as necessary to support our rdDCO.

## **9.5. THE APPLICANT'S PROPOSED CHANGES TO THE DRAFT DCO IMMEDIATELY PRIOR TO THE CLOSURE OF THE EXAMINATION**

- 9.5.1. The Applicant refers to an error in respect of A2 whereby the reference to 'security' should be omitted. This is an amendment suggested by IPs at D11 and thus a technical correction to the dDCO has been undertaken. We are confident that although not the subject of consultation, such a correction may be undertaken without compromise to those with an interest in the Proposed Development.
- 9.5.2. The Applicant also accedes now in respect of A20 that the NWG will now be retained within the CoCP (as per the D10 version) this consultative vehicle now being considered more appropriate than the PMSC. This is in effect to return to the preference in the ExA's published version of the dDCO.
- 9.5.3. The Applicant also proposes revisions to paragraphs 6 and 7 of R11(5) relating to dispute resolution. As A62 incorporates referral of any such disputes to a third party, in the absence of further consultation, we feel this is a matter properly addressed by the SoS after receipt of this report.

## **9.6. DCO AMENDMENTS SHOULD CROWN LAND CONSENT NOT BE OBTAINED**

- 9.6.1. Chapter 8 of this report advises that, should CA consent not be received from the relevant authority in respect of the Crown land within the Order limits, then the rdDCO would need to be amended. We now set out those amendments.
- 9.6.2. In view of the fact that Crown land would exist within the Order limits, we consider that it would be prudent to retain A23 and A57 for the avoidance of doubt in relation to the status of, and protection afforded to, Crown land. It would however be necessary to remove the pink shading from Plots 2-08, 10, 12 and 25 on Sheet 2 of the Land Plans. This would exclude the plots from the Order land and remove the offending CA powers from the DCO. The Crown land plots would still be referred to in the BoR, but would not be subject to CA powers. These references would then be for information only.



## 9.7. CONCLUSIONS

- 9.7.1. The dDCO as initially submitted has undergone successive modification and refinement through the examination process. Such a process, as the revisions demonstrate, has resulted in a significant narrowing of the differences between the Applicant and IPs. Although consensus on all its elements has not been fully achieved, we consider, **subject to the necessary Crown land consent**, it now to be a robust, fair and fit for purpose vehicle for the delivery of the Lake Lothing Third Crossing.

# 10. SUMMARY OF FINDINGS AND CONCLUSIONS

## 10.1. INTRODUCTION

10.1.1. This chapter summarises the Examining Authority's (ExA) conclusions arising from the report as a whole and sets out the primary recommendation to the Secretary of State (SoS).

## 10.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

10.2.1. In relation to section (s)104 of Planning Act 2008 (PA2008) we conclude in summary:

- That making the recommended draft Development Consent Order (rdDCO) would be in accordance with the National Policy Statement for National Networks (NPSNN), National Policy Statement for Ports (NPSP), any relevant development plans and other relevant policy, all of which have been taken into account in this report.
- That we have had regard to the submitted Local Impact Reports from Suffolk County Council, Waveney District Council and Great Yarmouth Borough Council in making our recommendation.
- That whilst the SoS is the competent authority under the Habitats Regulations and will make the definitive assessment, we find that, in our view, the proposal would not be likely to have significant effects on European sites, species or habitats, and we have taken this into account in reaching our recommendation.
- That in regard to the matters in the s35 direction, that the making of the order would support the strengthening of the Trans-European Network, the resilience of the adjacent Strategic Road Network and contribute to the overall development of the port of Lowestoft and its ability to service the offshore energy sector.
- That in regard to all other matters and representations received, we found no important and relevant matters that would individually or collectively lead to a different recommendation to that below.
- That with the mitigation proposed through the rdDCO (Appendix D), there is no adverse impact arising from the Proposed Development that would outweigh its benefits.
- That there is no reason to indicate that the application should be decided other than in accordance with the relevant National Policy Statements.

10.2.2. In relation to the application for Compulsory Acquisition (CA) and related powers within the recommended rdDCO, the ExA in summary concludes:

- That the CA powers included in the rdDCO be granted, **subject to the matters set out in Chapter 8 in relation to Crown land.**
- That the Temporary Possession powers included in the rdDCO be granted.
- That the powers authorising the CA of Statutory Undertakers' (SU) land and rights over land included in the rdDCO be granted.

- that the powers authorising the extinguishment of rights and removal of apparatus of SUs included in the rdDCO be granted; and
- that the powers included in the rdDCO to apply, modify or exclude a statutory provision be granted.

10.2.3. We have had regard to the provisions of the Human Rights Act 1998. We are satisfied that the powers sought are no more than is required to secure the interests of the wider community and are not likely to place an excessive burden on those whose human rights could be affected. We therefore consider that there would be no violation of Article 1 of the First Protocol and Articles 6 and 8 of the European Convention on Human Rights or the Human Rights Act 1998.

### **10.3. RECOMMENDATION**

10.3.1. Our findings and conclusions on important and relevant matters are set out in this report under s83 of the PA2008. In considering our recommendations the SoS may wish to satisfy themselves on the following point:

- The representations made by the Applicant in respect of certain matters in their submissions immediately prior to the closure of the examination and not the subject of public or other consultation [[AS-027 to AS-033](#)].

10.3.2. Subject to the above, we recommend that the SoS for Transport makes the Lake Lothing Third Crossing Development Consent Order in the form attached at Appendix D to this report.

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## **APPENDICES**

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## **APPENDIX A: EVENTS IN THE EXAMINATION**

The table below lists the main events occurring during the Examination and the main Procedural Decisions taken by the Examining Authority (ExA).

<b>Event</b>	<b>Date(s)</b>
<b>Preliminary Meeting</b>	<b>5 December 2018 (Morning)</b>
<b>Open Floor Hearing 1</b>	<b>5 December 2018 (Afternoon)</b>
<p><b>Deadline 1</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at Open Floor Hearing held on 5 December 2018</li> <li>• Any further submissions/ clarifications from the Applicant in response to the Planning Inspectorate's s51 advice dated 9 August 2018</li> </ul>	<b>12 December 2018</b>
<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> <li>• Examination Timetable</li> </ul> <p>Publication of:</p> <ul style="list-style-type: none"> <li>• The ExA's First Written Questions</li> </ul>	<b>17 December 2018</b>
<p><b>Deadline 2</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Notification of wish to speak at a Compulsory Acquisition Hearing</li> <li>• Notification of wish to speak at a subsequent Open Floor Hearing</li> <li>• Notification of wish to attend Accompanied Site Inspection 1 on 12 February 2019</li> <li>• Notification by Statutory Parties of wish to be considered an Interested Party</li> </ul>	<b>4 January 2019</b>
<p><b>Deadline 3</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on Relevant Representations (RRs)</li> <li>• Summaries of all RR's exceeding 1500 words</li> <li>• Written Representations (WRs)</li> <li>• Summaries of all WRs exceeding 1500 words</li> <li>• Local Impact Reports from any Local Authorities</li> </ul>	<b>8 January 2019</b>

<ul style="list-style-type: none"> <li>• Responses to the ExA’s First Written Questions</li> <li>• Applicant’s first revised draft Development Consent Order (dDCO)</li> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated Book of Reference reconciling the s59 certificate</li> <li>• An updated Statement of Common Ground (SoCG) Report</li> <li>• An Application Document Tracker</li> <li>• Applicant’s draft itinerary for the Accompanied Site Inspection scheduled for 12 February 2019</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules<sup>32</sup></li> </ul>	
<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> <li>• Notification of date, time and place of hearings to be held between 13 and 15 February 2019</li> <li>• Notification of date, time and meeting place for Accompanied Site Inspection 1 on 12 February 2019</li> </ul> <p>Publication of:</p> <ul style="list-style-type: none"> <li>• Itinerary for Accompanied Site Inspection 1 on 12 February 2019</li> </ul>	<b>14 January 2019</b>
<p>Issue by The Planning Inspectorate of:</p> <ul style="list-style-type: none"> <li>• Notification of change in the ExA</li> </ul> <p>Issue by the ExA of:</p> <ul style="list-style-type: none"> <li>• Notification of temporary postponement of Issue Specific Hearing 2 (Environment) and Open Floor Hearing 2</li> </ul>	<b>23 January 2019</b>
<p><b>Deadline 4</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on WRs and responses to comments on RRs</li> <li>• Comments on Local Impact Report(s)</li> <li>• Comments on responses to the ExA’s Written Questions</li> <li>• SoCGs requested by the ExA</li> </ul>	<b>29 January 2019</b>

<sup>32</sup> The Infrastructure Planning (Examination Procedure) Rules 2010



<ul style="list-style-type: none"> <li>• Comments on any further information requested by the ExA and received to Deadline 3</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> <li>• Notification of new date, time and place for previously postponed Issue Specific Hearing 2 (Environment) and Open Floor Hearing 2 to be held on 7 and 8 March 2019</li> </ul>	<b>4 February 2019</b>
<p><b>NMC<sup>33</sup> Key Event 1</b></p> <p>Applicant submits request to make changes to the application</p>	<b>29 January 2019</b>
<b>Accompanied Site Inspection 1</b>	<b>12 February 2019</b>
<b>Issue Specific Hearing 1 (draft DCO)</b>	<b>13 February 2019 (Morning)</b>
<p><b>Compulsory Acquisition Hearing 1</b></p> <p>This hearing was adjourned to 11.00am on 8 March 2019</p>	<b>13 February 2019 (Afternoon)</b>
<p><b>Deadline 5</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at hearings on 13 February 2019</li> <li>• Applicant's second revised dDCO</li> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated SoCG Report</li> <li>• An updated Application Document Tracker</li> <li>• Comments on any further information requested by the ExA and received to Deadline 4</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	<b>22 February 2019</b>
<p><b>Deadline 6</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Raw responses received by the Applicant to consultation on proposed changes to the application</li> </ul>	<b>5 March 2019</b>

<sup>33</sup> 'Non-material change'

<b>Accompanied Site Inspection 1a</b> Targeted inspection of Motorlings site	<b>6 March 2019</b>
<b>Issue Specific Hearing 2 (Environment)</b>	<b>7 March 2019</b>
<b>Open Floor Hearing 2</b>	<b>8 March 2019 (Morning)</b>
<b>Compulsory Acquisition Hearing 1</b> Reconvened after adjournment on 13 February 2019	<b>8 March 2019 (Morning and afternoon)</b>
<b>Deadline 7</b> Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at hearings held on 7 and 8 March 2019</li> <li>• Applicant's report dealing with consultation on changes to the application proposed in Deadline 4 submission</li> <li>• An updated Application Document Tracker</li> <li>• Comments on any further information requested by the ExA and received to Deadline 6</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	<b>15 March 2019</b>
<b>NMC Key Event 2</b> Applicant submits report dealing with consultation on proposed changes to the application	<b>15 March 2019</b>
Publication of: <ul style="list-style-type: none"> <li>• The ExA's Second Written Questions</li> </ul>	<b>22 March 2019</b>
<b>Deadline 8</b> Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Responses to the ExA's Second Written Questions</li> <li>• Comments on Applicant's report dealing with consultation on changes to the application proposed in Deadline 4 submission</li> <li>• Comments on any further information requested by the ExA and received to Deadline 7</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	<b>12 April 2019</b>
Issue by the ExA of:	<b>15 April 2019</b>

<ul style="list-style-type: none"> <li>• Notification of any further hearings to be held in the week beginning 13 May 2019</li> </ul>	
<p><b>Deadline 9</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on responses to the ExA's Second Written Questions</li> <li>• Applicant's third revised dDCO</li> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated SoCG Report</li> <li>• An updated Application Document Tracker</li> <li>• Comments on any further information requested by the ExA and received to Deadline 8</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	<b>26 April 2019</b>
<p>Publication by the ExA of:</p> <ul style="list-style-type: none"> <li>• Report on the Implications for European Sites (RIES)</li> </ul>	<b>3 May 2019</b>
<p><b>NMC Key Event 3</b></p> <p>ExA issues Procedural Decision to accept changes to the application</p>	<b>9 May 2019</b>
<p><b>Accompanied Site Inspection 2</b></p>	<b>13 May 2019</b>
<p>Applicant submits updated application documents reflecting accepted changes to the application</p>	<b>13 May 2019</b>
<p><b>Issue Specific Hearing 3 (dDCO)</b></p>	<b>14 May 2019 (Morning)</b>
<p><b>Compulsory Acquisition Hearing 2</b></p>	<b>14 May 2019 (Afternoon)</b>
<p><b>Deadline 10</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at hearings held on 14 May 2019</li> <li>• Applicant's fourth revised dDCO</li> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated SoCG Report</li> <li>• An updated Application Document Tracker</li> </ul>	<b>24 May 2019</b>

<ul style="list-style-type: none"> <li>• Comments on any further information requested by the ExA and received to Deadline 9</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
<p>Publication of:</p> <ul style="list-style-type: none"> <li>• The ExA's dDCO</li> </ul>	<b>29 May 2019</b>
<p><b>Deadline 11</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on the ExA's dDCO</li> <li>• Comments on the RIES</li> <li>• Comments on any further information requested by the ExA and received to Deadline 10</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	<b>4 June 2019</b>
<p><b>Deadline 12</b></p> <p>The ExA is under a duty to complete the examination of the application by the end of the period of 6 months</p>	<b>5 June 2019</b>

## **APPENDIX B: THE EXAMINATION LIBRARY**

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<a href="#">Adequacy of Consultation responses</a>	AoC-xxx
<a href="#">Relevant Representations</a>	RR-xxx
<a href="#">Procedural Decisions and Notifications from the Examining Authority</a> Includes Examining Authority’s questions, s55, and post acceptance s51	PD-xxx
<a href="#">Additional Submissions</a> Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
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**TR010023 - Lake Lothing Third Crossing  
Examination Library**

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APP-182	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 10B - Visual Effects Schedule
APP-183	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 11A - Preliminary Ecological Appraisal

APP-184	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 11B - Bat Survey
APP-185	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 11C - BAP List
APP-186	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 11D - Wintering Bird Survey Report
APP-187	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 11E - Reptile Survey
APP-188	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 11F - Benthic Survey
APP-189	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 11G - Invertebrate Survey
APP-190	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 12A - Environmental Desk Study Part 1 of 2
APP-191	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 12A - Environmental Desk Study Part 2 of 2
APP-192	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 12B - GIR
APP-193	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 12C - Piling Works Risk Assessment
APP-194	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 13A - Baseline Noise Monitoring Results
APP-195	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 13B - Sound Power for Construction
APP-196	<a href="#">Suffolk County Council</a>

	6.3 Environmental Statement Volume 3 Appendix 13C - Noise Meter Calibration Certificates
APP-197	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix App 13D - Operational noise & vibration nuisance assessment
APP-198	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix App 15A - Vessel Simulation Report
APP-199	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 17A - WFD Assessment
APP-200	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix App 17B - HAWRAT
APP-201	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 17C - Sediment Transport Assessment
APP-202	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 18A - Flood Risk Assessment
APP-203	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 18A - Flood Risk Assessment Annex A, B + C
APP-204	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 18B - Drainage Strategy
APP-205	<a href="#">Suffolk County Council</a> 6.4 Environmental Statement Non-Technical Summary
APP-206	<a href="#">Suffolk County Council</a> 6.5 Habitats Regulations Assessment Report
APP-207	<a href="#">Suffolk County Council</a> 6.6 Statement of Statutory Nuisance
APP-208	<a href="#">Suffolk County Council</a> 6.7 Preliminary Navigation Risk Assessment

APP-209	<a href="#">Suffolk County Council</a> 6.8 Equalities Impact Assessment Screening
<b>Adequacy of Consultation Responses</b>	
AoC-001	<a href="#">Suffolk County Council</a> Adequacy of Consultation Representation
AoC-002	<a href="#">Norfolk County Council</a> Adequacy of Consultation Representation
AoC-003	<a href="#">South Norfolk Council</a> Adequacy of Consultation Representation
AoC-004	<a href="#">Waveney District Council</a> Adequacy of Consultation Representation
AoC-005	<a href="#">The Broads Authority</a> Adequacy of Consultation Representation
AoC-006	<a href="#">Babergh and Mid Suffolk District Councils</a> Adequacy of Consultation Representation
AoC-007	<a href="#">Great Yarmouth Borough Council</a> Adequacy of Consultation Representation
<b>Relevant Representations</b>	
RR-001	<a href="#">The Coal Authority</a>
RR-002	<a href="#">Stephen Berry</a>
RR-003	<a href="#">Judith White</a>
RR-004	<a href="#">Derek Johnson</a>
RR-005	<a href="#">John Corkett</a>
RR-006	<a href="#">SMS Group</a>
RR-007	<a href="#">Great Yarmouth Borough Council</a>
RR-008	<a href="#">Broads Authority</a>
RR-009	<a href="#">Environment Agency</a>
RR-010	<a href="#">Mr R Cousin</a>



RR-011	<a href="#">BS Pension Fund Trustee Ltd</a>
RR-012	<a href="#">Lings Motor Group</a>
RR-013	<a href="#">Anglian Water Services Ltd</a>
RR-014	<a href="#">Cadent Gas Limited</a>
RR-015	<a href="#">Cara Robinson</a>
RR-016	<a href="#">Lowestoft Cruising Club</a>
RR-017	<a href="#">Northumbrian Water Limited</a>
RR-018	<a href="#">Statuslist Limited</a>
RR-019	<a href="#">Trinity House</a>
RR-020	<a href="#">Waveney District Council and Suffolk County Council</a>
RR-021	<a href="#">Network Rail Infrastructure Limited</a>
RR-022	<a href="#">Associated British Ports</a>
RR-023	<a href="#">Broadland Housing Group</a>
RR-024	<a href="#">Brookhouse (Lowestoft) Nominees VI Limited</a>
RR-025	<a href="#">Historic England</a>
RR-026	<a href="#">Hitech Grand Prix Limited</a>
RR-027	<a href="#">Lift Truck Rentals Limited</a>
RR-028	<a href="#">Marine Management Organisation</a>
RR-029	<a href="#">Nexen Lift Trucks Limited</a>
RR-030	<a href="#">Norfolk and Suffolk Boating Association</a>
RR-031	<a href="#">Oakes Recruitment Limited</a>
RR-032	<a href="#">Overseas Interests Inc</a>
RR-033	<a href="#">Public Health England</a>
RR-034	<a href="#">Royal Mail Group Limited</a>
RR-035	<a href="#">Royal Yachting Association</a>
RR-036	<a href="#">Team Oakes Limited</a>

RR-037	<a href="#">Waveney Fork Trucks limited</a>
<b>Procedural Decisions and notifications from the Examining Authority</b>	
PD-001	<a href="#">Appointment of the Examining Authority</a>
PD-002	<a href="#">Notification of Decision to Accept Application</a>
PD-003	<a href="#">Section 55 Checklist</a>
PD-004	<a href="#">Post-acceptance Advice to the Applicant Provided under Section 51</a>
PD-005	<a href="#">Rule 6 Letter - Notification of the Preliminary Meeting and Matters to be Discussed</a>
PD-006	<a href="#">Rule 8 Letter - Notification of Timetable for the Examination</a>
PD-007	<a href="#">Examining Authority's Written Questions</a>
PD-008	<a href="#">Response to Applicant's letter dated 15 January 2019</a>
PD-009	<a href="#">Rule 13 and Rule 16 - Notification of Hearings and Accompanied Site Inspection (ASI)</a>
PD-010	<a href="#">Appointment of the Examining Authority</a>
PD-011	<a href="#">Rule 8 – notification of timetable for the examination and Rule 13 - Notification of Hearing</a>
PD-012	<a href="#">Further Written Questions</a>
PD-013	<a href="#">Notification of hearings and Accompanied Site Inspection - Rule 13 and Rule 16</a>
PD-014	<a href="#">Report on the Implications for European Sites (RIES)</a> Issued by the Examining Authority – 3 May 2019
PD-015	<a href="#">Section 89 - Notification of Procedural Decision in respect of proposed changes to the application</a>
PD-016	<a href="#">Examining Authority's draft Development Consent Order</a> Published on 29 May 2019
PD-017	<a href="#">Notification of completion of the Examining Authority's Examination</a>
<b>Additional Submissions</b>	
AS-001	<a href="#">CMS LLP for B.S. Pension Fund Trustee Limited</a> Additional Submission - Accepted at the discretion of the Examining Authority

AS-002	<a href="#">Suffolk Chamber of Commerce</a> Additional Submission (from non-Interested Party) accepted at the discretion of the Examining Authority
AS-003	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority comprising Updated Habitats Regulations Assessment (HRA) Report (clean)
AS-004	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority comprising Note on Updated NPPF
AS-005	REFERENCE NOT IN USE
AS-006	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority comprising Updated Habitats Regulations Assessment (HRA) Report (track change)
AS-007	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority comprising Statements of Common Ground Report
AS-008	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority comprising Applicant's response to Rule 6 letter
AS-009	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority comprising Applicant's response to s51 advice issued by the Planning Inspectorate on 9 August 2018
AS-010	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority comprising Applicant's Errata Report
AS-011	<a href="#">Marine Management Organisation</a> Additional Submission accepted at the discretion of the Examining Authority
AS-012	<a href="#">Associated British Ports</a> Additional Submission accepted at the discretion of the Examining Authority
AS-013	<a href="#">Suffolk County Council</a>

	Additional Submission accepted at the discretion of the Examining Authority comprising Applicant's Response to Relevant Representations
AS-014	<a href="#">Marine Management Organisation</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-015	<a href="#">Waveney Gymnastics Club</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-016	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority
AS-017	<a href="#">Clyde &amp; Co LLP on behalf of Associated British Ports</a> Additional Submission accepted at the discretion of the Examining Authority
AS-018	<a href="#">Clyde &amp; Co LLP on behalf of Associated British Ports</a> Additional Submission accepted at the discretion of the Examining Authority
AS-019	<a href="#">Birketts LLP on behalf of PFK Ling Limited</a> Additional Submission Accepted at the discretion of the Examining Authority
AS-020	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority - Letter from the Applicant explaining position on proposed non-material changes
AS-021	<a href="#">Richard Brown</a> Additional Submission accepted at the discretion of the Examining Authority
AS-022	<a href="#">Axis Property Consultancy LLP on behalf of Brookhouse (Lowestoft) Nominees VI Ltd - North Quay Retail Park</a> Additional Submission accepted at the discretion of the Examining Authority
AS-023	<a href="#">Shakespeare Martineau LLP on behalf of Cadent Gas Limited</a> Additional Submission accepted at the discretion of the Examining Authority
AS-024	<a href="#">Anglian Water Services Limited</a>

	Additional Submission accepted at the discretion of the Examining Authority
AS-025	<a href="#">Bryan Cave Leighton Paisner LLP on behalf of Northumbrian Water Limited (NWL)</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-026	<a href="#">Bryan Cave Leighton Paisner LLP on behalf of Northumbrian Water Limited</a> Additional Submission accepted at the discretion of the Examining Authority
AS-027	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority (Received before the Examination closed at 23:59 on 5 June 2019) Cover Letter
AS-028	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority (Received before the Examination closed at 23:59 on 5 June 2019) Application Document Tracker
AS-029	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority (Received before the Examination closed at 23:59 on 5 June 2019) DCO R8 comparison against Application DCO (Revision 0)
AS-030	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority (Received before the Examination closed at 23:59 on 5 June 2019) DCO R8 - Clean
AS-031	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority (Received before the Examination closed at 23:59 on 5 June 2019) DCO R8 - Tracked Changes
AS-032	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority (Received before the Examination closed at 23:59 on 5 June 2019) Scheme of Operation for the new bridge - Revision 3 - clean
AS-033	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority (Received before the Examination closed at 23:59 on 5

	June 2019) Scheme of Operation for the new bridge - Revision 3 - tracked
<b>Events and hearings</b>	
<b>Preliminary Meeting</b>	
EV-001	<a href="#">Recording of Preliminary Meeting - 05 December 2018</a>
EV-002	<a href="#">Preliminary Meeting Note</a>
<b>Site inspections and hearings</b>	
EV-003	<a href="#">Note of Unaccompanied Site Inspection - 30 October 2018</a>
EV-004	<a href="#">Recording of Open Floor Hearing - 05 December 2018</a>
EV-005	<a href="#">Suffolk County Council</a> Accompanied Site Inspection Itinerary
EV-006	<a href="#">Agenda for Issue Specific Hearing</a> Agenda for Issue Specific Hearing 1 dealing with matters relating to the draft Development Consent Order scheduled for 10.00am on 13 February 2019
EV-007	<a href="#">Agenda for Compulsory Acquisition Hearing</a> Agenda for Compulsory Acquisition Hearing 1 scheduled for 2.00pm on 13 February 2019
EV-008	<a href="#">Agenda for Issue Specific Hearing</a> Agenda for Issue Specific Hearing 2 dealing with matters relating to the environment scheduled for 10.00am on 7 March 2019
EV-009	<a href="#">Recording of Issue Specific Hearing 1 - Draft DCO - 13 February 2019</a>
EV-010	<a href="#">Recording of Compulsory Acquisition Hearing 1 - 13 February 2019</a>
EV-011	<a href="#">Recording of Issue Specific Hearing 2 - 7th March 2019 AM</a>
EV-012	<a href="#">Recording of Issue Specific Hearing 2 - 7th March 2019 PM</a>
EV-013	<a href="#">Recording of Open Floor Hearing 2 - 8th March 2019</a>
EV-014	<a href="#">Supplementary agenda for resumed Issue Specific Hearing 2</a>
EV-015	<a href="#">Recording of Issue Specific Hearing 2 Reconvened - 1st April 2019 AM</a>
EV-016	<a href="#">Recording of Issue Specific Hearing 2 Reconvened - 1st April 2019 PM</a>

EV-017	<a href="#">Note of targeted ASI with representatives of Lings Motor Group - 6 March 2019</a>
EV-018	<a href="#">Accompanied Site Inspection 2 Itinerary</a>
EV-019	<a href="#">Agenda for Issue Specific Hearing 3</a>
EV-020	<a href="#">Agenda for Compulsory Acquisition Hearing 2</a>
EV-021	<a href="#">Recording of Issue Specific Hearing 3 - 14 May 2019 AM</a>
EV-022	<a href="#">Recording of Issue Specific Hearing 3 - 14 May 2019 PM</a>
EV-023	<a href="#">Recording of Compulsory Acquisition Hearing 2 (CAH2) - 14 May 2019</a>
<b>Representations</b>	
<b>Deadline 1 – 12 December 2018</b>	
<ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at Open Floor Hearing held on 5 December 2018</li> <li>• Any further submissions/ clarifications from the Applicant in response to the Planning Inspectorate's s51 advice dated 9 August 2018</li> </ul>	
REP1-001	<a href="#">Oulton Broad Parish Council</a> Open Floor Hearing Representation
<b>Deadline 2 – 4 January 2019</b>	
<ul style="list-style-type: none"> <li>• Notification of wish to speak at a Compulsory Acquisition Hearing</li> <li>• Notification of wish to speak at a subsequent Open Floor Hearing</li> <li>• Notification of wish to attend Accompanied Site Inspection 1 on 12 February 2019</li> <li>• Notification by Statutory Parties of wish to be considered an Interested Party</li> </ul>	
-	No Deadline 2 submissions received
<b>Deadline 3 – 8 January 2019</b>	
<ul style="list-style-type: none"> <li>• Comments on Relevant Representations (RRs)</li> <li>• Summaries of all RR's exceeding 1500 words</li> <li>• Written Representations (WRs)</li> <li>• Summaries of all WRs exceeding 1500 words</li> <li>• Local Impact Reports from any Local Authorities</li> <li>• Responses to the ExA's First Written Questions</li> <li>• Applicant's first revised draft Development Consent Order (dDCO)</li> </ul>	

<ul style="list-style-type: none"> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated Book of Reference reconciling the s59 certificate</li> <li>• An updated Statement of Common Ground (SoCG) Report</li> <li>• An Application Document Tracker</li> <li>• Applicant’s draft itinerary for the Accompanied Site Inspection scheduled for 12 February 2019</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules<sup>34</sup></li> </ul>	
REP3-001	<a href="#">Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></a> Deadline 3 Submission - Responses to Comments on Relevant Representations
REP3-002	<a href="#">Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></a> Deadline 3 Submission - Responses to the responses of the Examining Authority's Written Questions (ExQ1)
REP3-003	<a href="#">Harlaxton Energy Networks Limited</a> Deadline 3 Submission
REP3-004	<a href="#">Waveney District Council</a> Deadline 3 Submission - Response to the Examining Authority’s Written Question 3.1
REP3-005	<a href="#">ESP Utilities Group Ltd</a> Deadline 3 Submission
REP3-006	<a href="#">New Anglia Local Enterprise Partnership</a> Deadline 3 Submission - Written Representation
REP3-007	<a href="#">Historic England</a> Deadline 3 Submission - Written Representation
REP3-008	<a href="#">Shakespeare Martineau on behalf of <b>Cadent Gas Limited</b></a> Deadline 3 Submission - Written Representation
REP3-009	<a href="#">Nwes Property Services Limited</a> Deadline 3 Submission - Written Representation
REP3-010	<a href="#">Great Yarmouth Borough Council</a> Deadline 3 Submission - Local impact Report

<sup>34</sup> The Infrastructure Planning (Examination Procedure) Rules 2010



REP3-011	<a href="#"><u>Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></u></a> Deadline 3 Submission - Written Representation - Summary and Main Report
REP3-012	<a href="#"><u>Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></u></a> Deadline 3 Submission - Written Representation -Transport Highways Supporting Evidence
REP3-013	<a href="#"><u>Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></u></a> Deadline 3 Submission - Written Representation - Noise Assessment Supporting Evidence
REP3-014	<a href="#"><u>Marine Management Organisation</u></a> Deadline 3 Submission - Comments on Relevant Representations, Summaries of all Relevant Representations exceeding 1500 words, Written Representation
REP3-015	<a href="#"><u>Environment Agency</u></a> Deadline 3 Submission - Responses to the Examining Authority's Written Questions
REP3-016	<a href="#"><u>Waveney District Council and Suffolk County Council</u></a> Deadline 3 Submission - Joint Local Impact Report
REP3-017	<a href="#"><u>CMS Cameron McKenna Nabarro Olswang LLP on behalf of <b>B.S. Pension Fund Trustee Limited</b></u></a> Deadline 3 Submission - Written Representation and appendices
REP3-018	<a href="#"><u>Howes Percival LLP on behalf of <b>Our Clients</b></u></a> Deadline 3 Submission - Written representations and appendices
REP3-019	<a href="#"><u>Howes Percival LLP on behalf of <b>Our Clients</b></u></a> Deadline 3 Submission - Summary of Written representations
REP3-020	<a href="#"><u>Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail</b></u></a> Deadline 3 Submission - Written Representation
REP3-021	<a href="#"><u>Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail</b></u></a> Deadline 3 Submission - Summary of Written Representation
REP3-022	<a href="#"><u>Carter Jonas LLP on behalf of <b>Cara Robinson</b></u></a> Deadline 3 Submission - Written Representation

REP3-023	<a href="#"><u>Birketts LLP on behalf of <b>PFK Ling Limited</b></u></a> Deadline 3 Submission - Written Representations and appendices
REP3-024	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 3 Submission - Written Representation and appendices
REP3-025	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 3 Submission - Summary of Written Representation
REP3-026	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 3 Submission - Responses to the Examining Authority's Written Questions
REP3-027	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Cover Letter
REP3-028	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Application Document Tracker
REP3-029	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Responses to the Examining Authority's Written Questions
REP3-030	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Draft DCO R1 - Clean
REP3-031	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Draft DCO R1 - tracked
REP3-032	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Explanation of Changes to the DCO
REP3-033	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Draft Scheme of operation
REP3-034	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Compulsory Acquisition Negotiation & Objections Tracker
REP3-035	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Draft Accompanied Site Visit Itinerary

REP3-036	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Draft Design Guidance Manual R1
REP3-037	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - late Submission - Draft DGM Change Log
REP3-038	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - HRA R2 - clean
REP3-039	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - HRA R2 - Tracked
REP3-040	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Landscape Plans
REP3-041	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Mitigation Route Map Table 1-1 R1
REP3-042	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - General Arrangement Sheet 1
REP3-043	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 5A CoCP R1 - Clean
REP3-044	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 5A CoCP R1 - Tracked
REP3-045	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 9F WSI R1 - Clean
REP3-046	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 9F WSI R1 - tracked
REP3-047	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 12C Pilling Works Risk R1 - Clean
REP3-048	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a>

	Deadline 3 Submission - Late Submission - ES Appendix 12C Piling Works Risk R1 - Tracked
REP3-049	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 17C sediment R1- Clean
REP3-050	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 17C sediment R1 - Tracked changes
REP3-051	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 17C Sediment - Table of changes
REP3-052	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 18A Annex A - EA Consultation - R1
REP3-053	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 18B Drainage R1 - Clean
REP3-054	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 18B Drainage R1 - Tracked
REP3-055	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - TA Appendix I Junction Modelling Outputs R1
REP3-056	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Transport Assessment R1 - Clean
REP3-057	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Transport Assessment R1 - Tacked
REP3-058	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES C11 R1 - Clean
REP3-059	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES C11 R1 - Tracked
REP3-060	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a>

	Deadline 3 Submission - Late Submission - Vessel Survey Report R1 - Clean
REP3-061	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 3 Submission - Late Submission - Vessel Survey Report R1 - Track Changes
REP3-062	<a href="#">Suffolk County Council</a> Deadline 3 Submission - Appendix 12B GIR R1 - Clean
REP3-063	<a href="#">Suffolk County Council</a> Deadline 3 Submission - Appendix 12B GIR R1 - Tracked
REP3-064	<a href="#">Anglian Water</a> Deadline 3 Submission - Late submission accepted at the discretion of the Examining Authority
<p><b>Deadline 4 - 29 January 2019</b></p> <ul style="list-style-type: none"> <li>• Comments on WRs and responses to comments on RRs</li> <li>• Comments on Local Impact Report(s)</li> <li>• Comments on responses to the ExA's Written Questions</li> <li>• SoCGs requested by the ExA</li> <li>• Comments on any further information requested by the ExA and received to Deadline 3</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
REP4-001	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 4 Submission - Cover Letter
REP4-002	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 4 Submission - Application Document Tracker
REP4-003	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 4 Submission - Updated Book of Reference R1 - Clean
REP4-004	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 4 Submission - Updated Book of Reference R1 - Track Changes
REP4-005	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 4 Submission - Book of Reference - Schedule of Changes
REP4-006	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 4 Submission - Book of Reference - List of New Interests

REP4-007	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Revised draft Development Consent Order (dDCO) R2 - Clean
REP4-008	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Revised draft Development Consent Order (dDCO) R2 - Track changes
REP4-009	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Explanation of changes to draft DCO
REP4-010	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Response to the Local Impact Report
REP4-011	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Statements of Common Ground Report - Clean
REP4-012	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Statements of Common Ground Report - Tracked
REP4-013	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Proposed Non-Material Changes to the Application
REP4-014	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Responses to Written Representations and Interested Parties Responses to Written Questions
REP4-015	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Impact of the Scheme on the Port of Lowestoft
REP4-016	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Justification and Traffic Effects of draft Scheme of Operation Revision 0
REP4-017	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Interim Code of Construction Practice - Clean - Revision 2
REP4-018	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Interim Code of Construction Practice - Tracked - Revision 2

REP4-019	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Updated Engineering Section Drawings and Plans Mainline Long Section Sheet 2 of 2 - Revision 1
REP4-020	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Written Scheme of Investigation for Future Evaluation and Mitigation Revision 2 - Clean
REP4-021	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Written Scheme of Investigation for Future Evaluation and Mitigation Revision 2 - Track Changes
REP4-022	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Response to Interested Parties' Deadline 3 Submissions - Appendix F
REP4-023	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Chapter 11 of the Environmental Statement - R2 - Clean
REP4-024	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Chapter 11 of the Environmental Statement - R2 - Track changes
REP4-025	<a href="#"><u>Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></u></a> Deadline 4 Submission - Response to Deadline 4
REP4-026	<a href="#"><u>Axis Property Consultancy LLP on behalf of <b>Brookhouse Group</b></u></a> Deadline 4 Submission - Response to Deadline 4
REP4-027	<a href="#"><u>Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></u></a> Deadline 4 Submission - Further Written Representation
REP4-028	<a href="#"><u>Marine Management Organisation</u></a> Deadline 4 Submission - Response to Deadline 4
REP4-029	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 4 Submission - Comments on the Applicant's Response to Associated British Ports Relevant Representations and annexes
REP4-030	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 4 Submission - Comments on the Local Impact Report
REP4-031	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a>

	Deadline 4 Submission - Comments on the First Revised Draft Development Consent Order R1
REP4-032	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 4 Submission - Comments on the Applicant's Response to Examining Authority's First Written Questions and annexes
REP4-033	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 4 Submission - Comments on the draft Scheme of Operation
REP4-034	<a href="#"><u>Howes Percival LLP on behalf of <b>Our Clients</b></u></a> Deadline 4 Submission - Comments on representations made by the Applicant and the Applicant's responses to Examining Authority's Written Questions and appendices
<p><b>Deadline 5 - 22 February 2019</b></p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at hearings on 13 February 2019</li> <li>• Applicant's second revised dDCO</li> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated SoCG Report</li> <li>• An updated Application Document Tracker</li> <li>• Comments on any further information requested by the ExA and received to Deadline 4</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
REP5-001	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Cover Letter
REP5-002	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Application Document Tracker
REP5-003	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Applicant's revised draft Development Consent Order (dDCO) R3 - Clean
REP5-004	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Applicant's revised draft Development Consent Order (dDCO) R3 - Track Changes
REP5-005	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Statements of Common Ground Report - Clean



REP5-006	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Statements of Common Ground Report - Tracked
REP5-007	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Applicant's Responses to Interested Parties' Representations Submitted at Deadline 4
REP5-008	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Compulsory Acquisition Negotiations and Objections Tracker Revision 2
REP5-009	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Written summaries of oral submissions at Issue Specific Hearing 1 (draft DCO)
REP5-010	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Written summaries of oral submissions at Compulsory Acquisition Hearing 1
REP5-011	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Site Visit Information Pack for Accompanied Site Inspection 12 February 2019
REP5-012	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Chapter 12 of the Environmental Statement R1 - Clean
REP5-013	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Chapter 12 of the Environmental Statement R1 - Tracked
REP5-014	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Environmental Statement Volume 3 Appendix 18B Drainage Strategy and Plans Revision 2 - clean
REP5-015	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Environmental Statement Volume 3 Appendix 18B Drainage Strategy and Plans Revision 2 - Tracked
REP5-016	<a href="#"><u>Suffolk County Council</u></a> Deadline 5 Submission - Response to Deadline 5
REP5-017	<a href="#"><u>Squire Patton Boggs (UK) LLP on behalf of <b>Statuslist Limited</b></u></a> Deadline 5 Submission - Response to Deadline 5

REP5-018	<a href="#"><u>Birketts LLP on behalf of <b>PFK Ling Limited</b></u></a> Deadline 5 Submission - Written Representation
REP5-019	<a href="#"><u>Birketts LLP on behalf of <b>PFK Ling Limited</b></u></a> Deadline 5 Submission - Response to Deadline 5 and Appendices
REP5-020	<a href="#"><u>Howes Percival LLP on behalf of <b>Our Clients</b></u></a> Deadline 5 Submission -Written summary of oral submission at Draft DCO hearing 13 Feb 2019
REP5-021	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Written summary of oral submission at Draft DCO hearing 13 Feb 2019
REP5-022	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Response to the Applicant's Response on Environmental Statement Matters
REP5-023	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Response to the Impact of the Scheme on the Port of Lowestoft Report
REP5-024	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Post Inquiry Note in respect of Compulsory Acquisition Matters
REP5-025	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Post Inquiry Note in respect of Funding Arrangements
REP5-026	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Annex 1 - 'Port of Lowestoft, Berth Utilisation Assessment - Years 2015 to 2017', ABPmer (February 2019)
REP5-027	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Annex 2- Off shore Wind Opportunities in the Port of Lowestoft, BVG Associates (January 2019)
REP5-028	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Annex 3- Overview of CTV Characteristics, ABPmer (February 2019)
REP5-029	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Annex 4 - Extract of data from the A47 Bascule Bridge Lift Record Book

REP5-030	<a href="#">Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></a> Deadline 5 Submission - -Annex 5 - 'Vessel Mooring Systems in Tidal Ports', ABP Lowestoft (February 2019), annexing the ABPmer Mooring Analysis
REP5-031	<a href="#">Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></a> Deadline 5 Submission - Annex 6 - Response to the Justification and Traffic Effects of the draft Scheme of Operation report
REP5-032	<a href="#">Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></a> Deadline 5 Submission - Annex 7 -Response to the Technical Report - Review of Central and Western Bridge Options, Appendix B to the Applicant's Response to Written Representations
REP5-033	<a href="#">Shakespeare Martineau on behalf of <b>Cadent Gas Limited</b></a> Deadline 5 Submission - Response to Deadline 5
REP5-034	<a href="#">Dr David Bennett on behalf of <b>Lowestoft Cruising Club</b></a> Deadline 5 Submission - Written summary of oral submission at Draft DCO hearing 13 Feb 2019
REP5-035	<a href="#">Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></a> Deadline 5 Submission - Further Written Representations
REP5-036	<a href="#">Marine Management Organisation</a> Deadline 5 Submission - Response to Deadline 5
REP5-037	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 5 Submission - Explanation of changes to draft DCO
<b>Deadline 6 – 5 March 2019</b>	
<ul style="list-style-type: none"> <li>Raw responses received by the Applicant to consultation on proposed changes to the application</li> </ul>	
REP6-001	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 6 Submission - Cover Letter
REP6-002	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 6 Submission - Consultation Responses
<b>Deadline 7 – 18 March 2019</b>	
<ul style="list-style-type: none"> <li>Written summaries of oral submissions put at hearings held on 7 and 8 March 2019</li> <li>Applicant's report dealing with consultation on changes to the application proposed in Deadline 4 submission</li> </ul>	

	<ul style="list-style-type: none"> <li>• An updated Application Document Tracker</li> <li>• Comments on any further information requested by the ExA and received to Deadline 6</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>
REP7-001	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 7 Submission - Cover Letter
REP7-002	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 7 Submission - Application Document Tracker Deadline 7 Submission - Application Document Tracker
REP7-003	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 7 Submission - Consultation Report on the Proposed Non-Material Changes to the Application
REP7-004	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 7 Submission - Response to Northumbrian Water Limited and NWES' Oral Submissions at 7-8 March 2019
REP7-005	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 7 Submission - Response to ABP's Deadline 5 and Oral Submissions at 7 & 8 March 2019 Hearings
REP7-006	<a href="#">Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></a> Deadline 7 Submission - Summary of oral submissions made by ABP at the examination hearing held on Thursday 7 March 2019 and Annexes
REP7-007	<a href="#">Clyde and Co LLP on behalf of <b>Associated British Ports</b></a> Deadline 7 Submission - Summary of oral submissions made by ABP at the examination hearing held on Friday 8 March 2019 and Annexes
REP7-008	<a href="#">Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></a> Deadline 7 Submission - ABP Curriculum Vitaes
REP7-009	<a href="#">Lowesoft Cruising Club</a> Deadline 7 Submission - Discussion of Scheme of Operation
REP7-010	<a href="#">Lowesoft Cruising Club</a> Deadline 7 Submission - Response to the Applicant's latest revised dDCO Deadline 5 submission - Article 40

REP7-011	<a href="#">Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></a> Deadline 7 Submission - Further Written Representations and Summary of oral submissions made at the Issue Specific Hearing
REP7-012	<a href="#">Nwes Property Services Ltd</a> Deadline 7 Submission - Post Hearing Submission
<p><b>Deadline 8 - 12 April 2019</b></p> <ul style="list-style-type: none"> <li>• Responses to the ExA's Second Written Questions</li> <li>• Comments on Applicant's report dealing with consultation on changes to the application proposed in Deadline 4 submission</li> <li>• Comments on any further information requested by the ExA and received to Deadline 7</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
REP8-001	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 8 Submission - Cover Letter
REP8-002	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 8 Submission - Application Document Tracker
REP8-003	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 8 Submission - Compulsory Acquisition Negotiations and Objections Tracker - Revision 3
REP8-004	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 8 Submission - Responses to the Examining Authority's Second Written Questions
REP8-005	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 8 Submission - Summary of the Applicant's Oral Submissions at Issue Specific Hearing on Navigation Matters of 1 April 2019
REP8-006	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 8 Submission - Applicant's Responses to Interested Parties' Representations Submitted at Deadline 7
REP8-007	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 8 Submission - Response to ABP's Summary of Case at 8 March Hearing and to Second Written Questions 1.11 to 1.13
REP8-008	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a>

	Deadline 8 Submission - Impact of the Scheme on the Port of Lowestoft - R1 Clean
REP8-009	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 8 Submission - Impact of the Scheme on the Port of Lowestoft - R1 Track Changes
REP8-010	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - ABP Response to the Examining Authority's Second Suite of Written Questions
REP8-011	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Summary of oral submissions made by ABP at the Issue Specific Hearing 2 (Reconvened) held on Monday 1 April 2019
REP8-012	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Comments on the Applicant Response to ABP's DL5 and Oral Submissions at 7 & 8 March 2019 Hearings
REP8-013	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 1 - Plan 1 Future Berthing Scenarios
REP8-014	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 1 - Plan 2 Future Berthing Scenarios
REP8-015	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 1 - Plan 3 Future Berthing Scenarios
REP8-016	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 1 - Plan 4 Future Berthing Scenarios
REP8-017	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 2 - North Quay Bollard Plan
REP8-018	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 3- Port of Lowestoft, Berth Utilisation Assessment - Years 2015 to 2017, ABPmer (April 2019) - Clean
REP8-019	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 3- Port of Lowestoft, Berth Utilisation Assessment - Years 2015 to 2017, ABPmer (April 2019) - Tracked
REP8-020	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 4 - Post Hearing Examination Note - Justification of Assumptions of Future Development at the Port of Lowestoft

REP8-021	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 5 - Assessment of Trends in the European CTV Market, 4C Offshore Limited (5 April 2019)
REP8-022	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 6 - Njord Offshore Crew Transfer Vessels - Future Vessel Development Plans Paper, ABP Lowestoft (April 2019)
REP8-023	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 7 - Statement given to the Examination by Andrew Harston, Regional Director for ABP's Short Sea Ports
REP8-024	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 8 - Post Examination Note - Impact of Additional Restrictions Imposed by the Scheme of Operation on Vessel Transit Times
REP8-025	<a href="#"><u>Marine Management Organisation</u></a> Deadline 8 Submission - Response to Deadline 8
REP8-026	<a href="#"><u>Anglian Water Services Limited</u></a> Deadline 8 Submission - Response to the Examining Authority's Written Questions
REP8-027	<a href="#"><u>Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></u></a> Deadline 8 Submission - Response to Deadline 8
REP8-028	<a href="#"><u>Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></u></a> Deadline 8 Submission - Written summary of oral case at Issue Specific Hearing 2 (Reconvened) 1st April 2019
REP8-029	<a href="#"><u>Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></u></a> Deadline 8 Submission -Response to REP7-009 - Scheme of Operation
REP8-030	<a href="#"><u>Howes Percival LLP on behalf of <b>Nexen Group</b></u></a> Deadline 8 Submission - Response to the Examining Authority's Written Questions
REP8-031	<a href="#"><u>Howes Percival LLP on behalf of <b>Nexen Group</b></u></a> Deadline 8 Submission -Swept Path Analysis Nexen 2/01 to 2/07
REP8-032	<a href="#"><u>Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></u></a>

	Deadline 8 Submission - Response to the Examining Authority's Written Questions and Further Written Representations
REP8-033	<a href="#">Nwes Property Services Ltd</a> Deadline 8 Submission - Response to the Examining Authority's Written Questions
REP8-034	<a href="#">Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></a> Deadline 8 Submission - Supporting Video
REP8-035	<a href="#">Squire Patton Boggs (UK) LLP on behalf of <b>Statuslist Limited</b></a> Deadline 8 Submission - Response to Deadline 8
<p><b>Deadline 9 – 26 April 2019</b></p> <ul style="list-style-type: none"> <li>• Comments on responses to the ExA's Second Written Questions</li> <li>• Applicant's third revised dDCO</li> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated SoCG Report</li> <li>• An updated Application Document Tracker</li> <li>• Comments on any further information requested by the ExA and received to Deadline 8</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
REP9-001	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 9 Submission - Cover Letter
REP9-002	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 9 Submission - Application Document Tracker
REP9-003	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 9 Submission - Applicant's revised draft Development Consent Order (dDCO) R4 - Clean
REP9-004	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 9 Submission - Applicant's revised draft Development Consent Order (dDCO) R4 - Tracked
REP9-005	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 9 Submission - Explanation of changes to draft DCO
REP9-006	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 9 Submission - Compulsory Acquisition Negotiations and Objections Tracker



REP9-007	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 9 Submission - Statements of Common Ground Report - Clean
REP9-008	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 9 Submission - Statements of Common Ground Report - Tracked
REP9-009	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 9 Submission - Comments on responses to the Examining Authority's Second Written Questions and to Interested Parties' Representations Submitted at Deadline 8
REP9-010	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 9 Submission - Response to ABP's Deadline 8 Submissions
REP9-011	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 9 Submission - Comments on the Applicant's Response to ABP's Summary of Case at 8 March Hearing and to Second Written Questions 1.11 to 1.13
REP9-012	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 9 Submission - Annex 1 - The Port of Lowestoft Master Plan Consultation Draft (April 2019)
REP9-013	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 9 Submission - Annex 2 - A Peer Review and Assessment of the Applicant's pNRA ABPmer (April 2019)
REP9-014	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 9 Submission - Annex 3 - ABP's comments on the Applicant's Port Impact Paper
REP9-015	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 9 Submission - Annex 4 - ABP's Comments on the Applicant's Oral Submission at the Issue Specific Hearing on Navigation Matters of 1 April 2019
REP9-016	<a href="#"><u>Howes Percival LLP on behalf of <b>Nexen Group</b></u></a> Deadline 9 Submission - Comments on the Applicants responses to the Examining Authority's second written questions
REP9-017	<a href="#"><u>Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></u></a> Deadline 9 Submission - Response to Deadline 9
<b>Deadline 10 – 24 May 2019</b>	

<ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at hearings held on 14 May 2019</li> <li>• Applicant’s fourth revised dDCO</li> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated SoCG Report</li> <li>• An updated Application Document Tracker</li> <li>• Comments on any further information requested by the ExA and received to Deadline 9</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
REP10-001	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Cover Letter
REP10-002	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Application Document Tracker
REP10-003	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Table of changes to application documents for Non-Material Changes
REP10-004	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Applicant’s revised draft Development Consent Order (dDCO) R5 - Clean
REP10-005	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Applicant’s revised draft Development Consent Order (dDCO) R5- Track changes
REP10-006	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Updated Book of Reference R2 – Clean
REP10-007	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Updated Book of Reference R2 – Track Changes
REP10-008	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - BoR Schedule of Changes
REP10-009	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Statement of Reasons (clean)
REP10-010	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Statement of Reasons (tracked)
REP10-011	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a>

	Deadline 10 Submission - Plans Drawings and Sections
REP10-012	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Location Plan (Sheet 1 of 1)
REP10-013	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - General Arrangement Plans – Key Plan
REP10-014	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - General Arrangement Plans P01 (Sheet 1 of 2)
REP10-015	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - General Arrangement Plans (Sheet 2 of 2)
REP10-016	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Land Plans (Sheet 3 of 5)
REP10-017	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Land Plans (Sheet 4 of 5)
REP10-018	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Land Plans (Sheet 5 of 5)
REP10-019	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Works Plan - Key Plan
REP10-020	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Works Plan (Sheet 2 of 2)
REP10-021	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Rights of Way and Access Plans - Key Plan
REP10-022	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Rights of Way and Access Plans (Sheet 1 of 2)
REP10-023	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Rights of Way and Access Plans (Sheet 2 of 2)
REP10-024	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Traffic Regulation Measures Plans – Key Plan
REP10-025	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a>

	Deadline 10 Submission - Traffic Regulation Measures Plans (Clearways and Prohibitions) (Sheet 1 of 3)
REP10-026	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Traffic Regulation Measures Plans (Clearways and Prohibitions) (Sheet 2 of 3)
REP10-027	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Traffic Regulation Measures Plans (Clearways and Prohibition) (Sheet 3 of 3)
REP10-028	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Traffic Regulation Measures Plans Speed Limits & Restricted Roads (Sheet 2 of 2)
REP10-029	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Classifications of Roads Plan
REP10-030	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Landscape Plans - Key Plan
REP10-031	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Landscape Plans – P01 (Sheet 1 of 2)
REP10-032	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Landscape Plans – P01 (Sheet 2 of 2)
REP10-033	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans Side Roads Key Plan
REP10-034	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans Side Roads (Sheet 5 of 9)
REP10-035	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans Side Roads (Sheet 6 of 9)
REP10-036	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans Side Roads (Sheet 7 of 9)
REP10-037	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans Side Roads (Sheet 9 of 9)

REP10-038	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans and Elevations - Key Plan
REP10-039	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans and Elevations - Mainline Key Plan
REP10-040	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans and Elevations - Mainline (Sheet 1 of 2)
REP10-041	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans and Elevations - Mainline (Sheet 2 of 2)
REP10-042	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Trees subject to Tree Preservation Order
REP10-043	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Limits of Dredging
REP10-044	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - New Bridge Area - Key Plan
REP10-045	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - New Bridge Area (Sheet 2 of 2)
REP10-046	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Harbour Limits Plan
REP10-047	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Rights of Navigation Plan
REP10-048	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figure 1.2
REP10-049	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 4.1 and 4.3
REP10-050	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 5.1 to 5.5

REP10-051	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figure 8.2
REP10-052	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 9.1, 9.3 and 9.4
REP10-053	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 11.3 to 11.6
REP10-054	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 12
REP10-055	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figure 13.1
REP10-056	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figure 15.2
REP10-057	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 17
REP10-058	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 18
REP10-059	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 19.2 and 19.3
REP10-060	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 3 Appendix 18A - Flood Risk Assessment Annex C: Figures 3.1 and 6.1
REP10-061	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 3 Appendix 18B - Drainage Strategy and Plans
REP10-062	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a>

	Deadline 10 Submission - Habitats Regulations Assessment Report Figure 1
REP10-063	<a href="#">Marine Management Organisation</a> Deadline 10 Submission - Issue Specific Hearing 3 Notification Letter
REP10-064	<a href="#">Birketts LLP on behalf of PFK Ling Limited</a> Deadline 10 Submission - written summary of the oral submissions made at the recent CAH hearing
REP10-065	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 10 Submission - Cover Letter
REP10-066	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 10 Submission - Application Document Tracker Deadline 10
REP10-067	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 10 Submission - Updated Book of Reference R3 – Clean
REP10-068	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 10 Submission - Updated Book of Reference R3 – Track Changes
REP10-069	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 10 Submission - BoR Schedule of Changes
REP10-070	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 10 Submission - Applicant’s revised draft Development Consent Order (dDCO) R6 - Clean
REP10-071	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 10 Submission - Applicant’s revised draft Development Consent Order (dDCO) R6- Track changes
REP10-072	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 10 Submission - Explanation of changes to draft DCO
REP10-073	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 10 Submission - Compulsory Acquisition Negotiation and Objections Tracker
REP10-074	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 10 Submission - Scheme of Operation for the new bridge - Clean
REP10-075	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a>

	Deadline 10 Submission - Scheme of Operation for the new bridge - Tracked
REP10-076	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Statements of Common Ground Report - Clean
REP10-077	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Statements of Common Ground Report - Tracked
REP10-078	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Interim Code of Construction Practice (Appendix 5A of the ES) - clean
REP10-079	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Interim Code of Construction Practice (Appendix 5A of the ES) - Tracked
REP10-080	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Summary of Applicant's Oral Submissions at Hearings on 14 May and Responses to Interested Parties' Deadline 9 Submissions
REP10-081	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 10 Submission - Summary of oral submissions made by ABP at the examination hearing held on Monday 14 May 2019 and comments on the draft Development Consent Order
REP10-082	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 10 Submission - Document 1 (Annex 1 - clean) - The Applicant's amendments to Article 40 of the dDCO
REP10-083	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 10 Submission - Document 1 (Annex 1 - Track Change) - The Applicant's amendments to Article 40 of the dDCO
REP10-084	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 10 Submission - Comments on the draft Scheme of Operation
REP10-085	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 10 Submission - Document 2 (Annex 1) - The Applicant's amendments to draft Scheme of Operation (Revision 2)
REP10-086	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a>



	Deadline 10 Submission - Comments on the Applicant's response to ABP's issues raised in Deadline 8 submissions
REP10-087	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 10 Submission - Further comment on the Applicant's Oral Submissions at the Issue Specific Hearing on Navigation Matters of 1 April 2019
REP10-088	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 10 Submission - Document 4 (Annex 1 ) - Port of Lowestoft Berth Utilisation
REP10-089	<a href="#"><u>Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></u></a> Deadline 10 Submission - Closing Submission, Document Tracker and Summary Position
REP10-090	<a href="#"><u>Howes Percival LLP on behalf of <b>Nexen Group</b></u></a> Deadline 10 Submission - Written Summary of Oral Submissions
<p><b>Deadline 11 - 4 June 2019</b></p> <ul style="list-style-type: none"> <li>• Comments on the ExA's dDCO</li> <li>• Comments on the RIES</li> <li>• Comments on any further information requested by the ExA and received to Deadline 10</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
REP11-001	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Cover Letter
REP11-002	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Application Document Tracker
REP11-003	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Applicant's revised draft Development Consent Order (dDCO) R7 - Clean
REP11-004	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Applicant's revised draft Development Consent Order (dDCO) R7 - Track Changes
REP11-005	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - DCO Validation Report
REP11-006	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a>

	Deadline 11 Submission - LLTC Development Consent Order (DCO) R7 v Application DCO Revision 0 - Track Changes
REP11-007	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Scheme of Operation for the new bridge - Revision 2 - clean
REP11-008	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Scheme of Operation for the new bridge - Revision 2 - Track Changes
REP11-009	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Closing Submission (ABP)
REP11-010	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Closing Submissions (Other Interested parties)
REP11-011	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Updated Explanatory Memorandum - Clean
REP11-012	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Updated Explanatory Memorandum - Track Changes
REP11-013	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 11 Submission - Response to the Applicant's Deadline 10 submissions and the Examining Authority's draft Development Consent Order
REP11-014	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 11 Submission - Closing Submissions
REP11-015	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 11 Submission - Letter from ABP to the Secretary of State dated 31 May 2019
REP11-016	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 11 Submission - Appendix 1
REP11-017	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 11 Submission - Appendix 2
REP11-018	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 11 Submission - Appendix 3
REP11-019	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a>

	Deadline 11 Submission - Appendix 4a
REP11-020	<a href="#">Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></a> Deadline 11 Submission - Appendix 4b
REP11-021	<a href="#">Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></a> Deadline 11 Submission - Appendix 5
REP11-022	<a href="#">Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></a> Deadline 11 Submission - Response to Deadline 10 Submissions
REP11-023	<a href="#">Marine Management Organisation</a> Deadline 11 Submission - Comments on the Examining Authority's draft Development Consent Order
REP11-024	<a href="#">Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail</b></a> Deadline 11 Submission - Comments on the Examining Authority's draft Development Consent Order
REP11-025	<a href="#">Howes Percival LLP on behalf of <b>Nexen Group</b></a> Deadline 11 Submission - Closing position statement
REP11-026	<a href="#">Birketts LLP on behalf of <b>PFK Ling Limited</b></a> Deadline 11 Submission - Letter to the Examining Authority
<b>Other Documents</b>	
OD-001	<a href="#">LLTC - Regulation 24 Transboundary Screening</a>
OD-002	<a href="#">Suffolk County Council</a> Certificates under s58 and s59 of the Planning Act 2008 and Regulation 14 of The Infrastructure Planning (EIA) Regulations 2009, including updated Book of Reference
OD-003	<a href="#">Suffolk County Council</a> Section 56 Notice

## **APPENDIX C: LIST OF ABBREVIATIONS USED IN THE EXAMINATION**

<b>Abbreviation or usage</b>	<b>Reference</b>
AADT	Annual Average Daytime Traffic
ABP	Associated British Ports
AONB	Area of Outstanding Natural Beauty
AQD	Air Quality Directive
AQMA	Air Quality Management Area
AQS	Air Quality Strategy
AQSR	Air Quality Standards Regulations 2010
ASI	Accompanied Site Inspection
BoR	Book of Reference
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CHA	Competent Harbour Authority
CO <sub>2</sub>	Carbon Dioxide
CO <sub>2e</sub>	Carbon Dioxide Equivalent
CoCP	Code of Construction Practice
CRTN	Calculation of Road Traffic Noise
CRWA	The Countryside and Rights of Way Act 2000
CTV	Crew Transfer Vessels
CWS	County Wildlife Site
dB	decibel
DCLG	Department for Communities and Local Government
dDCO	Draft Development Consent Order
DCO	Development Consent Order
Defra	Department for Environment, Food and Rural Affairs
DfT	Department for Transport

DMRB	Design Manual for Roads and Bridges
dSoO	Draft Scheme of Operation
EC	European Commission
ECHR	European Convention on Human Rights
EEA	European Economic Area
EIA	Environment Impact Assessment
EIMP	East Inshore Marine Plan
EOMP	East Offshore Marine Plan
EPR	The Infrastructure Planning (Examination Procedure) Rules 2010
ESC	East Suffolk Council
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
ExQ1	Examining Authority's First Written Questions
ExQ2	Examining Authority's Second Written Questions
FRA	Flood Risk Assessment
GIS	Geographic information systems
GVA	Gross Value Added
GYBC	Great Yarmouth Borough Council
ha	Hectare
HAT	Highest astronomical tide
HAWRAT	Highways Agency Water Risk Assessment Tool
HCA	Homes and Communities Agency
HGV	Heavy Goods Vehicle
HRA	Habitat Regulations Assessment
HRAR	Habitats Regulations Assessment Report

IAPI	Initial Assessment of Principal Issues
ICoCP	Interim Code of Construction Practice
IP	Interested Party
ISH	Issue Specific Hearing
km	kilometre
LHA	Local Highway Authority
LIR	Local Impact Report
LNR	Local Nature Reserve
LPA	Local Planning Authority
LSE	Likely Significant Effects
MCAA	Marine and Coastal Access Act 2009
MHCLG	Ministry of Housing, Communities and Local Government
MMO	Marine Management Organisation
NE	Natural England
NERCA	Natural Environment and Rural Communities Act 2006
NIDP	National Infrastructure Delivery Plan
NIP	National Infrastructure Plan
NMC	Non-Material Change
NMU	Non-Motorised Users
NO <sub>2</sub>	Nitrogen dioxide
NO <sub>x</sub>	Mono-nitrogen oxides NO and NO <sub>2</sub>
NPACA	The National Parks and Access to the Countryside Act 1949
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSNN	National Policy Statement for National Networks
NPSP	National Policy Statement for Ports

NRA	Navigational Risk Assessment
NRIL	National Rail Infrastructure Limited
NSIP	Nationally Significant Infrastructure Project
NVMS	Noise and Vibration Monitoring Strategy
OFH	Open Floor Hearing
PA2008	Planning Act 2008
PM	Preliminary Meeting
PM10	Particulate matter 10 micrometres or less in diameter
PM2.5	Particulate matter less than 2.5 micrometres in diameter
PNRA	Preliminary Navigational Risk Assessment
PPG	Planning Practice Guidance
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
rdDCO	Recommended draft Development Consent Order (Appendix D)
RIES	Report on the Implications for European Sites
RBC	Riverside Business Centre
RR	Relevant Representation
SAC	Special Area of Conservation
SCC	Suffolk County Council
SHA	Statutory Harbour Authority
SO <sub>2</sub>	Sulphur Dioxide
SoCG	Statement of Common Ground
SoO	Scheme of Operation
SoR	Statement of Reasons
SoS	Secretary of State
SoSEFRA	Secretary of State for the Environment, Food and Rural Affairs



SoSHCLG	Secretary of State for Housing, Communities and Local Government
SoST	Secretary of State for Transport
SPA	Special Protection Area
SRN	Strategic Road Network
SSSI	Sites of Special Scientific Interest
SU	Statutory Undertaker
TEMPro	Trip End Model Presentation Programme
TP	Temporary Possession
UK	United Kingdom
UNEPC	United Nations Environment Programme Convention
USI	Unaccompanied Site Inspection
WCA	Wildlife and Countryside Act 1981
WDC	Waveney District Council
WebTAG	Department for Transport Web-based Traffic Analysis Guidance
WFD	Water Framework Directive
WGC	Waveney Gymnastics Club
WR	Written Representation

## **APPENDIX D: THE RECOMMENDED dDCO**

See separate document – combined pdf to be provided 6 September 2019