

Scrutiny Committee

8 March 2017

Upper Orwell Crossings and Lake Lothing Third Crossing proposals

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Introduction

1. This report provides the Committee with an opportunity to consider the benefits, process and risks associated with the delivery of these projects and the overarching approach being taken by the County Council to the management and delivery of the two bridges.
2. The information below has been provided by the Senior Responsible Officers for the two bridge projects in response to the questions (a-k). The first section deals with those answers which apply equally to both bridges (a-h). The second and third sections deal with those answers which are specific to each bridge (i-k).

Answers applicable to both The Upper Orwell Crossings and Lake Lothing Third Crossing Proposals

a.) How is the County Council preparing to deliver these proposals?

3. Each bridge project is overseen by an officer board chaired by a Senior Responsible Officer. In the case of The Upper Orwell Crossings, the Senior Responsible Officer is the Assistant Director Operational Highways. The Lake Lothing Third Crossing Senior Responsible Officer is the Assistant Director Infrastructure and Waste.

4. The Cabinet Member with overarching responsibility is the Cabinet Member for Highways and Transport, Councillor James Finch. Cllr Finch has asked Cllr Guy McGregor, the Cabinet Member with Responsibility for Outside Bodies, to take personal leadership of the project. Cllr McGregor holds a regular Bridges Project Lead Members Meeting which both Senior Responsible Officers report to on the progress of each project.
5. The continuing involvement of key stakeholders in each locality is crucial to the success of each project. In the case of The Upper Orwell Crossings, Ben Gummer MP chairs a Task Force. In Lowestoft, Peter Aldous MP chairs the Key Stakeholders Group. Both groups ensure that the County Council (as local highways authority) keeps in close contact with each locality's key stakeholders. Both groups are invaluable to the success of each bridge project.
6. The Council is procuring main contractors for the 'design and build' aspects of these projects. Their work will be informed by advice on constructability, including ground investigations and architectural design from separate contracts. The design and build contractors will take on this work and provide a target cost in line with the programme requirements for the Development Consent Order (DCO) to achieve funding from central government.
7. Design and build contracts will be advertised and awarded under the requirements of the Public Contracts Regulations (2015) and will allow contractors the freedom to establish their own teams to deliver the project. During market engagement, it became clear that several firms will want to form consortia to bid for this work and already have well established relationships from previous projects.
8. Early involvement of consultants is essential to our ability to meet the timescales for the project and has been achieved through a combination of awards from existing framework contracts and by using the current Highway Services Contract with Kier.

b.) What are the key stages of the process applying to both projects?

9. The Planning Act 2008 ("the Act") provides a means to speed up the consenting of major infrastructure projects. It allows an application for multiple consents and the compulsory acquisition of land to be made at the same time. The Secretary of State for Transport is the ultimate decision maker for transport projects, with the Planning Inspectorate making a recommendation to it after an examination in public. This is unusual for local government as it is usually the appropriate local planning authority that determines planning applications.
10. The regime is only open to infrastructure projects of national importance, which are known as Nationally Significant Infrastructure Projects (NSIP). For highways schemes, in simple terms, NSIPs include those projects for which the Secretary of State for Transport is the highway authority, i.e. trunk roads such as the A14, and the area of the scheme meets the relevant limits set out in the legislation.
11. However, the Act also provides a mechanism for highway scheme promoters, such as county councils, to apply to the Secretary of State for a Direction that their scheme is nationally significant and thus can enter the fast track Planning Act regime. A Direction for the Lake Lothing Third Crossing to be designated an NSIP was granted on 22 March 2016. A Direction was subsequently sought for The Upper Orwell Crossings scheme and this was granted on 30 June 2016.

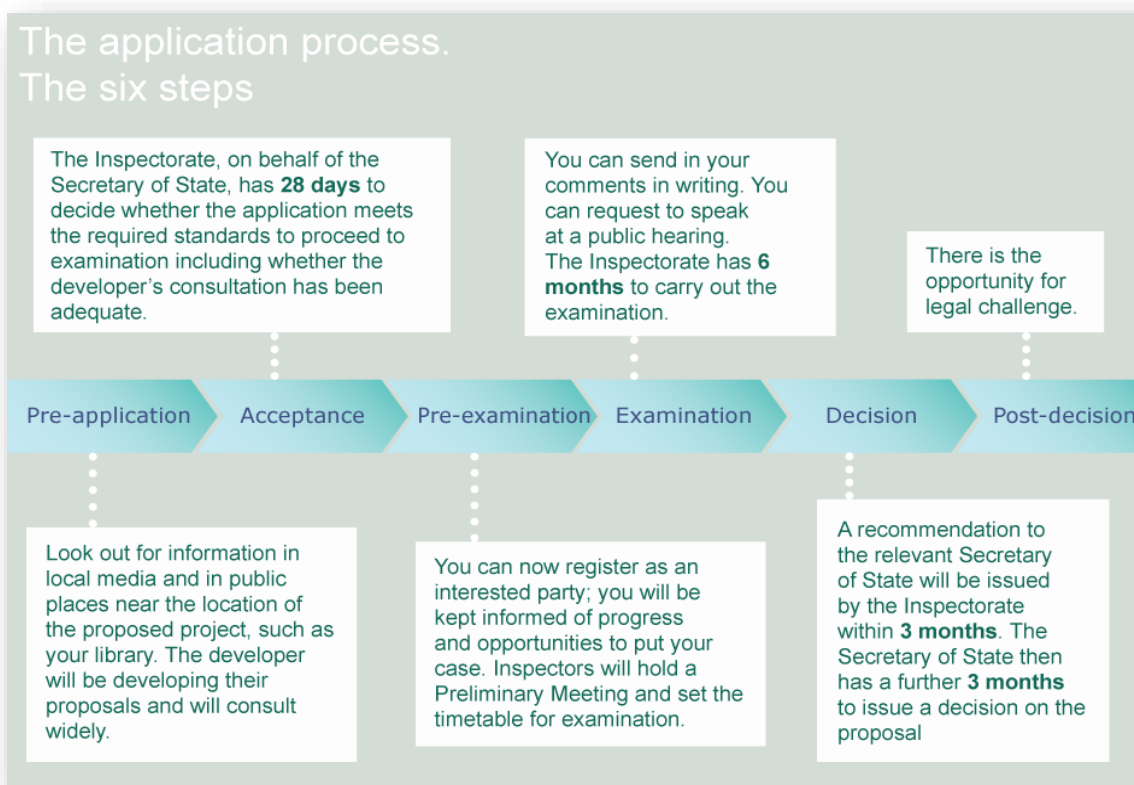


Figure 1 - The Planning Inspectorate Nationally Significant Infrastructure Project (NSIP) planning process

12. For schemes classified as NSIPs, the promoter must make an application for development consent to the Planning Inspectorate. Before doing so, there are strict requirements in relation to pre-application consultation.
13. Pre-application engagement is a statutory requirement under the Planning Act 2008, with the Council required to consult for a period of at least 28 days with statutory consultees for example the Environment Agency; the Marine Management Organisation; host and neighbouring local authorities; all those people/organisations who may have a 'private' interest in the land affected by the projects and 'people living in the vicinity of the land' (i.e. the local community). The Council (as the promoter of the schemes) will also be required to consult itself as a host local authority. To ensure that there is a clear separation of duties in place, the Assistant Director Strategic Development, reporting to the Development Control Committee, will lead with regard to the Council's role as consultee and will have no other role in the bridge projects.
14. The subsequent applications will consist of a suite of documents including a draft Development Consent Order (the Statutory Instrument that authorises the scheme), an Environmental Impact Assessment and a description of how the development complies with the National Networks National Policy Statement. The National Networks National Policy Statement is the policy document against which the application is tested, not the Local Plan or National Planning Policy Framework as is the case for applications made under the Town and Country Planning Act.

15. The Planning Inspectorate examines the application documents in a six-month process, which includes public hearings, and then reports three months later. Its recommendation report is then sent to the Secretary of State for Transport who has three months to determine the application.

c.) How are the contractual aspects being progressed?

16. The design and build of The Upper Orwell Crossings in Ipswich and the Lake Lothing Crossing in Lowestoft are being procured as two separate projects.
17. Development of the procurement strategy for the main design and build contracts took place during 2016 and was influenced by a preliminary market engagement event that took place on 29 September 2016 and involved 24 companies who responded to our advertisement. Those attending ranged from major national companies to local construction firms.
18. The market engagement event allowed us to test the various options we were considering for the main design and build procurement including:
 - The number of contracts to be advertised i.e. one for both sites, two or multiple contracts;
 - The procurement route to be followed i.e. 'restricted tender' with pre-qualification or a 'negotiated tender' process where we would arrive at final offers following rounds of negotiation;
 - Whether to novate professional services contracts into the design and build contracts or allow bidders freedom to establish their own teams.
19. The majority of firms attending, including 15 who responded subsequently to our on-line survey, were in favour of the requirement being run as two 'restricted tender' processes as opposed to following a 'negotiated tender' process. Firms felt that the sites were sufficiently far apart that any economies of scale would be lost and that the potential costs to the bidding process would detract from the opportunity at a time when firms have a wide choice of projects to bid for.
20. Firms expressed a desire to be allowed the freedom to select their own teams to work with and were against forced novation of consultants contracts into the design and build process.
21. In addition to the two major design and build contracts, there are a number of requirements which are either common to both sites or provide additional support works. The current procurement programme is shown below but we expect that other procurement requirements will emerge throughout the project:

Project	Means of appointment	Planned final award date	Estimated Value
Appointment of an architectural design team for the main Upper Orwell Crossings in conjunction with RIBA	Restricted tender run by Corporate Procurement in conjunction with RIBA	March 2017	£845k
Provision of programme management support for the crossings projects	Direct award to Collins International through the Council's Highway Services Contract with Kier.	Complete	£125k
Provision of professional support for client side and procurement	Direct award to Mace from an existing NHS Framework	Complete	£20k
Ground investigation work for both projects	Open competitive tender run by Corporate Procurement	April 2017	£3m
Preliminary engineering and feasibility works for the Upper Orwell Crossings	Services supplied by WSP through the Council's Highway Services Contract with Kier	Complete	On-going by task order
Preliminary engineering and feasibility works for Lake Lothing	Services supplied by Mouchel via the Council's Highway Services Contract with Kier until financial year end.	Complete	On-going by task order
Design and build for Upper Orwell	Restricted tender run by Corporate Procurement	September 2017	£40m
Design and build for Lake Lothing	Restricted tender run by Corporate Procurement	September 2017	£40m

Figure 2 The current procurement programme

22. The need for immediate consultancy advice and support for design work meant that there was insufficient time within the project to run separate tender processes for all the work required. We have sourced these using suitable framework agreements, which offer the facility to make a direct award to a contractor and these are shown under 'Means of appointment' in the table above. The advantages of using a framework are that the time for the procurement process is substantially reduced and the terms and conditions of contract are agreed at the time the framework is established. However, a framework can only be established for a period of up to four years and provides no guarantee of any business to the firm or firms on it, which can be reflected in the prices available. The period of contract can be restrictive if we are unable to commit spend within the framework period.
23. The public sector organisation who establishes the framework, will determine the process to be used by other public sector bodies who want to access it. This can place limits on the value of spend we are able to commit under the framework without running a further competition, or provide a turnover based income to the sponsoring authority. Other frameworks have proved inaccessible because the owner of the framework has committed to spend up to the maximum permitted over the life of the framework.
24. Contracts for this process will use industry standard terms and conditions – mainly the New Engineering Contract (NEC 3) as fully supported by the Institution of Civil Engineers (ICE) - which are specifically written for civil engineering projects including, options for professional services. Legal support for developing terms and conditions and general procurement is being provided throughout the project by Suffolk Legal with additional advice as required from Pinsent Masons, who have significant experience in this area.
25. To support the procurement process, we have engaged specialist consultants – Mace - who have experience in this type of project, having worked previously with local authorities and Highways England (including in its former guise, the Highways Agency). They will support the Council throughout the procurement process, including development of the 'invitation to tender' and evaluation models, appropriate performance and payment mechanisms and management of risk.
26. Additionally, we have established a contact within the Cabinet Office – Crown Commercial Services – which has run similar procurement projects for the Government, to act as a 'critical friend'. Specifically, we have asked for support to ensure that we are correctly applying central government policy requirements to our process and supplement the work that we are doing with the Council's policy specialists in health and safety, environment and learning and skills. Our first meeting took place at the end of January and has already helped our thinking on the development of pre-qualification questions.

Mitigation of Risk

27. With a programme of this scale there are a number of risks to delivery associated with procurement.

Risk	Mitigation
<p>Public procurement rules require that at the point of advertisement the procurement documents should be available. This normally includes the invitation to tender, evaluation criteria, weightings and methodology, terms and conditions and an outline specification. It is unlikely that we will have sufficient information to inform all of these documents when we need to advertise</p>	<p>We will be using an extended tender timescale to ensure sufficient time for bidders to review information as it becomes available. All documentation that we have will be held in a password secured 'Data-Room' and all bidders will be notified as soon as new information is loaded into it.</p>
<p>The timetable for procurement is designed to ensure we can meet the timescales to access funding. Any delay in obtaining information required to inform the tender may result in failure to award in time.</p>	<p>Procurement and 'client' officers will work to ensure as far as possible that timetables are met. As much work as possible will be completed to inform the main design and build contracts. Any significant issues will be escalated through the governance structure.</p>
<p>There is a risk of challenge to the procurement process from any bidder who has expressed an interest in it. A challenge may result in delays to contract award or legal action.</p>	<p>The procurement process is governed by the Public Contracts Regulations 2015 which dictate the manner in which the procurement process is conducted. The Corporate Procurement Team will manage each tender process using our e-tendering platform (Suffolk Sourcing) to ensure any risk of challenge is minimised.</p>
<p>Attractiveness of the project for potential bidders.</p>	<p>The market engagement event identified that there were a number of possible opportunities for firms to bid for currently. We have taken on board the comments we received from the market at this event and structured our tenders accordingly to ensure they are as attractive as possible.</p>

Figure 3 Procurement risks

d.) What approach is being taken to managing the relationship between the design and build elements of the projects?

28. The early design work completed by consultants will be made available to the design and build contractors to minimise the risk of delay in the process of arriving at a target cost. We expect the design and build contractors will undertake their own due diligence on this information as part of the assurance processes. We considered novating the appointed consultants into the design and build contract but with the exception of the architects for The Upper Orwell

Crossings, to ensure continuity of design for the main crossing, this option was not favoured by firms during market engagement.

e.) Who is involved and why? and

f.) What alternative options have been considered and why have these been eliminated?

29. The timelines for the projects have been a major driver of the available options for procurement. The simplest route to contract would be by using a framework with sufficient capacity and an ability to make a direct award. The project considered such a Framework awarded by the SCAPE Group, which is a Nottingham-based publically owned body specialising in letting frameworks for built environment and civil engineering contracts.
30. SCAPE offered a framework with a direct award option but the framework was coming towards the end of its term and we would have been unable to commit spending before the end of the contract.
31. We also researched alternative framework options from other local authorities and Highways England. However, there was nothing else available that would satisfy the timescales of the project.
32. In the absence of a suitable framework with the capacity needed, we looked at procuring early consultancy from existing frameworks and through the Council's Highway Services Contract. This allowed sufficient time to develop an informed design and build tender which we can run ourselves within the timescales of the project.
33. By running the design and build tenders ourselves, we have greater control over timescales and contractual terms and this ensures that we can build into the requirement our social value needs.
34. This section should be read in conjunction with Figure 2 above which sets out the current procurement programme and comprehensively answers who is involved in each component of the question.

g.) What are the overarching risks to delivery and how are these being mitigated?

Risk	Mitigation
Ground investigation	Open tender procurement being undertaken due for award March 2017. Works to be undertaken in the summer for Lake Lothing Third Crossing and the spring for The Upper Orwell Crossings. Risks associated with access to third party and Association of British Ports (ABP) land.
Statutory consultation	The Development Consent Order process requires a single round of formal consultation; the Lake Lothing Third Crossing will undertake this in Summer 2017 and The Upper Orwell Crossings will undertake this in Autumn 2017. In addition to the formal consultation process, there is ongoing engagement with key stakeholders throughout the design process.

Submission of planning application	The Lake Lothing Third Crossing current programme will submit the application in Winter 2017; the Upper Orwell Crossings project will submit in Summer 2018. Risks relate to satisfying the requirements of the Development Consent Order. This is being mitigated by undertaking the formal consultation, development of the design based on ongoing consultation with key stakeholders, undertaking surveys and assessing the impact of the construction of the project. At submission, Suffolk County Council will need to confirm funding for the projects; evidence will be provided to Cabinet for a decision to proceed.
Examination by the Planning Inspectorate	The Lake Lothing Third Crossing programme has the examination being undertaken in early 2018 and The Upper Orwell Crossings in late 2018. The risks associated with the examination relate to challenge on the detail of the applications. This is mitigated by ensuring sufficient consultation and the submission of a sound planning application. The examination process can take up to 6 months.
Decision by the Secretary of State	The decision by the Secretary of State will be in Spring 2019 for Lake Lothing Third Crossing and in Winter 2019 for The Upper Orwell Crossings. This risk is mitigated by submitting a sound planning application.
Confirmation of Department for Transport Funding	Following the planning consent, both projects will be required to submit a full business case to the Department for Transport to confirm the funding currently allocated to the projects. This will include updated costs and benefits for the projects that will need to demonstrate that the business cases for the projects remain. The costs and benefits will change as the detail of design and impacts are assessed as part of the detailed design. A risk to this assessment is the change of assessment criteria or process by the Department for Transport. The current funding period runs until 2020/2021.
2020 General election	A change in political control following a general election introduces the risk of funding across government being reviewed. This can be mitigated by confirming the funding allocation before the end of March 2020.
Construction	The risks associated with construction primarily relate to unforeseen events. This will be mitigated by the form of design and build contract, it is planned to use the NEC3 ECC form of contract with the target price option where changes to the contract price will be assessed on a pain/gain basis.

Completion/Opening	The successful application to the Secretary of State to consider the projects as Nationally Significant Infrastructure Projects has ensured a planning period with a maximum determination time mitigating the time delay implications of a more traditional planning process. The risk relates to the impact of interruption during the contract period, impact on cost and when benefits can be realised.
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Figure 4 The risks to the bridge building projects and how they are being mitigated

j.) How will costs be managed to ensure the project is delivered within budget?

35. The projects have governance structures to ensure the proper management and review of the project, refer to paragraphs 3 to 5. The project manager is responsible for managing the time/quality and cost aspects of the project, specialist services or advice has been procured to assist with this. Value for money for key specialist assistance is ensured through competitive procurement or use of frameworks that were formed as part of a competitive process. An important aspect of managing the budget is the management of stakeholder expectations and ensuring that the works undertaken as part of the project are required by the project.

The Upper Orwell Crossings costs

36. The project costs were calculated in the outline business case. This was based on an assessment of the design and construction costs, including an estimate of land acquisition costs. The final predicted scheme out-turn costs also included an allowance for risk and operating costs. The estimated cost of The Upper Orwell Crossings project is £96.649m; in March 2016, the government allocated provisional funding of £77.546m, requiring a local contribution of £19.1m. In May 2016, Cabinet approved £10m capital and £10m revenue funding to develop both The Upper Orwell Crossings and Lake Lothing Third Crossing for submission of the final business case.

Bridges	£44,718,969
Design fee	£5,000,000
Immediate junctions	£2,982,700
Land cost	£22,322,263
Environmental mitigation	£663,200
Quantifiable risk	£12,404,183
Growth 2016 to 2021/22	£8,558,664.19
Total	£96,649,980

Figure 5 Project cost included in the outline business case

37. The Upper Orwell Crossings project includes architectural services procured through competitive tender.

Lake Lothing costs

38. The project costs were calculated in the outline business case. This was based on an assessment of the design and construction costs, including an estimate of land acquisition costs. The final predicted scheme out-turn costs also included an allowance for risk and operating costs. The estimated cost of the bridge is £96.649m; in March 2016, the government allocated provisional funding of £73.39m, requiring a local contribution of £18.3m. In May 2016, Cabinet approved £10m capital and £10m revenue funding to develop both The Upper Orwell Crossings and Lake Lothing Crossing for submission of the final business case.

Scheme Element Cost	Total Cost at 2015 Q4 prices
Construction contracts	£40,612,000
Land	£3,630,000
Design, investigation, surveys, procurement, supervision, etc.	£6,498,000
Total cost (excluding quantified risk and optimum bias)	£54,801,000
Quantified risk costs	£25,545,702
Risk-adjusted total cost (at 2015 prices)	£80,346,702
Adjustments to allow for inflation	£11,386,568
Predicted scheme cost (out-turn prices)	£91,733,270

Answers applicable to The Upper Orwell Crossings proposals

h.) What is this project designed to deliver in terms of benefits?

39. The Upper Orwell Crossings project has five objectives:
- Enable the redevelopment of the Wet Dock Island
 - Ensure the continued success of the waterfront, marina and port
 - Provide a catalyst to the regeneration of the southern section of town
 - Relieve congestion in Ipswich and on the A14 (over the Orwell Bridge and the nearby junctions)
 - Improve connectivity and promote the increased use of sustainable transport for journeys between southeast and southwest areas.
40. The outline business case identified the following transport and associated economic benefits:

41. Transport benefits:
 - a.) Overall journey time savings. The crossings could reduce total journey times by approximately 18% during the heaviest morning traffic and 27% during the heaviest afternoon traffic.
 - b.) Reduce travel costs
 - c.) Improved accessibility for pedestrians and cyclists.
42. Associated economic benefits:
 - d.) More business in the area
 - e.) More jobs for skilled workers in the area
 - f.) Improved business productivity due to reduced journey times
 - g.) The regeneration of the underused land
 - h.) Opportunities for public space improvements.
43. The business case to the Department for Transport assesses the value of benefits from the project to the cost as a benefit/cost ratio; this is currently high.

i.) What are the timescales and specific risks associated with each stage of delivery of this project?

Funding award	March 2016
Informal consultation	July/August 2016
Environment surveys	April/December 2016
Architecture team competition	March 2017
Ground investigation	Spring 2017
Formal consultation	Autumn 2017
Planning application submission	Summer 2018
Secretary of State decision	Winter 2019
Final business case	Early 2020
Start on site	Spring 2020
Completion	2023

Figure 6 The Upper Orwell Crossing timetable

k.) What consultation is taking place and what feedback has been received?

- 44. An informal six-week consultation was undertaken between 1 July and 12 August 2016 to raise awareness and inform businesses, residents and local communities about the proposed crossings including: the project objectives; the planning and design process; and their opportunities for input.
- 45. A summary of the consultation outcome is shown below. There has been ongoing consultation with key statutory stakeholders, for example ABP and Network Rail.

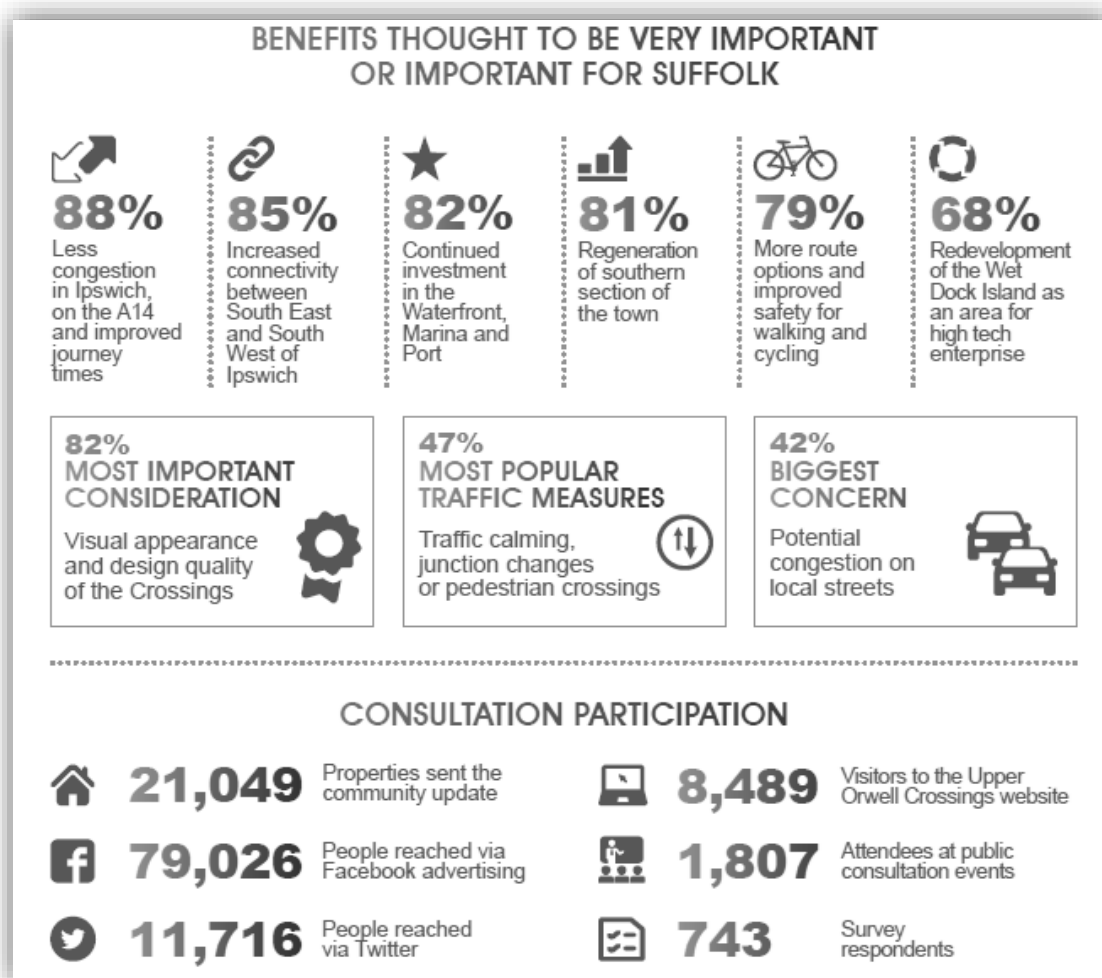


Figure 7 Upper Orwell Crossing consultation results

Answers applicable to the Lake Lothing Third Crossing proposals

h.) What is this project designed to deliver in terms of benefits?

- 46. The overall aim of the proposed scheme is to stimulate regeneration, sustain economic growth, and enhance Lowestoft as a place to live and work in, and to visit.
- 47. The key project benefits are highlighted in the outline business case that was submitted to the Department of Transport. These are:
 - a.) To open up opportunities for regeneration and development in Lowestoft.

- b.) To provide the capacity needed to accommodate planned growth.
- c.) To reduce community severance between north and south Lowestoft.
- d.) To reduce congestion and delay on the existing bridges over Lake Lothing.
- e.) To reduce congestion in the town centre and improve accessibility.
- f.) To encourage more people to walk and cycle, and reduce conflict between cycles, pedestrians and other traffic.
- g.) To improve bus journey times and reliability.
- h.) To reduce accidents.

i.) What are the timescales and specific risks associated with each stage of delivery of this project?

48. The key milestones for the project are as follows:

Statutory consultation	Summer 2017
Ground investigation	Summer 2017
Submission of planning application	Winter 2017/18
Examination by the Planning Inspectorate	Early 2018 (6-month period)
Decision from Secretary of State (6-month period)	Spring 2019
Submission of full funding business case	Summer 2019
Construction start	Autumn 2019
Completion/opening	Spring 2022

Figure 8 The Lake Lothing Third Crossing timetable

k.) What consultation is taking place and what feedback has been received?

- 49. The project had a public consultation in 2014 where the publicly supported route option was chosen and formed part of the rationale for the outline business case.
- 50. The project will need a statutory consultation which is a targeted consultation to affected and interested parties. We will also run a public consultation alongside the statutory consultation. The statutory minimum period for this consultation is 28 days, this consultation will be six weeks which is appropriate for a project of this scale and in-line with other projects of this type nationally.

51. A number of briefings and presentations are being made to key stakeholders and groups with their input being incorporated into the scheme (such as input and direction from Associated British Ports and Network Rail).
52. The comments and input from the statutory and public consultation will be included in the consultation report which will form part of the submission of the planning application.

Glossary

ABP – Association of British Ports

Consortia - an association, typically of several companies.

DCO – Development Consent Order

Design and build contracts - is a generic term describing a procurement route in which the main contractor is appointed to design and construct the works, as opposed to a traditional contract, where the client appoints consultants to design the development and then a contractor is appointed to construct the works.

Development Consent Order (DCO) – The Statutory Instrument that authorises a scheme.

Due diligence - An investigation of a business or person prior to signing a contract, or an act with a certain standard of care.

Environmental Impact Assessment (EIA) - A process of evaluating the likely environmental impacts of a proposed project or development, taking into account inter-related socio-economic, cultural and human-health impacts, both beneficial and adverse.

Framework agreements - A framework is an agreement with suppliers to establish terms governing contracts that may be awarded during the life of the agreement. In other words, it is a general term for agreements that set out terms and conditions for making specific purchases (call-offs).

ICE – Institution of Civil Engineers

Local Plan - A local plan sets out local planning policies and identifies how land is used, determining what will be built where. Adopted local plans provide the framework for development across England.

National Planning Policy Framework - Government planning policy is contained in the National Planning Policy Framework (NPPF). This covers all national planning issues, such as planning for housing, shops, offices and good design.

NEC – New Engineering Contract

Novate - Novation, in contract law and business law, is the act of either: replacing an obligation to perform with another obligation; or. adding an obligation to perform; or. *replacing a party to an agreement with a new party*. In the context of this report the meaning is the italicised section.

NSIP – Nationally Significant Infrastructure Projects

RIBA – Royal Institute of British Architects

Supporting information

Comprehensive background information relating to the two projects can be found on their respective websites. The information covers issues such as outline business cases, recent community newsletters, questions and answers and consultation plans. The web links are below:

The Upper Orwell Crossings

www.suffolk.gov.uk/upperorwellcrossings

Lake Lothing Third Crossing

www.suffolk.gov.uk/lakelothing3rdcrossing