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The Planning Inspectorate
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Our Ref	Your Ref	Date:
BG/ALO/10028565	TR010023	24 July 2018

Dear Sir,

Associated British Ports
Lake Lothing Third Crossing, Lowestoft – Acceptance of Application

1 Introduction

1.1 We write on behalf of our client Associated British Ports ("ABP") in relation to the above project.

1.2 We understand that Suffolk County Council, ("SCC") as promoters of the Lake Lothing Third Crossing ("LLTC") submitted their application for a DCO to PINS for review and validation on Friday 13 July 2018. The purpose of this letter is to draw your attention to what we consider to be a number of serious and fundamental defects in the pre-application process required to be undertaken by the promoter. We believe these defects to be so fundamental in terms of legal process as to warrant a decision by the Secretary of State not to validate the application but to require the promoter first to remedy those defects which currently act to the detriment of a number of third party interests and then, should such be appropriate, to resubmit.

1.3 To place our client's concerns in context, ABP is the owner and operator of the Port of Lowestoft and the principal owner of the bed of that part of Lake Lothing affected by the proposed crossing. The project now being proposed by SCC contemplates the construction of a low two-lane bascule bridge though the middle of the Port of Lowestoft's Inner Harbour.

1.4 Significantly in terms of the LLTC project, ABP is also the Statutory Harbour Authority for the Port. Together with its customers and tenants, we would suggest that ABP constitutes probably the key stakeholder in the context of the LLTC project, suffice to say, ABP's operational land and marine activities will be seriously and detrimentally impacted by SCC's proposals.

1.5 As we appreciate you are fully aware, in considering whether an application for a DCO should be accepted for examination pursuant to section 55 of the Planning Act 2008, the Secretary of State must determine whether or not the applicant has complied with the statutory pre-application requirements set out in Chapter 2 of Part 5 of the Act, as supplemented by the Department for Communities and Local Government Guidance - *'The Planning Act 2008: Guidance on the pre-application process'*[1], together with such other Advice Notes as may have been published by the Planning Inspectorate in accordance with section 50(3) of the Act.

1.6 In light of the critical impact that the LLTC project, as presently formulated insofar as we understand, will have on our client's port operations, both existing and future, our client has attempted to engage constructively with SCC, the promoters of the scheme. Unfortunately, whilst SCC may be aware that consultation is a formal requirement of the pre-application process, the degree of consultation actually undertaken by the appellant has fallen far short of actual engagement.

1.7 In the light of the above, it is our view that the applicant has failed to comply with the statutory pre-application requirements set out very clearly in the Act. We believe, for the reasons summarised below, therefore, that the pre-application process ostensibly followed by the applicant is fundamentally flawed. It follows that the application is not of a "satisfactory standard" as required by section 55(3)(f) of the Act, and cannot as a consequence be validated for examination.

1.8 In summary, the defects and omissions in process relate to the applicant's failure to:-

(a) Undertake effective, meaningful and proportionate consultation with ABP, a key stakeholder impacted by the Scheme;

(b) Formally consult with all tenants of the Port impacted by the Scheme;

(c) Provide as part of the pre-application process a draft of the proposed environmental statement for review and comment prior to submission;

(d) Provide certainty regarding key aspects of the project, such as the design of the bridge, the bridge piers and location of the control tower; and

(e) Undertake in consultation with the Statutory Harbour Authority and in advance of submission, a Navigation Risk Assessment. This assessment will form a critical element of the environmental impact assessment - without which the Examining Authority will be unable to determine with any degree of certainty the impact of the proposed bridge on port operations, navigational safety and risk to human life.

1.9 You should be aware that our client has raised its concerns regarding the inadequacy of the pre-application consultation with the applicant on a number of occasions – the relevant copy correspondence is attached - but at no time have these concerns been satisfactorily addressed

[1] DCLG Guidance, March 2015

1.10 Our client's concerns with regard to the defects in pre-application procedure are set out in further detail below.

2 Compliance with Pre-application Requirements – Consultation

2.1 As stated above, ABP is the owner of the Port of Lowestoft and the principal freehold owner of that part of the bed of Lake Lothing across which it is proposed to construct the LLTC. ABP is also the Statutory Harbour Authority for the Port. Accordingly, for the purposes of consultation, ABP is a:-

(a) person prescribed under section 42(1)(a) of the Act, who must be consulted in relation to all proposed applications that are likely to affect its functions as statutory undertaker; and a

(b) Category 1 person under section 42(1)(d) of the Act, as defined by section 44 of the Act.

2.2 In accordance with the provisions of the Act and supplementary guidance, we would suggest that it is unarguable that the applicant is required to undertake a genuine exercise of effective and meaningful consultation prior to the submission of the application so as to ensure that issues associated with the LLTC project are identified, considered, assessed and – as far as reasonably possible – resolved prior to submission.

2.3 For the record, we note that the DCLG Guidance states at paragraph 18 that:-

> *"Early involvement of local communities, local authorities and statutory consultees can bring about significant benefits for all parties, by:*
>
> - *helping the applicant identify and resolve issues at the earliest stage which can reduce the overall risk to the project further down the line as it becomes more difficult to make changes once an application has been submitted; .....*
> - *enabling applicants to obtain important information about the economic, social and environmental impacts of a scheme from consultees, which can help rule out unsuitable options;*
> - *enabling potential mitigating measures to be considered and, if appropriate, built into the project before an application is submitted; and*
> - *identifying ways in which the project could, without significant cost to the promoter, support wider strategic or local objectives."*

2.4 Paragraph 19 continues –

> *"The pre-application consultation process is crucial to the effectiveness of the major infrastructure consenting regime. A thorough process can give the Secretary of State confidence that issues that will arise during the six months examination period have been identified, considered, and as far as possible – that applicants have sought to reach agreement on those issues.* ***Without adequate consultation, the subsequent application will not be accepted***

when it is submitted*[2]*. *If the Secretary of State determines that the consultation is inadequate, he or she can recommend that the applicant carries out further consultation activity before the application can be accepted."*

2.5 The DCLG Guidance further states at paragraph 21 that:–

"*Experience suggests that, to be of most value, consultation should be:*

- *based on accurate information that gives consultees a clear view of what is proposed including any options;*
- *shared at an early stage so that the proposal can still be influenced, while still being sufficiently developed to provide some detail on what is being proposed; and*
- *engaging and accessible in style, encouraging consultees to react and offer their views."*

2.6 Finally, paragraph 21 concludes that:–

"*Compliance with this guidance will not guarantee that the Secretary of State will conclude that the applicant has complied with the pre-application consultation requirements introduced by the Planning Act. Applicants should satisfy themselves that they have complied with all statutory requirements and applicable guidance (including this guidance) so they can reasonably expect that their application will not be rejected on the grounds of inadequate consultation…."*

2.7 We should make very clear at this juncture that we are not suggesting that the applicant has failed to consult with our client. On the contrary, we recognise that various meetings have indeed taken place over the ensuing months – some at the behest of the applicant, others at the behest of the our client - but consultation without any attempt genuinely to engage renders the entire process meaningless and leads ultimately to the state of affairs in which our client now finds itself.

2.8 This letter is not designed to go to the merits of the scheme – nor does it. Our letter is directed solely at due process – the legal requirements with which we believe SCC as promoter of the scheme should have complied but which they have failed so to do – a failure which, unless remedied, will have serious and adverse consequences for the forthcoming examination before the appointed Ex.A - entirely contrary to the central ethos of the NSIP process.

2.9 Our client's position regarding the process undertaken to date by the applicant, and the adverse consequences to which we refer above, are possibly best summarised in a letter from ABP addressed to the Chief Executive of SCC when we asked her to agree to delay the submission of the application to give our client – and indeed other interested third parties – time actually to discuss the consequences of the LLTC project on the Port. A copy of that letter dated 29 June 2018 is attached, together with SCC's reply, dated 12 July 2018.

2.10 This letter is, therefore, guided by reference to both the formal statutory requirements set down in part 5 of the Act and the section 55 Acceptance of Applications Checklist, published by PINS in November 2017.

[2] Our highlighting

2.11 To place our client's concerns in context, without touching on the merits, the LLTC project contemplates the construction of a low, two-lane, bascule bridge through the middle of the Port of Lowestoft – which is owned and operated by our client ABP.

2.12 Without in any way wishing to claim special status for our client over and above those other third parties who will clearly be adversely impacted by the proposed crossing, it is we hope clear from the above that our client at the very least occupies a position as one of the key stakeholders? On that basis, again without arguing for special treatment for our client, it must surely be the case that in assembling the scheme, the promoter should have ensured that ABP was genuinely part of the consultation process and should have genuinely engaged with ABP in accordance with the provisions of section 42 of the Act?

2.13 That the applicant has not undertaken a realistic and proportionate exercise of consultation and engagement is demonstrated by the following:-

3 Scheme alternatives

3.1 As we hope the applicant's environmental statement will discuss – in that as noted below, the applicant decided not to incorporate the publication of a draft environmental statement for comment by stakeholders as part of its pre-application process prior to submission – three options for the third crossing were initially considered.

3.2 Those three options comprised first a crossing effectively adjacent to the existing bascule bridge in Lowestoft, second the central option as now being promoted and third, a western option. At no stage throughout the project's inception and development has our client ever supported the central option.– our client's preference being for the western option. Numerous requests for sight of the detailed historic data assembled by SCC which led them to dismiss the western option in favour of the central option have only been partially fulfilled – and indeed in the recent correspondence from SCC (copy attached, dated 11 June 2018), you will see that SCC now claim that the relevant data has been discarded.

3.3 In the applicant's Preliminary Environmental Information Report ("PEIR"), it was suggested that a considerable proportion of background data, demonstrating how the applicant arrived at the central crossing option, was available on the project website. In fact the background data had not been published on line and despite various requests was not received by us until 11 June 2018. We have not had sight of the draft ES nor the updated transport assessment and have, therefore, had no opportunity to comment upon it prior to submission of the application.

3.4 You should be aware that there still remain significant outstanding questions on the draft documentation. We had been told originally that there was no intention to revisit the Option Appraisal for the crossing based on the new transport model, which at the time seemed to us to be distinctly questionable in law. We have therefore, read with interest the letter from the Chief Executive of SCC to ABP, dated 12 July 2018 where she states that:–

> *"Recently, we have carried out a verification exercise applying current information to the previously discounted options. This updated analysis also confirms the central option is the right option. Therefore, we do not consider*

that it would be appropriate to re-open the debate on the alignment options at this point in the statutory process"

3.5 This paragraph alone simply underlines our client's concerns. The concept of the NSIP process is that applications should be "front-loaded". As advised in the DCLG Guidance quoted above, the *"pre-application consultation process is crucial to the effectiveness of the major infrastructure consenting regime."*

3.6 Further, the above does cast serious doubt on the credibility and relevance of the PEIR, which stated that the traffic model which informed the preceding Options Appraisal is out of date and could no longer be relied upon.

3.7 On the basis of the above, our client will be faced, when we eventually see the application documentation, either with an appraisal which is out of date and of no relevance – the background data for which has not been provided – or with a fresh appraisal – seemingly carried out "recently" – but which has not been provided to us in advance of submission of the application?

3.8 Suffice to say, when the application documentation is eventually published, our client and our highway consultants will require a considerable amount of time to properly assess the information provided – and we suspect seek sight of the omitted relevant supporting data. Our client has been placed at a significant disadvantage by not having seen the new modelling prior to submission and thereby being able to understand how, or indeed if, it actually resolves our client's significant concerns in this respect.

3.9 You should be aware, incidentally, that we did suggest to the applicant prior to submission of the application that our highway consultants and their consultant could perhaps meet to discuss the issues arising – but that offer seems unfortunately to have been disregarded by the applicant.

4 PEIR

4.1 The applicant published its PEIR in August 2017. Our client provided a comprehensive and detailed commentary on the PEIR in its formal response, dated 23 October 2017, a copy of which is attached. You will see from that response that our client considered the PEIR to be inadequate and defective in numerous critical areas - ranging from:

(a) a failure to provide details of the bridge design itself – which is absolutely essential for our client in terms of assessing navigational safety and risk to human life;

(b) a failure to provide even a draft of a Navigation Risk Assessment, to which we return to below;

(c) a failure to provide information regarding air quality – despite identifying our clients and its operation at the Port as a "sensitive receptor";

(d) a failure to undertake a genuine assessment of alternatives – and our comments in terms of the highway options are noted in the section above;

(e) an inadequate consideration of noise and vibration impacts;

(f) a failure to provide any information which could be of practical use in relation to the proposed compulsory acquisition of part of ABP statutory landholding;

(g) inadequate vessel simulations;

(h) a fundamentally incorrect and inadequate assessment of the proposed crossing's impact on port operations;

(i) a worrying lack of understanding as to ABP statutory duties in terms of navigational safety, the environment, water quality and pollution; and

(j) the inclusion of inadequate and incorrect scheme details, land plans etc.

4.2 Indeed, we did also query whether the applicant had in fact dealt with the omissions identified by the Secretary of State as part of the scoping process.

4.3 You will see that in our letter to the applicant of 23 October 2017 we did sound a warning as to our client's concerns in the following terms -

> "*Our client's consultation response* [to the scoping exercise] *drew attention at the time to a number of significant concerns in relation to the potential detrimental impact that the bridge crossing would have on the Port and it is unfortunate that it will be necessary – for the most part – to repeat these concerns within this response to the PEIR.*
>
> *"Indeed as a general comment, we are bound to note that a significant amount of the information currently provided in the PEIR is stated as requiring "further assessment". As such, we would suggest that little weight can be given to those parts of the PEIR which remain unsubstantiated and/or require further work.*
>
> *"Further, in this context, if it is indeed the case, as would appear to be suggested by the County Council's published timetable, that the next stage in this process will be the submission of the DCO application without further consultation,* ***we would question whether the published PEIR actually complies with the legislative requirements as to publicity and consultation, as supplemented by Guidance?***[3]
>
> *"As a final general comment, we should record at this point our client's extreme disappointment that, despite every effort that our client has made to assist, the County Council as promoter of the Project has demonstrated through the PEIR a worrying lack of understanding as to the complexity of port operations at Lowestoft, the statutory obligations that fall to ABP in performing its role as the statutory port operator and the very clear impact that the Project, if implemented, will have on the Port, to the serious detriment of the Port itself – and we would suggest, to the local community in terms of employment and economic benefit."*

4.4 In the conclusion to our response to the PEIR, we stated that –

> "*.... we consider the Scheme in terms of its location and design to be fundamentally flawed. As a consequence, our client is firmly of the view that the Scheme as currently being promoted should be withdrawn and reviewed so as to enable the County Council and all stakeholders to identify in collaboration a*

[3] Our highlighting

project that will work to the benefit of the local community, the economic well-being of Lowestoft and the Port of Lowestoft itself rather than to their collective detriment."

4.5 As you will appreciate, this suggestion made by our client, that the applicant should pause and undertake a genuine, collaborative consultation was rejected in October last year – and of course was again rejected only a few weeks ago when our client reiterated that request – to which reference has already been made above.

5 Environmental Assessment

5.1 In light of the fundamentally defective nature of the PEIR, our client had anticipated that the preliminary assessment would be reviewed, revised and published for consultation in the form of a draft environmental statement prior to submission of the application. We are firmly of the opinion that this was an essential pre-requite for the applicant if it was to be able to demonstrate to the Secretary of State – as it is now so attempting - that the statutory pre-application consultation requirements had been met and that the application could be validated.

5.2 Our client's position in relation to the pre-application process pursued by the applicant, has been constant throughout. Thus in our letter to the applicant's Project Manager dated 22 November 2017 (copy attached) we stated that:-

> *"…. clearly in terms of NSIP process, the greater the consultation prior to submission, the more likely the application will be accepted by PINS at submission".*

5.3 Similarly, in our letter dated 16 February 2018, (copy attached), we reiterated our comment that *"the Scheme should be withdrawn, revised and reviewed".*

5.4 As you will appreciate from the above, our client has over the last months made every effort to prevent the premature submission of the LLTC application to give all parties more time to establish a common view. As it is, should you decide to accept the application as now submitted – the only understanding of the applicant's assessment of the impacts and effects of the LLTC project will be that which it was possible for our client and other third parties to glean from what was patently an incomplete and defective PEIR. That surely runs entirely contrary to the thrust of the Act's requirements and indeed at the very least, a number of questions in the Acceptance of Applications Checklist, namely: –

> Question 23 – *s49: Duty to take account of responses to consultation and publicity*"; and
>
> Question 33 "*Has the applicant had regard to DCLG guidance, and has this regard led to the application being prepared to a standard that the Secretary of State considers satisfactory?"*

5.5 You should be aware incidentally, that to avoid precisely the scenario in which the applicant now finds itself, we did write to the applicant on 25 September 2017, (copy attached), having by then seen the quality of the published PEIR drawing attention to the Departmental Guidance, citing paragraph 19 as already noted above and pointing out that –

> *"This advice is reflected in the Planning inspectorate's Advice Note Seven – "Preliminary Environmental information, Screening and Scoping", which at paragraphs 2.4 and 2.9 raises the option for an applicant as part of the PEIR process to publish a draft of the eventual environmental statement and throughout emphasises the need for the applicant to undertake a genuine and comprehensive pre-application process."*

5.6 In light of this advice, we asked the applicant – "*whether it might be prudent to publish a draft of your environmental statement as part of the pre-submission consultation stage?*"

5.7 This suggestion was designed to assist the applicant with a view to establishing a collaborative as opposed to confrontational approach.

6 Development Consent Order

6.1 My client was provided with two separate iterations of the draft Development Consent Order ("DCO") - the initial draft DCO was provided in October 2017 and the most recent updated draft was provided in May 2018. We understand that this was Version 5 of the DCO.

6.2 Both draft versions of the DCO were missing a number of key elements, which meant that my client could not undertake a comprehensive review of a number of key provisions and schedules, such as the 'Authorised Development' and 'Limits of Deviation'. Despite the missing information, my client provided the applicant with detailed comments on each iteration of the draft DCO, the most recent comments being provided on 5 June 2018.

6.3 We do not intend to trouble you with copies of our letters in relation to the draft DCO in that they do, inevitably, in places go to the merits of the proposal which do not form part of this letter.

6.4 We would point out, however, that since the date of our last letter on this subject the applicant failed to provide ABP prior to submission of the DCO application with any further comments, nor did the applicant let us see the latest version of the DCO.

6.5 Then to our surprise, a full week after submission, we received a letter from the applicant's solicitors, dated 18 July outlining how they have responded to our comments on the draft DCO – without that is, providing us with a copy of the DCO itself - which does make their observations somewhat meaningless.

6.6 In reality, therefore, as at the date of this letter, our client is unaware whether or not the numerous outstanding concerns, which we drew to the applicant's attention, have in fact been formally addressed and if so, how they have been so addressed.

6.7 In other words, the publication of the DCO should the Secretary of State validate the application, will come as somewhat of a surprise to our client – with the consequent inevitable lengthening of the examination process.

7 Plans

7.1 Similarly, my client was only provided with the relevant plans referenced in the draft DCO shortly before submission of the application. In particular, the draft Works Plans and Land Plans were provided on 7 June 2018, and the Engineering Section Drawings and Plan were provided on 11 June 2018.

7.2 Most significantly, the updated "new bridge area plans" which are referenced in the draft DCO, were only provided to us by email dated 19 July 2018, almost a week after the submission of the application.

7.3 Due to the highly technical nature of these plans and the time constraints between provision of the plans and submission of the application, our client has had no opportunity to undertake a meaningful assessment of the plans and to understand their impact. Consequently, there has been no time to present a constructive response to the applicant in relation to a scheme that now has all the appearances of attempting to cut every procedural corner.

8 Tenant Consultation

8.1 The applicant is required to identify and consult with those who own, occupy or have another interest in the land affected by the application, or who could be affected by the project in such a way that they may be able to make a claim for compensation.

8.2 Despite ABP assisting the applicant by providing a list of Category 1 Port tenants that will be impacted by the scheme, my client understands that the applicant has failed to formally consult with all affected tenants that fall within the red-line boundary of the DCO.

8.3 This is a worrying breach of section 42(1)(d) of the Act, as applied by section 44, which requires the applicant to consult each person with an interest in the land affected by the LLTC project as well the DCLG Guidance which states that:–

> *"Applicants will also need to identify and consult people who own, occupy or have another interest in the land in question … this will give such parties early notice of projects, and an opportunity to express their views regarding them."*

8.4 The applicant has been aware of these affected tenants for some considerable time.

8.5 Accordingly, we are of the view that the applicant is in breach of Section 42 of the Act, for failing to undertake thorough, effective and proportionate consultation with ABP.

8.6 Due to the procedural defects with the pre-application process, my client is of the strong view that the application should not be accepted for examination under section 55 of the Act.

9 Description of the Proposed Development

9.1 Whilst we do not take this as a major point in terms of the pre-application process – although you may of course wish to do otherwise - in light of the details provided to date by the applicant, we are far from convinced that SCC have in fact even been

able accurately to describe the proposed development – so as to undertake a genuine and meaningful assessment of the project – to which we return below.

9.2 The most recent plans issued to our client do not provide sufficient information with regard to all of the elements of the proposed project such as, for instance, the bridge piers and abutments which you will appreciate have a significant bearing on navigational and marine impact and port infrastructure.

9.3 Based on the information provided to my client by the applicant regarding the LLTC project to date, my client is aware that a number of integral elements of the proposed development have yet to be finalised, for example, the position of the control tower, the design of the bridge, the design of the supporting piers to be located in the marine environment, and the bridge approach spans. We are bound to query, whether in the absence of this information, the applicant has actually been able to provide a meaningful description of the project - and certainly not having had sight of the draft environmental statement we are unable to assist in this respect - which does raise the query as to whether, if the applicant cannot identify the details of the project sufficient to define it – it can actually meaningfully assess the anticipated impacts of the project?

9.4 On that basis, we do ask you to consider whether the description of the Scheme is sufficiently certain to meet the requirements of Paragraph 1 of Schedule 4 to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("2017 EIA Regulations"). Without the certainty required by the Regulations, we have to question whether the submitted environmental statement can in fact be of a standard sufficient to support the LLTC project.

10 Navigation Risk Assessment

10.1 The failure by the applicant to provide a navigational risk assessment ("NRA") is inexplicable. We and our client have warned the applicant on numerous occasions, that if it continues to refuse to commission a NRA at this stage in the process, our client will be unable to assess the detrimental impact that the project will have on the Port in terms of ABP's overriding statutory duties and obligations – and neither for that matter, which may be of more immediate practical interest for the Secretary of State, will the Ex.A actually be able to come to a conclusion as to whether the LLTC project is acceptable in navigational risk and marine impact terms.

10.2 A NRA, properly undertaken, must assess a given project, taking a proactive approach, with a view to reducing the likelihood of risks by identifying risk controls. This is an essential pre-requisite for any new development which may have an impact on the passage of vessels in a Port and must be undertaken in line with the Port Marine Safety Code.

10.3 The purpose of a NRA, therefore, is to identify and then assess the hazards and risks affecting vessel navigation, before considering the controls currently in place to mitigate those risks and further controls that could/should be adopted to minimise those risks so as to be as low as reasonably practicable.

10.4 The applicant seems to think that the preparation of a NRA is some form of subsidiary and relatively unimportant exercise that can be undertaken at a convenient time in the future. In so thinking, we are afraid that the applicant has committed a fundamental

error which, unless remedied, will go the conduct of the NSIP examination, the timing of that examination and the ability of the Ex.A actually to determine the application.

10.5 An NRA is not an assessment that can be undertaken overnight. As noted, it requires data gathering, hazard identification, risk analysis, assessment of existing risk controls and consideration of future controls.

10.6 This will require the gathering of information in relation to vessel movements sedimentation impact, potential changes to current as a result of the construction of bridge piers in the main channel; bridge opening times and the ability of the Statutory Harbour Authority to control those opening times; the size of vessels; the size of future vessels; vessel movements past, present and future; the introduction of new hazards; the need for emergency measures; the need to incorporate any aids to navigational safety deemed necessary, etc.

10.7 As noted above, the requirement to undertake a NRA has been brought to the attention of the applicant on numerous occasions, both by our client and other statutory consultees (for example, Trinity House). Despite repeated requests, however, the applicant has failed to undertake a NRA as part of the overall assessment of the impact of the LLTC project but has instead simply advised ABP that the assessment of navigational risk will take place at a later stage of the project.

10.8 Without a robust NRA that comprehensively assesses the navigational risks and safety measures required as a result of the proposed LLTC, the application now before the Secretary of State is critically, and its present state irretrievably, flawed.

10.9 Further, and critically, this fundamental defect and omission in the application cannot be remedied by the applicant in the time now available to it.

As such, we consider that the environmental statement is not of satisfactory standard, as required under section 55(3)(f) of the Act - nor, we would suggest, in the absence of a NRA, can the ES meet the requirements of the 2017 EIA Regulations in terms of the Schedule 3 criteria.

11 Conclusion

11.1 We do not believe that the defects in process and the fundamental flaws in the application documentation which we have seen prior to submission can be remedied without the withdrawal of the application by the applicant.

11.2 The time afforded by such a withdrawal would enable the applicant to review its proposals and to undertake this time a meaningful and legally compliant consultation with all interested stakeholders so as to ensure that the application (including all supporting documents) are of a satisfactory standard prior to re-submission to the Planning Inspectorate.

11.3 Whilst the applicant may be concerned at the delay such a withdrawal would cause, as our client pointed out in its letter to the Chief Executive of SCC in the letter dated 29 June 2018 :–

> *"I would only add that it must surely be the case that any slight delay in the submission of the application to enable us to discuss the above would be quickly recovered if eventually we find that we are not taking up examination opposing*

each other. Given where we are, and the imperative need to protect the Port for the future, whilst addressing traffic congestion in Lowestoft – is it not in our mutual interest briefly to pause the DCO application for a matter of a few weeks to enable these discussions to bear fruit?"

11.4 As you will have gathered, this suggestion was made to the applicant before the application for a DCO was submitted – but the point of this letter to you will not come as a surprise to SCC in that our client has remained constant throughout in its wish to work with as opposed to against the applicant - and the sentiments expressed in that letter still remain valid today.

11.5 In the alternative, and rehearsing Checklist Question 33 namely: –

"*Has the applicant had regard to DCLG guidance, and has this regard led to the application being prepared to a standard that the Secretary of State considers satisfactory?"*

- we are bound to say that if the applicant fails to withdraw the application, we ask that the Secretary of State determine not to accept the application by reasons of the applicant's failure to comply with the pre-application provisions set out in the Planning Act 2008.

Yours faithfully

[redacted]

Brian Greenwood
Partner
Clyde & Co LLP