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Dear Sirs,

PLANNING ACT 2008 APPLICATION FOR THE PROPOSED LAKE LOTHING THIRD CROSSING DEVELOPMENT CONSENT ORDER

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:

- the Report dated 5 September 2019 of the Examining Authority, a Panel of two examining inspectors consisting of David Morgan and Stephen Roscoe (“the Panel”) who conducted an examination into the application made by Suffolk County Council (“the Applicant”) for the Lake Lothing Third Crossing Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”);
- the late representations received by the Secretary of State following the close of the examination; and
- the further responses received from the consultation undertaken by the Secretary of State following the close of the examination in respect of the application.

2. The application was accepted for examination on 9 August 2018. The examination began on 5 December 2018 and was completed on 5 June 2019. The Secretary of State notes with sadness that Panel member Dr Peter Widd passed away unexpectedly in January 2019. Stephen Roscoe was subsequently appointed to restore the panel to two members. The Secretary of State notes that work undertaken by Dr Widd has been incorporated into the examination. The examination was conducted on the basis of written and oral submissions submitted to the Panel and by a series of hearings. The Panel also undertook three accompanied site inspections and one unaccompanied site inspection.

3. The DCO as applied for would grant development consent for 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 Proposed Development would also include new moorings within the inner harbour for recreational vessels and a new access road linking Waveney Drive to Riverside Road on the south side of Lake Lothing.

4. Published alongside this letter on the Planning Inspectorate’s website is a copy of the Panel’s Report of Findings, Conclusions and Recommendations to the Secretary of State

(“the Panel’s Report”). The main features of the proposal and the site is set out in Chapter 2 of the Panel’s Report, and the Panel’s summary of findings and conclusions is set out in Chapter 10.

Summary of the Panel’s Recommendations

5. The principal issues considered during the Examination on which the Panel has reached conclusions on the case for development consent are set out in the Panel’s Report under the following broad headings:

- Legal and policy context (Chapter 3);
- Planning issues including conformity with national policy statements, marine policy statements, development plans and issues arising in local impact reports (Chapter 4);
- Finding and conclusions in relation to the planning issues on the environment (Chapter 5);
- Findings and conclusions in relation to the Habitats Regulations Assessment (Chapter 6);
- Conclusion on the case for Development Consent (Chapter 7);
- Compulsory Acquisition and Related Matters (Chapter 8); and
- Draft Development Consent Order and Related Matters (Chapter 9).

6. For the reasons set out in the Panel’s Report, the Panel recommended that, subject to the necessary Crown Land consent being obtained, the DCO be made in the form set out in Appendix D to the Panel’s Report.

Summary of Secretary of State’s Decision

7. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this application.** This letter is the statement of reasons for the Secretary of State’s decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 – which apply to this application by operation of regulation 37(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Secretary of State’s Consideration

8. The Secretary of State’s consideration of the Panel’s Report, the late representations, the responses to the consultation and all other material considerations are set out in the following paragraphs. Where not stated in this letter, the Secretary of State can be taken to agree with the Panel’s findings, conclusions and recommendations as set out in the Panel’s Report and the reasons given for the Secretary of State’s decision are those given by the Panel in support of the conclusions and recommendations. All “PR” references are to the specified paragraph in the Panel’s Report and references to “requirements” are to those in Schedule 2 of the DCO as recommended by the Panel at Appendix D of the Panel’s Report.

Legal and Policy Context

9. On 22 March 2016, the Secretary of State for Transport made a direction under section 35 of the 2008 Act that he was satisfied that the Lake Lothing Third Crossing

development is “of national significance”. Although currently falling outside the definition of a “nationally significant infrastructure project” as provided for in section 14 of the 2008 Act, he directed that the development, together with any matters associated with it, be treated as development for which development consent is required. The reasons given are set out in PR 3.2.1.

10. Given that the application requires development consent, section 104(2) of the 2008 Act has effect in relation to the development to which the application relates. In determining this application, the Secretary of State must therefore have regard to the relevant National Policy Statements; any appropriate marine policy documents, determined in accordance with section 59 of the Marine and Coastal Access Act 2009; any Local Impact Reports (“LIR”) submitted; any matters prescribed in relation to the development of the description to which the application relates; and any other matters that the Secretary of State considers to be both important and relevant to the decision (PR 3.2.3). Accordingly, this application needs to be considered in accordance with the National Policy Statement (“NPS”) for National Networks (“NPSNN”).

11. The Secretary of State notes that the Proposed Development does not propose new port development but as it does cross Lake Lothing and interfaces with the Port of Lowestoft, he concurs with the Panel that relevant content within the NPS for Ports (“NPSP”) is an important and relevant consideration in the assessment of this application (PR 3.2.12-3.2.13).

12. The Secretary of State agrees that as the application is located within a Marine Plan area the objectives of the UK Marine Policy Statement are relevant and that the relevant marine plan is the East Inshore Marine Plan (PR 3.3.7-3.3.10). The relevant development plan and local strategy documents which the Secretary of State has had regard to are set out in PR 3.8.

13. The Secretary of State also notes the Panel’s assessment set out in PR 3.4 and 3.5 of European Law and related UK Regulations and other legal and policy provisions and agrees these are relevant and important matters to be considered in deciding this application. The Secretary of State notes that amendments to the Climate Change Act 2008 made by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 were not taken into account by the Panel due to timing (PR 3.5.3). The Secretary of State notes the assessment of carbon dioxide emissions undertaken in paragraphs 8.5.38-8.5.42 of the Environmental Statement (“ES”) and considers that the small increase in carbon dioxide emissions identified would not have a material impact on the ability of the Government to meet its carbon targets.

Findings and Conclusions in Relation to the Potential Impacts of the Development

Noise

14. The Secretary of State notes the policy requirements within the NPSNN and NPSP in relation to noise (PR 5.2.2-5.2.7) and the Applicant’s approach through the framework of the ES and through specific provisions in the draft Development Consent Order (“dDCO”) to meet these requirements (PR 5.2.8). Requirement 4 of Schedule 2 to the dDCO requires the submission of a Code of Construction Practice (“CoCP”) to be approved by the county planning authority prior to commencement of any part of the development (PR 5.2.11). The

Secretary of State notes concerns raised by interested parties principally Nwes and Northumbria Water over noise and vibration during the construction and operation of the crossing (PR 5.2.1). He further notes that Northumbria Water's objection has been withdrawn as a side agreement has been signed by the Applicant and Northumbria Water in relation to noise and vibration (PR 5.2.14). Nwes wrote to the Secretary of State on 14 January 2020 stating it had entered into a legal agreement with Applicant and withdrawn their objection. The Secretary of State therefore concurs with the Panel that noise effects fall well below a magnitude that can be considered material harm (PR 5.2.15), and supports the Panel's conclusions that the Proposed Development accords with 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 (PR 5.2.16).

Air quality

15. The Secretary of State notes the policy requirements for air quality under the NPSNN and NPSP. This 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"); in particular that the Proposed Development should not result in any zone/agglomeration currently compliant with the AQD becoming non-compliant or undermine the ability of a non-compliant area seeking compliance (PR 5.3.2-5.3.3). However, he further notes that the Applicant's assessment of air quality effects in Chapter 8 of the ES concluded the Proposed Development will not affect the UK's ability to comply with the AQD, result in a zone/agglomeration becoming non-compliant or affect the ability to achieve regional compliance (PR 5.3.4).

16. The Secretary of State has noted that representations were made regarding the management of dust during construction and has noted the mitigation measures to be implemented through the CoCP which is capable of further refinement in accordance with Requirement 4 (PR 5.3.6-5.3.7). Having regard to these mitigation measures, the Secretary of State concurs with the Panel that although objections from the interested parties have not been withdrawn, the effects on air quality fall well below the magnitude of material harm and the impacts and effective mitigation have been comprehensively addressed by the Applicant (PR 5.3.8). The Secretary of State agrees with the Panel that air quality accords with policy expectations set out in section 5 of the NPSNN and sections 5.7 and 5.8 of the NPSP and thus does not weigh in the planning balance (PR 5.3.8).

Traffic and Transportation

17. The Secretary of State notes the Applicant (who is also the local Highway Authority) in preparing the Transport Assessment considered both national and local policy. This included the NPSNN and National Planning Policy Framework as well as the local planning documents of Waveney District Council, the Suffolk Local Transport Plan and the Lowestoft Transport Strategy (PR 5.5.4).

18. Concerns of Interested Parties relate to the configuration of junctions with Riverside Way, parking provision on the new southerly access road and private access to properties (PR 5.5.1). Regarding the first two concerns, the Secretary of State has noted that late representations were made on behalf of Statuslist in respect of elements of the changes to the application proposed by the Applicant and subsequently accepted by the Panel and that agreement with Statuslist is anticipated, although had not been secured by the end of the Examination (PR 5.5.11). The Secretary of State has no evidence to suggest that these

agreements will not be concluded and notes the Panel's conclusion that detailed concerns over elements of the highways design have been substantively addressed in amendments to these areas (PR 5.5.15). An objection is still outstanding with British Steel Pension Fund Ltd on the adverse effect on access to one of their tenant's units. The Secretary of State notes this objection has not been replicated by present tenants of the site in question and there are no objections by Statutory Undertakers, or the Highway Authority that would support it. The Secretary of State concurs with the Panel that their concerns remain unsupported by technical evidence and fall well below a magnitude that can be considered material harm (PR 5.5.14-5.5.15).

19. The NPSNN sets out the need case for development on the national networks in order *inter alia* to address congestion, improve resilience and support social and economic activity. He agrees with the Panel that the Proposed Development will assist in delivering key objectives of the NPSNN and accords with the economic objectives of the NPSP (PR 5.5.16-5.5.17). The Secretary of State agrees with the Panel that the Proposed Development accords with local and regional transport policy, and insofar as the Proposed Development will form a link in the Trans-European Network and act as a tactical diversion for the Strategic Road Network, weighs significantly in favour of the Proposed Development (PR 5.5.18).

Historic Environment

20. The Secretary of State notes that Historic England's initial concerns on the direct impact of the development on non-designated heritage assets within the area of the development footprint have been addressed by the Applicant through provisions in the ES (PR 5.6.6). The Secretary of State has also had regard to concerns that were raised in relation to the impact of the Proposed Development on the South Lowestoft and Oulton Broad Conservation Areas and on the significance of a number of heritage assets through development within their setting. The Secretary of State notes that the specific Cultural Heritage and Townscape Visual Impact Chapters in the ES confirm that there are only limited views from these designated heritage assets and therefore that significant adverse impact on setting of these assets will be avoided and appropriately mitigated. (PR 5.6.7-5.6.8). The Secretary of State therefore concurs that the Proposed Development accords with paragraphs 5.120 to 5.142 of the NPSNN and paragraphs 5.12.1 to 5.12.20 of the NPSP (PR 5.6.8).

21. The Secretary of State notes that the Panel recommend the dDCO include a provision for the delivery of a project-specific Written Scheme of Investigation to minimise the impact on the historic environment (PR 5.6.6) and notes this is included in the recommended draft Development Consent Order ("rdDCO").

Navigation (Recreation and Leisure Related navigation and Commercial Port-Related Navigation)

22. The Secretary of State notes the concerns from Interested Parties regarding the effects on recreational and leisure navigation, and in particular concerns regarding impacts of the closure of the western harbour to access to the sea for a three-week period during the construction process (raised by Lowestoft Cruising Club); 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 (PR 5.7.2-5.7.3). The Secretary of State notes the Applicant's approach to address these concerns is included in the dDCO and the Draft Scheme of Operation which includes a three months period of prior notification of the

closure. The Draft Scheme of Operation also makes provision for a waiting pontoon in the harbour area between the existing and proposed bridges and for a robust consultation process in the event of modifications to the Scheme of Operation or if it were to be replaced (PR 5.7.4). The Secretary of State agrees with the Panel that the dDCO and the provisions of the Draft Scheme of Operation offer sufficient assurance to leisure craft users both during and after construction of the new crossing (PR 5.7.5) and that insofar as the provisions of the Preliminary Navigation Risk Assessment and Draft Scheme of Operation safeguard the recreational activities of the harbour, the Proposed Development avoids conflict with paragraph 4.6.2 of the NSPS (PR 5.7.6).

The Effect of the Proposed Development on the Operation of the Port

23. The Secretary of State notes the opposition of Associated British Ports (“ABP”) and in its capacity as the Statutory Harbour Authority (“SHA”) to the Proposed Development. This is set out in PR 5.8.3-5.8.41. Clyde and Co acting on behalf of ABP wrote to the Secretary of State on 31 May 2019 (during the Examination) and on 11 October 2019 (in response to further consultation undertaken by the Secretary of State) expressing its opposition to the Proposed Development. It was explained that ABP would only withdraw its opposition if the Applicant would be prepared to provide the package of measures sought by ABP, which ABP considered was necessary so as to mitigate the harm that would otherwise be caused by the Proposed Development.

24. Clyde and Co wrote again on 6 April 2020 to inform the Secretary of State that ABP and the Applicant had completed a “Settlement Agreement” on 2 April 2020 and as a consequence ABP has formally withdrawn their objection to the Proposed Development.

25. The Secretary of State further notes the Panel’s position that whilst the Proposed Development would cause material harm to the operation of the port, the extent of this harm, when considered in the context of the port operation as a whole, might be characterised as no more than moderate (PR 5.8.156). The Secretary of State therefore concludes that the effect of the Proposed Development on the operation of the port would not justify refusing development consent even if a settlement had not been agreed between the Applicant and ABP.

Findings and Conclusions in Relation to Habitats Regulations Assessment (HRA)

26. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”), the Secretary of State is required to consider whether the Development would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European Site¹. The Proposed Development is not directly connected with or necessary to the management of any European Site. The Secretary of State must therefore undertake an appropriate assessment (“AA”) if likely significant effects on the conservation objectives of a European Site, either alone or in combination with other plans or projects cannot be ruled out. The Secretary of State notes that the Applicant provided a Habitats Regulations Assessment Report (“HRAR”) with its DCO application (PR 6.3.2), which was later updated prior to the start of the Examination to contain an updated assessment of the predicted effects on the Outer Thames Estuary Special Protection Area (PR 6.3.3-6.3.4). The Secretary of State further notes that the screening assessment in the

¹ The term “European Site” in the PR and in this decision letter includes Ramsar Sites.

HRAR concluded there were four sites which is likely to give rise to significant effects, alone or in-combination with other project or plans. These being:

- The Broads Special Area of Conservation
- Broadland Ramsar site
- Southern North Sea Site of Community Importance
- Outer Thames Estuary Special Protection Area

27. The Secretary of State notes the Applicant concluded that, with the implementation of the proposed pollution control mitigation measures set out in PR 6.6.2-6.6.3, the integrity of these sites would not be adversely affected by the Proposed Development (PR 6.6.5).

28. The Secretary of State notes Natural England (“NE”) did not submit any representations during the Examination but agreed that the application HRAR adequately assessed the risks to European sites and agreed its conclusions. Furthermore, the updated Statement of Common Ground confirmed that for the revised HRA, all HRA matters were agreed between the Applicant and NE (PR 6.4.11). In the Environment Agency’s response, it deferred to NE for HRA matters but considered that there were no overriding factors that suggested they should deviate from this position (PR 6.4.13). In addition, the Secretary of State notes that the Marine Management Organisation (“MMO”) deferred to the opinion of NE in relation to impacts on European sites but where mitigation measures are required to avoid or reduce any adverse effects on site integrity, the MMO would require such measures to be attached as Deemed Marine Licence conditions or included within an approved method statement (PR 6.4.16).

Secretary of State’s Conclusions

29. Having given consideration to the assessment material submitted during the Examination, the Secretary of State considers that likely significant effects in relation to construction and/or operations could not be ruled out. The Secretary of State therefore considered an AA should be undertaken to discharge his obligations under the Habitats Regulations. The AA is attached at annex B of this letter.

30. In the Secretary of State’s view, the material provided during the Examination contained sufficient information to inform consideration under regulation 63 of the Habitats Regulations as to the likely impact on the European Sites. The AA has considered the conclusions and recommendation of the Panel. The AA has also taken account of the advice of the Statutory Nature Conservation Body, which in this case is NE and the views of other interested parties as submitted during the Examination.

31. The Secretary of State, having carried out the AA, is content that the construction and operation of the Development, as proposed, with all the avoidance and mitigation measures secured in the DCO and the Deemed Marine Licence, will not adversely affect the integrity of any European Site. The Secretary of State’s therefore agrees with the Panel that the Proposed Development would have no adverse effect, either alone or in-combination with other plans or projects, on any European site (PR 6.7.2).

Conclusion on the Case for Development Consent

32. The NPSNN and the NPSP provide the primary basis for determining this application for development consent. The Secretary of State concurs with the Panel as set out in PR

7.2.1 that the Proposed Development would provide additional capacity that would help to reduce traffic congestion, improve journey times and support social and economic activity in accordance with the Government's vision and strategic objectives. The Secretary of State also agrees with the Panel that that the Proposed Development has an aspirational aesthetic component to its design, delivering an iconic new work of architectural engineering which achieves a key aim of NPS policy (PR 7.2.2). Taking into account the impacts of the Proposed Development, and the withdrawal of ABP's objection, the Secretary of State agrees with the Panel that any harm to the operation of the port, is clearly outweighed by the significant benefits the Proposed Development would bring (PR 7.4.5).

Compulsory Acquisition and Related Matters

Crown land

33. The Secretary of State notes that the Order limits include an area of land which includes Crown land. By virtue of section 135 of the 2008 Act these powers cannot be granted without the consent of the appropriate Crown authority. The appropriate Crown Authority is the government department having the management of the land. In this case, the land is managed on behalf of the Secretary of State for Transport by Highways England Historical Railways Estate. They advised the Applicant that the Department for Transport ("DfT") is the appropriate body to issue the consent. At the end of the Inquiry consent had yet to be granted and the Secretary of State wrote to DfT Estates Management on 7 October to inquire about the latest position. On 27 February 2020, DfT Estates wrote to the Secretary of State setting out it would have no objection to the compulsory acquisition by the Applicant of third party rights over the Crown land.

Statutory Undertaker Land

34. The Secretary of State has considered the compulsory acquisition ("CA") powers sought by the Applicant in accordance with sections 122, 123, 127, and 138 of the 2008 Act, the Human Rights Act 1998 and relevant guidance. In doing so he has taken into account the cases of the Applicant and the affected persons as set out in PR 8.5.

35. The Secretary of State agrees with the Panel that in the context of section 127 of the 2008 Act that the CA and TP powers sought would be detrimental to the carrying out of ABP's statutory undertaking but this detriment would not be serious (PR 8.5.193). However, as set out in paragraph 24, the Secretary of State notes that ABP has now withdrawn their objection to the Proposed Development.

Royal Mail Group

36. The Secretary of State notes the Royal Mail Group's concerns regarding removal of a post-box in Waveney Drive. The Secretary of State agrees with the Panel that the removal of the post-box would be necessary for carrying out the Proposed Development and that its removal would not cause serious detriment to the carrying on of the undertaking. He is therefore content, in the context of section 127 and section 138 of the 2008 Act, to grant the powers sought (PR 8.5.201-8.5.203).

Cara Jane Robinson

37. The Secretary of State notes that Ms Robinson entered a legal agreement with the Applicant and formally withdrew her objection on 2 December 2019, regarding CA of her property where she ran a beauty business.

PFK Ling Limited

38. The Secretary of State notes 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. The Secretary of State notes the impact Lings believe it would have on its business; its view that it would have to relocate; and its concerns about the CA powers sought (PR 8.5.213-8.5.216).

39. The Secretary of State notes the measures proposed by the Applicant in response to Lings' objections set out in PR 8.5.217-8.5.226, including securing traffic management measures and continuous access to the Lings' site in the rdDCO through the CoCP, which the Applicant considers to adequately mitigate the impacts of the CA (PR 8.5.220). He also notes that the Applicant sought the TP of adjacent land to the north of the Lings' site to provide additional space for Lings' operations during construction (PR 8.5. 221). The dDCO would also return the land currently occupied by Enterprise (whom operate a car rental franchise on the site) to Lings (PR 8.5.219).

40. The Secretary of State notes the Panel's consideration of this matter at PR 8.5.227 and that, whilst the Enterprise franchise would probably leave the Lings' site following the CA of its lease, both Enterprise and Lings would have access to compensation for loss as a result (PR 8.5.229). The Secretary of State agrees with the Panel that whilst there would be business disruption due to the CA and TP powers, that this would not be severe or any reason to justify the relocation of the Lings business (PR 8.5.231), and that this objection should not prevent the grant of the CA or TP powers sought (PR 8.5.233).

The Nexen Group

41. The Secretary of State notes the Nexen Group consists of various companies which undertake various business activities on land close to the Proposed Development. Access to the Group's land would be compulsorily acquired and part of the land would be subject to the CA of rights for construction and maintenance access. The CA sought would sever the Group's land from the local highway network. Although an alternative access would be provided, the Group believes access to its retained land may be interrupted during the construction or maintenance of the Proposed Development, which could have a severe and irreparable impact on their business. The Group also set out that the CA of its existing access would limit its ability to service an area identified for future development within its land (PR 8.5.234-8.5.239).

42. The Secretary of State notes the Applicant's response and that access to the Group's land during construction would be secured under the CoCP. In addition, following representation by the Group, a second private means of access would be provided to the Group's land. 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 (PR 8.5.240-8.5.243).

43. The Secretary of State has noted the Panel's consideration of this matter set out in PR 8.5.246-8.5.254. This includes its view that the CA at the existing access has been adequately mitigated. On future development, the Secretary of State notes the Panel considers that the Proposed Development could delay the timing of future development on this part of the Group's site. The potential future development does not however appear to be imminent and the period of delay would reduce as construction took place. While access to the part of the Group's land identified for future development by way of the relocated access may well be less efficient in terms of future development, any impact on its value due to the change in access would be compensable. The Secretary of State therefore concurs with the Panel that this objection should not prevent the grant of the CA or TP powers sought (PR 8.5.254).

Nwes Property Services Limited Group

44. The Secretary of State notes objections regarding traffic, noise, fumes and parking problems from Nwes, a not for profit enterprise agency providing business support. Nwes owns the Riverside Business Centre which is situated close to the Proposed Development. The CA and TA powers sought would include outdoor areas around the business centre building and 8 car parking spaces. Nwes wrote to the Secretary of State on 14 January 2020, formally withdrawing their objection having entered into a legal agreement with the Applicant.

Statuslist Limited

45. The Secretary of State notes concerns from Statuslist, a registered proprietor of freehold land which would be subject to CA for a new access road under the rdDCO. The road would bisect the land and would impact on the current and future use of the land. He further notes that good progress has been made on an agreement between the parties (PR 8.5.264-8.5.266) and Heads of Terms ("HoTs") are now at an advanced stage (PR 8.5.269).

46. The Secretary of State has not received confirmation that an agreement has been finalised. In the absence of an agreement, and having regard to the Panel's views, including that the road is required to replace the existing accesses, and that in crossing undeveloped land the road would have least impact, the Secretary of State agrees there is a compelling case for the CA powers sought and that the TP powers are justified (PR 8.5.270-8.5.273).

B.S. Pensions Fund Limited

47. The Secretary of State notes the B.S. Pension Fund Limited owns land which would be subject to the CA of all interests and this land, and that in its immediate vicinity, is let to Wickes Building Supplies Limited. B.S. Pensions Fund Ltd consider the CA of this land would have the potential to adversely affect access to the unit let to Wickes Limited (PR 8.5.274). The Secretary of State further notes that progress has been made on voluntary acquisition and HoTs have been agreed but no agreement concluded by the end of the Examination (PR 8.5.276) and the Secretary of State has not received confirmation that an agreement has been finalised since the examination closed. The Panel's view is that the impact of the CA on the operation of the site is negligible, and, in the absence of an agreement, the Secretary of State agrees with the Panel that there is a compelling case for the CA powers sought and that the TP powers are justified (PR 8.5.277-8.5.278).

Overall Conclusions

48. The Secretary has considered the general case for CA powers set out in PR 8.6.1-8.6.23. Taking into account the Panel's view, the Secretary of State notes that -

- there is significant public benefit to be weighed in the balance concerning the compelling case for CA (PR 8.6.11);
- interference with private rights have been minimised and mitigated where possible (PR 8.6.15);
- there are no viable main alternatives to the location of the Proposed Development (PR 8.6.18); and;
- that TP powers sought would be needed to facilitate implementation (PR 8.6.22).

The Secretary of State concurs with the Panel that the Applicant has made a case sufficient to justify its general request for CA and related powers (PR 8.6.23).

49. On the consideration of specific matters, the Secretary of State agrees that -

- there are no specific objections that the Applicant's position on CA and TP powers should be changed (PR 8.6.24);
- the CA of land and rights sought within the rdDCO can be purchased without serious detriment to the carrying on of the statutory undertaking concerned and that the extinguishment and removal of apparatus under the rdDCO would be necessary for the purpose of carrying out the Proposed Development (PR 8.6.25);
- in terms of the Human Rights Act 1998, DCLG Guidance and the requiring balancing exercise, 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 (PR 8.6.37) and that any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest (PR 8.6.38);
- there is no evidence that the Proposed Development would have any harmful equality impacts under section 149 of the Equality Act 2010 (PR 8.6.39-8.6.40); and
- there is 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 (PR 8.6.43).

50. In conclusion the Secretary of State agrees that the land which is sought would be in accordance with national policy and is required to facilitate or be incidental to the Proposed Development and the powers granted in the rdDCO should be granted.

Draft Development Consent Order and Related Matters

51. The Secretary of State notes the final version of the dDCO was submitted by the Applicant on 5 June 2019, immediately prior to the closure of the examination, which has not been the subject of consultation and other parties have not had the opportunity to make representations to it. This has involved considerable changes to articles, Protective Provisions and Requirements in the DCO. As these impacted on ABP, the Secretary of State consulted with them by letter dated 27 September 2019 and Clyde & Co replied on their behalf on 11 October 2019.

52. The Secretary of State accepts the proposed amendments to articles 2 (definitions of "harbour authority" and "Lowestoft Harbour") and 20 (temporary suspension of navigation)

which the Applicant and ABP have both agreed and which he does not consider will materially affect any other party.

53 The Secretary of State concurs with the drafting of requirement 11 of the rdDCO for the reasons set out by the Panel (PR 9.4.3), and declines to delete the provision allowing recourse to arbitration.

54. The Secretary of State has considered the submissions made on article 46 and in particular, on proposed Byelaw 37G. Article 41 (operation of the bridge) requires the undertaker to operate the bridge in accordance with a scheme of operation, which is a certified document. Article 46 (byelaws) then provides that the undertaker may make byelaws on various matters including placing controls on the passage of vessels. Article 46(5) amends the existing 1993 harbour byelaws to add in a number of new byelaws. ABP object to proposed Byelaw 37G, which requires *inter alia*, compliance by vessel masters with the scheme of operation.

55. The Secretary of State considers that it is not clear how masters of vessels would be informed of the contents of the scheme of operation, and how they would understand the relationship between directions issued by the harbour authority and the scheme. It is also not clear why many of the matters set out in the scheme need to or should be enforced through byelaws, and to take precedence over the explicit provisions of other byelaws.

56. Clyde and Co on behalf of ABP have suggested that requirements imposed on anyone other than the undertaker should be imposed through a general direction made by the harbour authority not the scheme of operation. The Applicant has submitted in their letter of 5 June 2019 that there was no guarantee that ABP as harbour authority would issue a general direction and Byelaw 37G is therefore necessary to secure that the scheme of operation can be enforced.

57. Applying the provisions of the scheme of operation through a general direction would accord with common practice for regulating vessel operations in the harbour and reduce the sources of regulation applied to masters of vessels. The concerns of the Applicant can be addressed through a provision in the DCO requiring the issue by the harbour authority of a general direction. The Secretary of State considers that, given that the harbour authority have themselves suggested that this route would be preferable, in the particular circumstances imposing an obligation on a party other than the undertaker is justified. The Secretary of State has accordingly made amendments to articles 41 and 46.

58. The main modifications which the Secretary of State has decided to make to the DCO are as follows:

- Pre-ambule. Paragraphs 30A and 30B of Schedule 5 to the 2008 Act have been added to the vires paragraph, so as to provide cover for the deemed marine licence and conditions of that licence.
- Article 2 (interpretation). The definition of “Cadent” now contains the updated details for the Company and a definition for “MMO” has been included.
- Article 5 (limits of deviation). As the limits of deviation are to any extent with the limits allowed, the wording ‘so far as the undertaker considers to be necessary or convenient’ is redundant and has been deleted.
- Article 9 (classification of roads, etc.). The Secretary of State considers that the reference to two, potentially different dates in article 9(a) and (b) being the date roads are open to traffic or the date determined by the undertaker is unclear and

inconsistent. The references to ‘from such date as the undertaker may determine’ are therefore deleted. A small amendment has been made to the paragraph references set out in article 9(a) and (b)

- Article 10 (permanent stopping up of streets and private means of access). The original Part 2 of Schedule 4 contained no entries and so has been deleted. The remaining Parts of the Schedule have been renumbered.
- Article 26(2) and (3). The Secretary of State is concerned that the drafting of these articles as set out in the DCO may not in practice achieve its intended effect. The changes proposed in subsections (2) and (3) create a parallel power to that set out in article 49 (transfer of benefit of Order). Further the changes proposed provide that the benefit of the powers of compulsory acquisition of rights under the Order may be transferred to the statutory undertakers by way of written consent by the undertaker. This is in contrast to the procedure set out in article 49(1) which require the consent of the Secretary of State. There is no explanation set out in the Explanatory Memorandum for the need of this provision and how it would work, and the Secretary of State notes that these changes are not discussed within the ExA’s report. The Secretary of State has further concerns that the effect of the transfer of benefit to any statutory undertaker would not transfer the liability for the payment of compensation to them. The Secretary of State is unclear how this would be expected to work in practice and is concerned that this may result in a lack of understanding or appreciation on the part of any affected landowners, which the Secretary of State does not consider fair or reasonable. For these circumstances in relation to this application, the Secretary of State believes that fairness and transparency requires the removal of these provisions. Any transfer of functions or powers under the Order that needs to be made to a statutory undertaker can be undertaken by way of the procedure set out in article 49(1).
- Article 27 (acquisition of subsoil and airspace only). The reference in article 27(4)(c) has been amended to section 153(4A).
- Article 41 (operation of the new bridge). Article 41(8) has been amended to provide that the harbour authority must issue a general direction imposing the relevant requirements of the scheme of operation on masters of vessels.
- Article 46 (byelaws). Article 46(5)(b) inserts a new Part IVA (new bridge controls on vessels), from which Byelaw 37G has been deleted.
- Article 49 (transfer of benefit of Order, etc.). As a consequence of the matters set out in relation to article 26, paragraph (4) has been reworked so as to remove subparagraph (b).
- Schedule 2. The requested minor corrections to borehole references in paragraph 8(1)(a) and paragraph 8(2)(b) have been made. The requested changes have been made to paragraph 20(1) and (2) so as to refer to ‘the discharging authority’.
- Schedule 9. The requested amendment to correct a cross reference to refer to ‘Sheet 3’.

59. The Secretary of State is making a number of other minor textual amendments to the rdDCO set out in Appendix D to the Panel’s Report in the interests of clarity, consistency and precision. He considers that none of these changes, nor the changes set out in paragraph 58², either individually or taken together, materially alter the effect of the DCO.

Secretary of State’s overall conclusion

² The number 58 replaces the numbers in the original decision letter, and corrects a typographical error.

60. For the reasons given in this letter, the Secretary of State considers that there is a clear justification for authorising the Proposed Development. The permission with the appropriate crown land has now been obtained. Subject to the changes referred above in paras 96 he is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the DCO as now proposed.

Challenge to Decision

61. The circumstances in which the Secretary of State's decision may be challenged are set out in Annex A of this letter.

Publicity for the Decision

62 The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the 2009 Regulations.

Yours faithfully,

Susan Anderson

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The Lake Lothing Third Crossing Development Consent Order 2020 (as made) is being published on the Planning Inspectorate website at the following address:

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

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).

Annex B

**HABITATS REGULATIONS ASSESSMENT FOR AN APPLICATION UNDER
THE PLANNING ACT 2008**

Development title: Lake Lothing Third Crossing

30 April 2020

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1. Introduction

Background

- 1.1 This is a record of the Habitats Regulations Assessment (“HRA”) that the Secretary of State for Transport has undertaken under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) in respect of the Development Consent Order (“DCO”), including the Deemed Marine Licence (“DML”) for the proposed Lake Lothing third crossing (“the Development”). The HRA includes an appropriate assessment for the purposes of regulation 63.
- 1.2 Suffolk County Council (“the Applicant”) applied to the Secretary of State for a DCO under section 37 of the Planning Act 2008 (“PA 2008”) for the Proposed Development. The Development application is described in more detail in section 2 of this report.
- 1.3 The Development constitutes a Nationally Significant Infrastructure Project by virtue of the direction given by the Secretary of State under section 35 of PA 2008. The Development application was accepted for examination by the Planning Inspectorate on 9 August 2018.
- 1.4 A two-person panel was appointed as the Examining Authority (“ExA”) for the application, David Morgan and Dr Peter Widd. Unfortunately, Dr Peter Widd passed away unexpectedly. The Secretary of State for the Ministry of Housing, Communities and Local Government subsequently appointed Inspector Stephen Roscoe to restore the panel to two persons. The Secretary of State notes that the work undertaken by Dr Widd was incorporated into the examination.
- 1.5 The Applicant submitted a request during the examination (on 29 January 2019) to make a series of changes to the Development. The request was subsequently amended in a letter from the Applicant dated 12 April 2019. The ExA accepted the proposed changes as being non-material in their letter dated 9 May 2019 and the Applicant duly produced revised application documents which were submitted at deadline 10 of the examination.
- 1.6 The ExA submitted the report of the examination, including its recommendation (“the ExA’s report”) to the Secretary of State on 5 September 2019. The Secretary of State’s conclusions in relation to European sites have been informed by the ExA’s report and the documents submitted during the examination as described below.

Habitats Regulations Assessment

- 1.7 Council Directive 92/43/EEC (“the Habitats Directive”) and Council Directive 2009/147/EC (“the Birds Directive”) provide for the designation of sites for the protection of certain species and habitats. The sites

designated under these Directives are collectively termed European sites and form part of a network of protected sites across Europe, known as the Natura 2000 network. In the UK the Habitats Regulations transpose these Directives into national law and apply up to the 12 nautical mile limit of territorial waters.

- 1.8 The UK Government is also a signatory to the Convention on Wetlands of International Importance 1972 ("the Ramsar Convention"). The Ramsar Convention provides for the listing of wetlands of international importance. UK Government policy is to give sites listed under this convention ("Ramsar sites") the same protection as European sites.
- 1.9 For the purposes of this report, in line with the Habitats Regulations and relevant Government policy, the term European sites includes Special Areas of Conservation ("SACs"), Special Protection Areas ("SPAs"), candidate SACs ("cSAC"), potential SPAs ("pSPA"), possible SACs ("pSAC"), Sites of Community Importance (SCI), listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites.
- 1.10 Regulation 63 of the Habitats Regulations requires that:
*"(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which-
(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
(b) is not directly connected with or necessary to the management of that site,
must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives..."*
- 1.11 The Development is not connected with or necessary to the management of any European sites. Accordingly, the Secretary of State, as the competent authority for the purposes of the DCO/DML application, has undertaken an assessment in line with the requirements of the Habitats Regulations. This HRA is the record of the appropriate assessment for the purposes of regulation 63.

[The Report on the Implications for European Sites and consultation with the appropriate nature conservation body](#)

- 1.12 The ExA, with support from the Environmental Services Team at the Planning Inspectorate produced a Report on the Implications for European Sites ("the RIES"). The purpose of the RIES was to compile, document and signpost information submitted by the Applicant and Interested Parties ("IPs") during the examination up to deadline 9 of the examination. It was issued to ensure that IPs, including Natural England ("NE") had been formally consulted on Habitats Regulations matters during the examination. The consultation period ran between 3 May 2019 and 4 June 2019.

- 1.13 Regulation 63(3) of the Habitats Regulations requires the Secretary of State, if they undertake an appropriate assessment, to consult the appropriate nature conservation body and have regard to any representations made by that body. For the purposes of this application, NE are the appropriate nature conservation body.
- 1.14 NE did not submit any representations during the examination and did not comment on the RIES. However, two Statements of Common Ground ("SoCG") were agreed between the Applicant and NE, which were submitted at deadlines 4 and 5 of the examination. Both SoCG confirmed that all matters relating to HRA were agreed between them. The Applicant's Document SCC/LLTC/EX/69 'Proposed Non-Material Changes to the Application' confirms that NE were consulted on the non-material changes to the DCO.
- 1.15 The Secretary of State is satisfied that NE have been consulted and has been given suitable opportunities to make representations thereon in accordance with regulation 63(3) of the Habitats Regulations.

Documents referred to in the HRA

- 1.16 This HRA has taken account of and should be read in conjunction with the documents produced as part of the application and examination as listed in Annex 1 to this report.
- 1.17 The Applicant submitted a report entitled 'Lake Lothing Third Crossing Habitats Regulation Assessment Report' ("the HRAR") as part of their DCO application. A revised version was submitted to the examination on 20 November 2018 ("the UHRAR") which superseded the report submitted as an application document. A final version of the UHRAR ("the UHRAR 2") was submitted at deadline 3 of the examination
- 1.18 This HRA has considered the information presented in the UHRAR 2 rather than the original HRAR or the UHRAR.

Structure of this report

- 1.19 The remainder of this HRA is presented as follows
- Section 2 provides a general description of the Development.
 - Section 3 describes the location of the Development and its relationship with European sites.
 - Section 4 identifies the European sites and qualifying features subject to likely significant effects, alone or in combination with other plans or project.
 - Section 5 considers adverse effects on the integrity of European sites, alone or in combination with other plans or projects.

2. Development description

- 2.1 The Development would comprise the following components:
- an opening bascule bridge over the Port of Lowestoft, in Lake Lothing;
 - on the north side of Lake Lothing, a bridge over the East Suffolk railway line linked via an earth embankment to a new roundabout junction to the C970 Peto Way between Rotterdam Road and Barnards Way;
 - on the south side of Lake Lothing, a bridge over the northern end of Riverside Road linked by an earth embankment to a new roundabout junction with the B1531 Waveney Drive;
 - a control tower for the bascule bridge opening situated immediately to the south of Lake Lothing;
 - provision of a new pontoon bridge for use by recreational vessels situated to the east of the new highway crossing, in the inner harbour of Lake Lothing; and
 - changes to the existing local road network including the closure of several junctions, the construction of a replacement road between Riverside Road and Canning Road and a new access road to property at Riverside Business Park.
- 2.2 The Development would be approximately 1km in length. During operation it would be able to carry both vehicular and non-motorised road users including pedestrians, while allowing large vessels to access the Port of Lowestoft.
- 2.3 The works to facilitate the construction, operation and maintenance of the Development include the installation of road drainage and lighting, landscaping and diversion and installation of utility services. The road drainage will connect to existing drainage systems via a Sustainable Drainage System (SuDS).
- 2.4 Construction of the Development is expected to take approximately two years. It would involve the following activities:
- site clearance including breaking hardstanding, demolition of buildings and vegetation clearance;
 - establishment of three construction compounds within the Order limits, providing parking for staff, storage areas and site offices;
 - use of generators, temporary machinery and lighting;
 - installation of cofferdams and temporary piers for the bridge construction (the worst case scenario would see the construction of cofferdams from both the north and south quays);
 - sediment removal and disposal of suitable sediment to an offshore disposal site;
 - piling into the lake bed to form the foundations of the bascule bridge and its approaches;
 - use of floating barges to construct the bridge piers and deck;
 - levelling and earthworks using scrapers, bulldozers and dump trucks;
 - import and export of material to form the carriageway;

- piling for the foundations of the bridge over the East Sussex railway line;
 - diversion of utilities and telecommunications; and
 - temporary road closures and diversions.
- 2.5 Routine maintenance of the bascule bridge may include dredging of Lake Lothing and could also affect existing dredging activities undertaken by Associated British Ports in relation to the Port of Lowestoft.
- 2.6 Decommissioning works are yet to be determined but the Applicant has advised that the Development will be designed to have an operational life of at least 120 years.
- 2.7 The Applicant proposed a number of non-material changes that consist of:
- a new turning head on Canning Road;
 - revised parking provision in Riverside Road and Canning Road;
 - amendment to/clarification of limits of deviation for elements of the Development;
 - addition of a new private means of access to Network Rail land;
 - addition of a new private means of access to the Nexen site;
 - addition of a new private means of access to the MotorLings site; and
 - addition of a T-junction arrangement on the new access road.
- 2.8 The potential effects on European sites associated with the construction, operation and decommissioning of the Development are discussed in section 4 of this HRA.

3. Project location and relationship with European sites

Location and existing land use

- 3.1 Lake Lothing is located in Lowestoft. It is a saltwater waterbody linking the North Sea and the Broads National Park; it divides the north and south parts of Lowestoft. There are two existing bridges crossing Lake Lothing, Mutford Bridge (to the west of the Development) and the A47 Bascule Bridge (to the east of the Development).
- 3.2 The Port of Lowestoft lies between the north and south sections of Lake Lothing. It is divided into inner and outer harbours. Lake Lothing constitutes the inner harbour and contains the Town Quay, South Quay, Silo Quay, North Quay, Shell Quay, the Lowestoft Haven Marina and a central navigation channel. The outer harbour lies to the west of the A47 Bascule Bridge and is constructed from breakwaters. It comprises the Hamilton Dock, Waveney Dock, Trawl Dock and a yacht marina.
- 3.3 The Development would cross from Peto Way (located to the north of Lake Lothing) to the B1531 Waveney Drive (located on the south side of Lake Lothing). On the northern side of Lake Lothing, the land within the Order limits includes operational land within the Port of Lowestoft and land relating to the East Sussex railway line. On the southern side of Lake Lothing within and adjacent to the Order limits are a number of commercial and municipal buildings, including a manufacturer of forklift trucks and a car sales business.
- 3.4 In the area surrounding the Order limits on both sides of Lake Lothing, the land uses are mainly urban and consist of a mixture of transport, residential and commercial uses. The Port of Lowestoft operations cover approximately 40ha of the land on the northern edge of Lake Lothing. There are a number of significant transport links running through the area including the A47 and A12 which lie to the east of the Development and the A1177 which runs to the west. The East Sussex railway line runs parallel to the northern edge of Lake Lothing and connects to Lowestoft railway station centre at a point west of Lowestoft town centre.

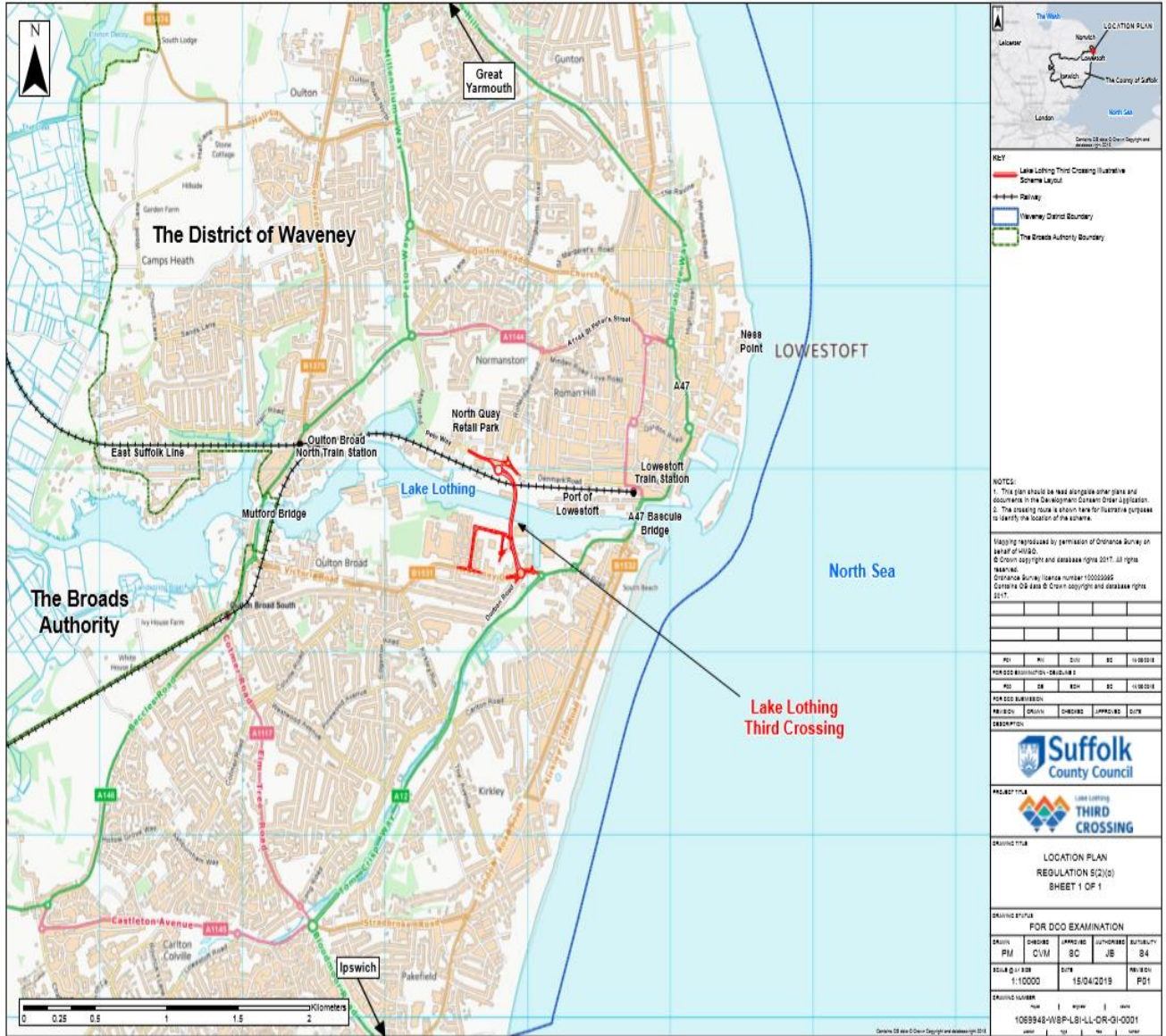
European sites potentially affected by the Development

- 3.5 The Order limits of the Development do not overlap with the boundaries of any European sites. The Applicant's UHRAR 2 identifies six European sites within 30km of the Development for which there could be pathways of effect. The environmental impact assessment (EIA) Scoping Opinion issued by the Planning Inspectorate to the Applicant on behalf of the Secretary of State requested that the Applicant also address any effects on the Alde-Ore Estuary SPA which is located more than 30km away. NE also endorsed this approach through their EIA scoping consultation response.
- 3.6 Accordingly, the Applicant identified seven European sites for inclusion within the URAR 2:
 - The Broads SAC;

- Broadland SPA;
- Broadland Ramsar site;
- Southern North Sea SAC;
- Outer Thames Estuary SPA;
- Benacre to Easton Bavents SPA
- Alde-Ore Estuary SPA.

3.7 No evidence was presented during the examination to suggest that effects could occur to any other European sites. The Secretary of State is therefore satisfied that no other European sites need to be considered in this HRA.

Location of the Development



NOT

- Lake Lothing Third Crossing Illustrative Scheme Layout
- Railway
- Waveney District Boundary
- The Broads Authority Boundary

NOTES:

1. This plan should be read alongside other plans and documents in the Development Consent Order Application.
2. The crossing route is shown here for illustrative purposes to identify the location of the scheme.

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REV	NO	DATE	BY	DESCRIPTION
FOR DCO SUBMISSION - ORIGINAL				
FOR DCO SUBMISSION				
FOR DCO SUBMISSION				

Suffolk County Council

PROJECT TITLE
LAKE LOTHING THIRD CROSSING

DRAWING TITLE
LOCATION PLAN
REGULATION 5(2)(D)
SHEET 1 OF 1

DRAWING STATUS
FOR DCO EXAMINATION

DESIGN	DESIGNED	DRAWN	CHECKED	APPROVED	DATE	SCALE	STATUS
PM	CVM	BC	JB	84			

PROJECT NUMBER
1069948-WBP-LB-LL-CR-GI-001

4. Assessment of likely significant effects (LSE)

Potential effects from the Development

- 4.1 The UHRAR 2 identified the following potential effects which could occur as a result of construction, operation and decommissioning activities necessary for the Development:
- direct habitat loss;
 - displacement of species as a result of noise or visual disturbance;
 - changes to water quality as a result of sediment re-suspension and deposition; and
 - changes to air or water quality as a result of the emission of pollutants.
- 4.2 No evidence was presented during the examination that the development was likely to give rise to any other effects on European sites.

Sites and features which could be affected

- 4.3 The Applicant's UHRAR 2 screened the sites and qualifying features listed in Table 4.1 to establish if significant effects were likely. The Secretary of State is content that this list includes all of the sites and qualifying features which require to be considered.

Conservation objectives

- 4.4 The conservation objectives for European sites define the desired state for a European site when it will contribute to favourable conservation status for the designated features. The conservation objectives, as published by NE and the Joint Nature Conservation Committee are provided in Annex 2 of this HRA.
- 4.5 Conservation objectives are not published for Ramsar sites. However, since the features of the Ramsar site are similar to those for The Broads SAC and the Broadlands SPA, this HRA has treated the conservation objectives for those sites as a proxy for the Ramsar site.

Assessment of in-combination effects

- 4.6 The Applicant's UHRAR 2 presented the other projects (no plans were identified) which were reviewed for potential in-combination effects with the Development on European sites. The projects assessed in the UHRAR 2 were the:
- 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.

Having considered the list presented in the UHRAR 2, the Secretary of State is content that all projects with the potential to have in-combination effects have been identified.

Conclusions on LSE

4.7 The Applicant’s UHRAR 2 concluded that, having regard to the distances between the Development, the other projects and the European sites under consideration, there would be no direct habitat loss, displacement of species or changes to air quality. Effects on water quality from sediment re-suspension was excluded on the basis of the modelling undertaken by the Applicant.

Table 4.1 – Sites screened in Applicant’s UHRAR 2

Name of European site	Qualifying features
The Broads SAC (approximately 2.4km west of the Order limits)	Hard oligo-mesotrophic waters with benthic vegetation of <i>Chara</i> species
	Natural eutrophic lakes with <i>Magnopotamion</i> or <i>Hydrocharition</i> – type vegetation
	Transition mires and quaking bogs
	Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davalliana</i>
	Alkaline fens
	Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i>
	Molinia meadows on calcareous, peaty or clayey-silt-laden soils
	Desmoulin’s whorl snail
	Fen orchid
	Ramshorn snail
	Otter
	Broadland SPA (approximately 2.4km west of the Order limits)
Bewick's swan (non-breeding)	
Whooper swan (non-breeding)	
Marsh Harrier (breeding)	
Hen harrier (non-breeding)	
Ruff (non-breeding)	
Wigeon (non-breeding)	
Gadwall (non-breeding)	
Shoveler (non-breeding)	

Broadland Ramsar site (approximately 2.4km west of the Order limits)	Criterion 2 (site supports a number of rare species and habitats within the biogeographical zone context):
	<ul style="list-style-type: none"> • Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davallianae</i> • Calcium-rich fen dominated by great fen sedge (saw sedge) • Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) • Alkaline fens • Desmoulin`s whorl snail • Otter • Fen orchid
	Criterion 6 (site supports species/populations occurring at international level) – peak counts in winter:
	<ul style="list-style-type: none"> • Bewick's swan • Wigeon • Gadwall • Shoveler
	Identified subsequent to designation for possible future consideration under Criterion 6 (peak counts in winter):
	<ul style="list-style-type: none"> • Pink-footed goose • Greylag goose
Southern North Sea SAC	Harbour porpoise
Outer Thames Estuary SPA	Red-throated diver (non-breeding)
	Little tern (breeding)
	Common tern (breeding)
Benacre to Easton Bavents SPA	Bittern (breeding)
	Little tern (breeding)
	Marsh harrier (breeding)
Alde-Ore Estuary SPA	Avocet (breeding and non-breeding)
	Little tern (breeding)
	Marsh Harrier (breeding)
	Sandwich tern (breeding)
	Lesser black-backed gull (breeding)
	Redshank (non-breeding)
	Ruff (non-breeding)

- 4.8 The UHRAR 2 states impacts from noise due to piling would not lead to LSE on the harbour porpoise population associated with the Southern North Sea SAC because of the distance between the European site and the Development. The Applicant confirmed its intent to comply with the Statutory Nature Conservation Agency protocol for minimising harm to individual marine mammals but as a matter of good practice rather than any form of mitigation for the effects of the Development.
- 4.9 The only LSE identified in the UHRAR 2 was from impacts to water quality, should a release of pollutants occur at any stage in the lifetime of the Development. There was no discernible pathway of effects for several of the European sites considered in the UHRAR 2 which could result in LSE. The UHRAR 2 therefore concluded that there would be no LSE as a result of the Development, either alone or in-combination with other plans or projects for:
- Broadland SPA;
 - Benacre to Easton Bavents SPA; and
 - Alde-Ore Estuary SPA.
- 4.10 The Secretary of State considers that the screening exercise carried out by the Applicant in UHRAR 2 is appropriate and that the only LSE to be considered is water quality. The Secretary of States agrees that there are no LSEs for Broadland Spa, Benacre to Easton Bavents SPA and the Alde-Ore Estuary SPA which require to be considered further in this HRA.
- 4.11 For the remaining sites, the designated features include mobile species which are likely to spend part of their time outside the boundaries of the European sites and could therefore be vulnerable to effects on water quality. The sites and features for which LSE were identified from the Development alone or in combination with other plans or projects were:
- The Broads SAC – otters;
 - Broadland Ramsar site – otters;
 - Southern North Sea SAC – harbour porpoise; and
 - Outer Thames Estuary SPA – red-throated diver.
- 4.12 The SoCG between NE and the Applicant stated that NE agreed with the Applicant’s approach and conclusions in the UHRAR 2. NE did not submit any other representations to the examination. The SoCG between the Applicant and Suffolk County Council/Waveney District Council also demonstrates agreement on the approach and conclusions of the original HRAR. The Environment Agency (EA) and Marine Management Organisation (MMO) advised that they would defer to NE’s opinion in relation to effects on European sites.
- 4.13 The Secretary of State is content that the correct European sites and features have been identified and assessed in relation to LSE. The Secretary of State is also content that the correct European sites, features and effects are progressed to the appropriate assessment in section 5 of this HRA.

5. Appropriate assessment

Introduction

- 5.1 As LSE cannot be excluded, the Secretary of State, as the competent authority is required to undertake an appropriate assessment to determine the implications for the conservation objectives of the affected European sites. In line with the requirements of regulation 63 of the Habitats Regulations, the competent authority *‘...may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site...In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given’.*
- 5.2 As noted in section 1 of this HRA, the competent authority is obliged to consult the appropriate nature conservation body and have regard to any representations made by that body.
- 5.3 If the competent authority cannot exclude adverse effects on the integrity of the affected European sites on the basis of objective scientific evidence, then it can only consent a plan or project if it complies with the requirements of regulation 64 of the Habitats Regulations. This means that there must be no alternative solutions to the delivery of the plan or project that would have lesser effects on the European sites, the plan or project must be delivered for imperative overriding reasons of public interest. In addition, regulation 68 requires compensatory measures to be secured which maintain the overall coherence of the Natura 2000 network.

Effects on the integrity of the European sites

- 5.4 The Applicant’s conclusion in the UHRAR 2 is that adverse effects on the integrity of European sites can be avoided with the implementation of appropriate pollution control measures. If contamination of Lake Lothing is avoided through implementation of such measures, there would be no implications for the conservation objectives of any of the European sites under consideration.
- 5.5 To address effects during construction, the Applicant produced an interim code of construction practice (ICoCP) which outlined the measures which would be taken by the contractor responsible for building the Development. The ICoCP is a certified document to the DCO.
- 5.6 Requirement 4 of the DCO secures the implementation of a full code of construction practice as follows:
“(1) No part of the authorised development may commence until a code of construction practice for that part of the authorised development has been submitted to the county planning authority by the undertaker following consultation with the Environment Agency, the harbour authority and the local planning authority and the submitted code of

construction practice has been approved by the county planning authority.

(2) Any code of construction practice produced under paragraph (1) must be in accordance with the interim code of construction practice.

(3) The authorised development must be carried out in accordance with the code of construction practice produced under paragraph 1."

- 5.7 To address effects during operation, the Applicant produced a drainage strategy which describes the structures and measures which will be implemented to deal with pollutants from road run-off. The measures would also provide protection from accidental spillage of pollutants, for instance as a result of a road traffic accident. The drainage strategy is also a certified document.
- 5.8 Delivery of the drainage strategy is secured through requirement 6 of the DCO and is worded as follows:
"(1) No part of the authorised development which comprises any part of a surface water drainage system must commence until written details of that surface water drainage system have been submitted to the county planning authority by the undertaker following consultation with the local planning authority, the harbour authority and the surface water drainage system has been approved in writing by the county planning authority.
(2) The surface water drainage system submitted for approval by the county planning authority under sub-paragraph (1) must be in accordance with the drainage strategy.
(3) The surface water drainage strategy must be constructed in accordance with the approved detailed referred to in sub-paragraph (1)."
- 5.9 The UHRAR 2 states that measures followed during decommissioning of the Development would broadly follow those used during construction. However, the DCO does not seek powers to decommission the Development at the end of its lifetime.
- 5.10 The review of in-combination effects in UHRAR 2 concludes that there would be no additional effects on any of the European sites. Interactions between the effects of the Development and the effects from the Great Yarmouth Third River Crossing, East Anglia ONE and East Anglia THREE wind farms and Sizewell C were excluded on the basis of their distance from the Development.
- 5.11 In-combination effects from the Lowestoft Tidal Barrier were not predicted because of the scale of the development and the likely need to include suitable pollution control measures in any consent granted for the project. The UHRAR 2 also notes that the application for the Tidal Barrier had not been submitted, making it unlikely that it would be constructed at the same time as the Development. In-combination effects from the other projects under consideration were excluded because the consents for these projects already secure measures to mitigate effects on water quality.

Conclusions on the effects on the integrity of the European sites

- 5.12 The mitigation measures proposed by the Applicant for construction will be designed in line with best practice Pollution Prevention Guidance and would be agreed with the EA prior to the commencement of construction. The mitigation measures during operation will follow the guidance within Highways England's Design Manual for Roads and Bridges and the EA's current advice on good practice. Any alteration in effects on water quality as a result of the non-material changes to the DCO would still be addressed by the mitigation measures proposed by the Applicant and secured by the DCO.
- 5.13 As noted in section 4 of this HRA, NE agreed with the Applicant's approach and conclusions regarding effects on European sites. No other interested parties raised specific concerns about potential effects on the integrity of European sites.
- 5.14 The Secretary of State is confident that the mitigation measures will be effective. With those measures in place, it does not appear that there would be any implications for the achievement of the conservation objectives for the relevant European sites. The Secretary of State therefore agrees with the conclusions of the recommendation report that there would be no adverse effects on the integrity of any European site.

ANNEX 1 – DOCUMENTS USED TO INFORM THIS HRA

Application documents

Lake Lothing Third Crossing Environmental Statement

Lake Lothing Third Crossing Habitats Regulations Assessment Report (June 2018)

Examination documents produced by Applicant

Application Document Tracker Deadline 7

Covering letter for deadline 11 submissions

Habitats Regulations Assessment Report Figure 1

Lake Lothing Third Crossing Updated Habitats Regulations Assessment Report (November 2018)

Lake Lothing Third Crossing Updated Habitats Regulations Assessment Report Revision 2 (January 2019)

Proposed Non-Material Changes to the Application (January 2019)

Response to the Examining Authority's Written Questions

Response to Written Representations and Interested Parties' Responses to Written Questions

Statements of Common Ground Report (November 2018)

Statements of Common Ground Report (January 2019)

Statements of Common Ground Report (February 2019)

Table of changes to application documents for Non-Material changes

Examination documents produced by Examining Authority

Notification of Procedural Decision in respect of proposed changes to the application

Report on the Implications for European Sites for the Lake Lothing third crossing

Written Questions (December 2018)

Examination documents produced by Interested Parties

Environment Agency Response to the Examining Authority's Written Questions

Marine Management Organisation Deadline 3 Response to the Examining Authority's Written Questions

Marine Management Organisation Deadline 4 Response to the Examining Authority's Written Questions

ANNEX 2 – CONSERVATION OBJECTIVES

Alde-Ore Estuary SPA

The site's conservation objectives apply to the site and the individual species and/or assemblage of species for which the site has been classified (the "Qualifying features" listed below).

The objectives are to ensure that, subject to natural changes, the integrity of the site is maintained or restored as appropriate, and that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring:

- the extent and distribution of the habitats of the qualifying features;
- the structure and function of the habitats of the qualifying features;
- the supporting processes on which the habitats of the qualifying features rely;
- the populations of each of the qualifying features; and
- the distribution of qualifying features within the site.

This should be read in conjunction with the accompanying supplementary advice...which provides more detailed information to help achieve the objectives set out above, including which attributes should be maintained and which restored.

Qualifying features

- Avocet (breeding and non-breeding)
- Lesser black-backed gull (breeding)
- Little tern (breeding)
- Marsh harrier (breeding)
- Redshank (non-breeding)
- Ruff (non-breeding)
- Sandwich tern (breeding)

Benacre to Easton Bavents SPA

With regard to the SPA and the individual species and/or assemblage of species for which the site has been classified (the 'Qualifying Features' listed below), and subject to natural change;

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive by maintaining or restoring:

- the extent and distribution of the habitats of the qualifying features;
- the structure and function of the habitats of the qualifying features;
- the supporting processes on which the habitats of the qualifying features rely;
- the populations of each of the qualifying features; and
- the distribution of qualifying features within the site.

The conservation objectives should be read in conjunction with the accompanying *Supplementary Advice* document, which provides more detailed advice and information to enable the application and achievement of the Objectives set out above.

Qualifying Features

- Botaurus stellaris; Great bittern (Breeding)
- Circus aeruginosus; Eurasian marsh harrier (Breeding)
- Sterna albifrons; Little tern (Breeding)

Broadland SPA

With regard to the SPA and the individual species and/or assemblage of species for which the site has been classified (the 'Qualifying Features' listed below), and subject to natural change;

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive by maintaining or restoring:

- the extent and distribution of the habitats of the qualifying features;
- the structure and function of the habitats of the qualifying features;
- the supporting processes on which the habitats of the qualifying features rely;
- the populations of each of the qualifying features; and
- the distribution of qualifying features within the site.

Qualifying features:

- Botaurus stellaris; Great bittern (Breeding)
- Cygnus columbianus bewickii; Bewick's swan (Non-breeding)
- Cygnus; Whooper swan (Non-breeding)
- Anas penelope; Eurasian wigeon (Non-breeding)
- Anas strepera; Gadwall (Non-breeding)
- Anas clypeata; Northern shoveler (Non-breeding)
- Circus aeruginosus; Eurasian marsh harrier (Breeding)
- Circus cyaneus; Hen harrier (Non-breeding)
- Philomachus pugnax; Ruff (Non-breeding)

Outer Thames Estuary SPA

With regard to the SPA and the individual species and/or assemblage of species for which the site has been classified (the 'Qualifying Features' listed below), and subject to natural change;

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive by maintaining or restoring:

- the extent and distribution of the habitats of the qualifying features;
- the structure and function of the habitats of the qualifying features;

- the supporting processes on which the habitats of the qualifying features rely;
- the populations of each of the qualifying features; and
- the distribution of qualifying features within the site.

The conservation objectives should be read in conjunction with the accompanying *Supplementary Advice* document, which provides more detailed advice and information to enable the application and achievement of the Objectives set out above.

Qualifying features

- *Gavia stellata*; Red-throated diver (Non-breeding)
- *Sterna hirundo*; Common tern (Breeding)
- *Sternula albifrons*; Little tern (Breeding)

[The Broads SAC](#)

With regard to the SAC and the natural habitats and/or species for which the site has been designated (the "Qualifying Features") listed below, and subject to natural change;

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving Favourable Conservation Status of its Qualifying Features by maintaining or restoring;

- the extent and distribution of qualifying natural habitats and habitats of qualifying species;
- the structure and function (including typical species) of qualifying species;
- the supporting processes on which qualifying natural habitats and the habitats of qualifying species rely;
- the populations of qualifying species; and
- the distribution of qualifying features within the site.

The Objectives should be read in conjunction with the accompanying *Supplementary Advice* document which provides more detailed advice and information to enable the application and achievement of the Objectives set out above.

Qualifying features

- Hard oligo-mesotrophic waters with benthic vegetation of *Chara* spp.; Calcium-rich nutrient-poor lakes, lochs and pools
- Natural eutrophic lakes with *Magnopotamion* or *Hydrocharition*-type vegetation; Naturally nutrient-rich lakes or lochs which are often dominated by pondweed
- *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*); Purple moor-grass meadows

- Transition mires and quaking bogs; Very wet mires often identified by an unstable `quaking` surface
- Calcareous fens with *Cladium mariscus* and species of the *Caricion davallianae*; Calcium-rich fen dominated by great fen sedge (saw sedge)
- Alkaline fens; Calcium-rich springwater-fed fens
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*); Alder woodland on floodplains
- *Vertigo moulinsiana*; Desmoulin`s whorl snail
- *Lutra*; Otter
- *Liparis loeselii*; Fen orchid
- *Anisus vorticulus*; Little whorlpool ram's-horn snail

Southern North Sea SAC

To ensure that the integrity of the site is maintained and that it makes the best possible contribution to maintaining Favourable Conservation Status (FCS) for harbour porpoise in UK waters:

In the context of natural change, this will be achieved by ensuring that:

1. harbour porpoise is a viable component of the site;
2. there is no significant disturbance of the species; and the condition of supporting habitats and processes, and the availability of prey is maintained.