



**FULL COUNCIL**  
**Wednesday, 22 November 2023**

<b>Subject</b>	Lowestoft Flood Protection – Transport and Works Act submission Update
<b>Report by</b>	Councillor Kay Yule Cabinet Member with responsibility for Planning and Coastal Management
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Is the report Open or Exempt?	OPEN
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Category of Exempt Information and reason why it is <b>NOT</b> in the public interest to disclose the exempt information.	Not applicable
<b>Wards Affected:</b>	Harbour & Normanston Gunton & St Margaret's Kirkley & Pakefield Carlton Colville Oulton Broad

## Purpose and high-level overview

### **Purpose of Report:**

The purpose of this report, following the consideration of a previous report by Full Council on 15<sup>th</sup> March 2023 is to:

- Set out for the Council how to comply with section 239 of the Local Government Act 1972 (as applied by section 20 of the Transport and Works Act 1992) and confirm the resolution passed by the Council at the meeting held on 15 March 2023 which approved the submission of the Transport and Works Act Order application on 12 October 2023.
- To update Full Council on the finding and potential delivery timetable for the tidal barrier element of the project and to note the funding shortfall and the dependency on additional funding to be identified to enable this project to progress.

### **Background:**

This report is brought to Full Council to update on the matters set out above following the resolution of Full Council on 15<sup>th</sup> March 2023. At that meeting it was resolved

1. That Full Council promotes an application to the Secretary of State for the Environment, Food and Rural Affairs for an Order under the Transport and Works Act 1992 (TWAO) to authorise the proposed construction, operation and maintenance of a new tidal barrier with a moveable gate across the channel entrance to Lake Lothing on the seaward side of the Bascule Bridge in Lowestoft, East Suffolk. The Order (if made) would, amongst other things, confer powers on the Council to compulsorily acquire and temporarily use land and to carry out other works and include provisions necessary for the purposes of, or for purposes ancillary to, the construction, operation and maintenance of the proposed tidal barrier; 2. That subject to resolution 1 above, that the Head of Planning and Coastal Management, in consultation with a Cabinet Member who has responsibility of [responsibility for] the coast, take all such steps as may be necessary or expedient to carry the above recommendations into effect, including the legal process required for the Council to apply for and thereafter to promote its application for the Order, please see appendix E for the TWAO legal process/programme required; and 3. That the corporate seal of the Council is affixed to any documents required to be sealed in connection with the application for and subsequent promotion of the Order. 4. That the Head of Planning and Coastal Management, in consultation with a Cabinet Member who has responsibility of [responsibility for] the coast Executive Board, comply and deal with any public local inquiry processes and procedures arising or resulting from the submission of the Application.

The Council formally submitted the Transport and Works Act application for the tidal barrier on the 12 October 2023.

As required by the legislation 30 clear days' notice has been given via Section 239 notices printed in the local press on 20 October 2023 (Appendix D).

The Lowestoft Flood Protection scheme is developing a way forward in managing flood risk to protect residents and businesses from disruption, threat to lives and livelihoods, to

support the economic growth and regeneration of Lowestoft and avoid unnecessary and potentially additional flood risk management recovery costs.

The tidal element of the scheme comprises of tidal flood walls, demountable defences and a 40m tidal barrier in the form of mitre gates seaward of the Bascule Bridge.

The tidal walls and demountable defence have been completed in October 2023. The tidal barrier is the final phase of the scheme and will enable the navigation channel from the sea to Lake Lothing to be closed in the event of a tidal surge. The tidal barrier will be the only one of its kind to be constructed in a working channel with no possible diversion. Given the risk to livelihoods, economic growth and the regeneration of Lowestoft, the Town cannot remain undefended from the flooding.

The town has become increasingly vulnerable to flooding from all sources. Heavy rainfall events led to significant fluvial and pluvial flooding in 2015 and flooded 33 homes in the Aldwyck Way and Velda Close area of the town. The 2013 tidal surge flooded 158 residential and 233 commercial properties in Lowestoft and Oulton Broad. Key transportation links such as the railway and A47 also flooded, impacting on flood response, recovery and clean up.

Currently 221 residential and 373 commercial properties are at risk of tidal flooding in addition to a number of locations earmarked for future development within the Lowestoft Local Plan. Following the installation of the barrier in combination with previous phases of work, the scheme will ensure that homes and businesses are better protected from the risk of tidal flooding.

The Lowestoft Economic Footprint and Impact Report was revised in 2022 (Appendix F) to consider the wider impacts of flooding on housing and the local Lowestoft economy along with the economic growth benefits that tidal flood protection would provide.

The study found that the future economic footprint of the area could support 12,000 direct jobs which could generate £641m of annual GVA, increasing to 15,600 Jobs and £833m GVA per year when indirect and induced benefits are considered.

Members should note that the delivery of the barrier will, in addition to protecting people, homes and businesses , provide a catalyst for further investment in the area by providing flooding protection to a 1-200 year level. Officers are also engaging with officials across a number of Government departments to promote the opportunity the barrier presents to the town to achieve national objectives in respect of Net Zero and Levelling Up, as well as delivering on many aspects of the Strategic Plan.

Lowestoft is now central in the wider Government agenda for Energy Resilience - notably offshore wind - a key component of national and international ambitions to reduce carbon and impacts of climate change.

#### **Outline Business Case:**

In 2018, an Outline Business Case (OBC) (Appendix C) for the construction of the tidal walls was presented to the Environment Agency (EA) for technical assurance, which was given. A further OBC was also provided to the EA for the construction of the tidal barrier, which highlighted the need for a change from the initial 28m tidal barrier to the necessary 40m

tidal barrier. This reflects the requirement for a safe navigation and longer-term impact from vessels on the operation of the Port.

### **Transport Works Act Order:**

In addition to financial and technical approval of the OBC, the tidal barrier requires a <sup>1</sup> TWAO to enable the Council to have the appropriate powers to access land to build and then to maintain the tidal barrier. It also grants the Council the necessary powers to alter navigation permanently.

- Section 239 of the Local Government Act 1972 confers on any local authority the power to promote or oppose local or personal Bills. This power is extended to TWAOs, by virtue of section 20 of the Transport and Works Act 1992.
- As part of the legal requirements contained in these provisions, a local authority applying for a TWAO under the Transport and Works Act 1992 must seek authority from its members to apply for the TWAO and secure a vote from at least half of the membership to do so. The Council considered this on 15 March 2023 and resolved to submit the Application. The Application was submitted on 12 October 2023.
- Following submission of an application for a TWAO, it is also a legal requirement under the Local Government Act 1972 and Transport and Works Act 1992 that the local authority that has submitted the TWAO application should confirm the resolution to apply for it by, again, securing a vote from at least half its membership to do so.
- The need for this additional resolution is merely a procedural matter and for the Council to confirm its resolution to submit the Application. Once confirmed, any matters relating to the detail of the Application and its merits can be considered through the normal channels and the public inquiry.

### **What is a <sup>2</sup>Transport Works Act Order?**

The TWAO is a statutory instrument “made” by the relevant Secretary of State, in this case the Secretary for the Environment, Food and Rural Affairs.

The TWAO grants “statutory authority” to construct, operate and maintain works, including powers to acquire land and interests in land.

TWAOs are routinely employed for rail and urban transit schemes but are also used in relation to a number of recent flood defence schemes. A TWAO applies when you are permanently altering navigation. For further information see Appendix A.

### **What powers are included in the TWAO?**

- Construction of works;
- Compulsory purchase of land – acquisition of rights permanent or temporary;
- Temporary use of land;
- Interference with highways;
- Interference with navigation – protection of those who use the water;

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<sup>1</sup> 1992 c.42

<sup>2</sup> 1992 c.42

- Powers of operation;
- Protective provisions;
- Repeals and disapplications.

**How does a TWAO compare to the planning process?**

- Scope of TWAO is far wider (e.g. CPO and operational powers);
- All applications are determined by the Secretary of State;
- Financial circumstances of applicant or likelihood of funding are a key consideration;
- Usually 5 years to implement (rather than 3 years);
- Applicant proposes ‘conditions’ to be imposed;
- Scope of consent is usually more flexible.

**Recommendations:**

Full Council resolve that:

That the resolution for the promotion by East Suffolk Council (the “Council”) for an application to the Secretary of State for Environment, Food and Rural Affairs for the Lowestoft Tidal Barrier Order, which is to be made under the Transport and Works Act 1992, was duly submitted to the Secretary of State for Environment, Food and Rural Affairs on 12 October 2023 in accordance with the resolution of this Council passed at a meeting held on Wednesday 15 March 2023, and is, by this resolution, confirmed.

**Corporate Impact Assessment**

**Governance:**

The Lowestoft Flood Protection scheme has a comprehensive governance structure in place, which consists of Project Board, Project Executive Group, Project Delivery Group, Strategic Steering Group and Key Stakeholder Group.

**ESC policies and strategies that directly apply to the proposal:**

- East Suffolk Council Constitution
- East Suffolk Strategic Plan
- East Suffolk Economic Growth Plan
- East Suffolk Council – Waveney Local Plan 2019

**Environmental:**

A full Environmental Impact Assessment has been completed and submitted as part the TWAO application. This assesses potential impacts and mitigation measures for the tidal barrier design. The Environmental Statement is appendix B to this report.

**Equalities and Diversity:**

An equality impact assessment has been undertaken for the scheme as a whole. The tidal barrier element specifically has no impact. In the case of relative deprivation and socio-economic disadvantage the recommended option will have a positive impact since its focus is to enable inclusive growth and enhance community development.

**Financial costs relating to the TWAO:**

The cost of delivering the barrier is estimated to be £199.6m with allocated funds of £75.6m leaving a shortfall of £124m. Officers, with the support of the Board (including Peter Aldous MP) are actively pursuing and lobbying for the additional funds given the importance of the project to the future of the town. However, if funding cannot be secured to address the shortfall the Council will have to either stall or completely stop the project as it is costing money to progress with the TWAO. The position on funding will be resolved (either way) in the coming weeks.

**Human Resources:**

Additional resources required by the project to progress to construction would be an additional Project Manager and Project Co-ordinator, these posts are subject to the successful award of additional funding.

**ICT:**

No impacts

**Legal:**

Ongoing legal agreement discussions with key landowners.

<sup>3</sup>Transport Works Act Order submission will involve significant legal support including counsel if the project is to go to Public Inquiry.

<b>External Consultees:</b>	Associated British Ports (ABP), all affected landowners, tenants and businesses, statutory stakeholders including Environment Agency and publics.
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### Strategic Plan Priorities

Select the priorities of the <a href="#">Strategic Plan</a> which are supported by this proposal: <i>(Select only one primary and as many secondary as appropriate)</i>		Primary priority	Secondary priorities
<b>T01</b>	<b>Growing our Economy</b>		
P01	Build the right environment for East Suffolk	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P02	Attract and stimulate inward investment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P03	Maximise and grow the unique selling points of East Suffolk	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P04	Business partnerships	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P05	Support and deliver infrastructure	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>T02</b>	<b>Enabling our Communities</b>		
P06	Community Partnerships	<input type="checkbox"/>	<input type="checkbox"/>
P07	Taking positive action on what matters most	<input type="checkbox"/>	<input type="checkbox"/>
P08	Maximising health, well-being, and safety in our District	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P09	Community Pride	<input type="checkbox"/>	<input type="checkbox"/>
<b>T03</b>	<b>Maintaining Financial Sustainability</b>		
P10	Organisational design and streamlining services	<input type="checkbox"/>	<input type="checkbox"/>
P11	Making best use of and investing in our assets	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<sup>3</sup> 1992 c.42

P12	Being commercially astute	<input type="checkbox"/>	<input type="checkbox"/>
P13	Optimising our financial investments and grant opportunities	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P14	Review service delivery with partners	<input type="checkbox"/>	<input type="checkbox"/>
<b>T04</b>	<b>Delivering Digital Transformation</b>		
P15	Digital by default	<input type="checkbox"/>	<input type="checkbox"/>
P16	Lean and efficient streamlined services	<input type="checkbox"/>	<input type="checkbox"/>
P17	Effective use of data	<input type="checkbox"/>	<input type="checkbox"/>
P18	Skills and training	<input type="checkbox"/>	<input type="checkbox"/>
P19	District-wide digital infrastructure	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>T05</b>	<b>Caring for our Environment</b>		
P20	Lead by example	<input type="checkbox"/>	<input type="checkbox"/>
P21	Minimise waste, reuse materials, increase recycling	<input type="checkbox"/>	<input type="checkbox"/>
P22	Renewable energy	<input type="checkbox"/>	<input type="checkbox"/>
P23	Protection, education, and influence	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>XXX</b>	<b>Governance</b>		
XXX	How ESC governs itself as an authority	<input type="checkbox"/>	<input type="checkbox"/>

#### **How does this proposal support the priorities selected?**

**Growing our economy:** The Lowestoft Economic Footprint and Impact Report was revised in 2022 (Appendix F) to consider the wider impacts of flooding on the local Lowestoft economy and the economic growth benefits that tidal flood protection would provide.

The study found that the current economic footprint of project benefit area is estimated to provide 6,400 direct jobs and generates £342m of annual GVA. When indirect and induced benefits are included, this increases to 8,300 jobs and £443m GVA per year. Although the indirect and induced effects are not necessarily located in tidal flood plain area, they depend on it – such as businesses supplying the renewable energy sector operations. The study found that the future economic footprint of the area could support 12,000 direct jobs which could generate £641m of annual GVA, increasing to 15,600 Jobs and £833m GVA per year when indirect and induced benefits are considered.

Although these wider national economic benefits are not necessarily located in Lowestoft, they depend on it – such as businesses supporting offshore renewable energy sector operations.

**Enabling our communities:** By significantly reducing flood risk across the area to infrastructure and important public facilities, the scheme will address a key risk to the community at the individual and systemic level. It will protect and prevent disruption to key assets and infrastructure the communities rely on (such as schools, GP surgeries and transport infrastructure) plus significantly reduce the pre- and post-event mental health impacts of flooding in an area of multiple deprivation. The community and schools have been involved throughout the process and maximising social value is a core component of the scheme. Artwork created by local students has been incorporated into the design of the tidal flood walls.

**Remaining financially sustainable:** The scheme will provide flood resilience to Lowestoft and offer certainty to existing businesses and new developers that Lowestoft is a great place to invest. The project will help protect business rate income generated in the area plus help unlock the generation of new income by enabling growth and development by reducing the cost of site-level flood mitigation on key sites in the town.

**Delivering digital transformation:** The project will protect infrastructure that will be part of the Lowestoft Full Fibre project, plus broader IT infrastructure assets.

**Caring for our environment:** The project will protect a range of environmental and landscape benefits within the town that make up the existing programme of improvements to public realm. Lowestoft is the gateway to The Broads and there is a thriving tourism and boating industry connected to this, which needs protection and potentially enhancing. ‘Leathes Ham’ nature reserve in central Lowestoft will also be protected from tidal inundation plus avoid the significant pollution resulting from a major tidal storm surge entering the urban zone.

## Background and Justification for Recommendation

1 Background facts	
1.1	During the December 2013 tidal surge over 158 homes and 233 commercial properties were flooded. In addition to this road and rail networks were significantly disrupted.
1.2	The Lowestoft Flood Protection scheme was already in the early stages of development prior to the tidal surge.
1.3	The scheme is developing a way forward to manage the flood risk to Lowestoft from all sources of flooding and to allow the economic growth and regeneration by introducing measures to protect existing residential and commercial properties. This has been confirmed as underpinning the Lowestoft Transport and Infrastructure Plan.
1.4	The extent of the project at risk of tidal flooding encompasses the area from the outer harbour entrance through Lake Lothing to the A1117 Bridge Road crossing and Mutford Lock, which forms the boundary with Oulton Broad. This will include the ongoing construction of tidal floodwalls and the future construction of a tidal barrier to provide protection from tidal flooding to the town of Lowestoft.
1.5	Phase 1 Works were fully funded and received technical assurance from the EA’s Large Project Review Group in 2018. This included tidal flood walls, river wall and pumping station and property level protection.
1.6	The tidal barrier forms Phase 2 of the works.
1.7	The expansion of the wind energy sector in Lowestoft, potential support for the delivery of the Sizewell C construction phase and the need to ensure that the Port remains operational during construction, plus the COVID-19 pandemic have impacted upon the scheme’s construction timetable and methodology – resulting in a substantial increase in project costs.
1.8	The tidal barrier delivers significant wider reaching benefits by significantly reducing the risk of flooding to the town centre, A road, development land and infrastructure.
1.9	In June 2021, the project team in conjunction with ABP tested the navigation simulations conclusions and verified through extensive option assessments that the only option available to deliver the scheme objectives was to increase the size of the barrier to 40m. ABP are supportive of the 40m barrier option, and it is critical to meet the needs of the key stakeholder landowners in the project in order to get the <sup>4</sup> TWAO approved.

<sup>4</sup> 1992 c.42



	The review and subsequent discussions with both the Project Executive Group and the Project Board approved the selection of the 40m barrier as the preferred option.
1.10	Construction of the tidal floodwalls was completed in October 2023.

## 2 Current position

2.1	<p>Current key activities being undertaken on the scheme include:</p> <ul style="list-style-type: none"> <li>- Updated Outline Business Case has been submitted to the Environment Agency and received technical approval.</li> <li>- All floodwall works were completed in October 2023.</li> <li>- Outline design has been reviewed and cost estimate has been updated.</li> <li>- The TWAO was submitted on 12 October 2023.</li> <li>- Discussions with Government Departments are taking place regarding additional funding - final cut off for a funding decision will be November 2023.</li> <li>- Ongoing consultation with key stakeholders, statutory consultees, landowners, tenants, businesses and the community.</li> </ul>
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## 3 Risk relating to the Order application

3.1	<p>It should be noted that the TWAO Application will present an opportunity for consultees to submit representations/objections to the scheme.</p> <p>These are most likely to come from a limited set of stakeholders that fall into the following categories:</p> <ul style="list-style-type: none"> <li>• affected landowners;</li> <li>• persons that object to the proposals to close the channel and/or change navigation; and</li> <li>• persons affected by or objecting to adverse impacts caused by the Project as a whole (e.g., noise, vibration etc).</li> </ul> <p>These submissions may be considered at a public inquiry before an Inspector. The Council will be required to justify the powers it is seeking in the Order, by reference to suitable evidence. The decision on the Application is taken by the Secretary of State for the Environment, Food and Rural Affairs. There is a risk that the Application may be refused in whole, or certain elements omitted. In addition, a decision made on an Order could be subject to legal challenge by third parties. The project team and officers have identified key risks to the Application being determined favourably and these are being managed, mitigated through preparation of robust supporting documentation with input from legal, planning, and technical consultants.</p> <p>The deadline for all objections to be submitted to the Secretary of State is 23 November 2023.</p> <p>We have proactively engaged with ABP and the Royal Norfolk and Suffolk Yacht Club thoroughly and are currently in the process of finalising legal agreements.</p>
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Appendix A - Consultation Report and Appendix B - Environmental Statement refer to actions taken to raise awareness of the scheme, to understand concerns, take mitigating action and reduce the risk of objection to the Order application.

#### 4 Reasons for recommendation

- 4.1 Full Council is being asked to resolve, for the purposes of section 239 of the Local Government Act 1972 (as applied by section 20 of the Transport and Works Act 1992), the resolution of the Council that was passed at a meeting of the Council held on 15 March 2023 which approved the submission of the Application on 12 October 2023 for the purpose of section 239 of the Local Government Act 1972 is confirmed by this resolution. It is not committing to the actual construction of the barrier as that will be subject to future reports next year. However, the resolution is a crucial stage in the process formalising, after many years of preparation, how we are seeking the necessary consent to deliver this crucial project for the town.
- 4.2 The main driver for the scheme is to reduce the risk of flooding to people and property in Lowestoft. The December 2013 tidal surge event caused significant damage and disruption to the Lowestoft community and economy and it is considered that without intervention to manage these risks Lowestoft will not be able to develop and will probably go into decline.
- 4.3 Investment to manage tidal flood risk in Lowestoft is supported by the SMP2's policy of hold the line for the coastal frontage. The proposals are compatible with the recommendations of the Gorleston to Lowestoft Coastal Management Strategy.
- 4.4 Lowestoft is a town of multiple deprivation that has become increasingly vulnerable to flooding from all sources for many decades.
- 4.5 At present Lowestoft does not have any formal tidal defences protecting the town and without intervention, it has become increasingly vulnerable to tidal flooding due to climate change. Lowestoft is currently considered to be at risk from the onset of flooding from tide levels with around a 1in5 (20%) to 1in10 (10%) Annual Exceedance Probability (AEP). A 1in200year (0.5% AEP) event (2018) would put approximately 221 residential and 373 commercial properties at risk of tidal flooding in addition to a number of locations earmarked for future development within the Lowestoft Local Plan.
- 4.6 This situation gets significantly worse when the impacts of climate change are considered with the low standard of protection (SoP) restricting the growth potential of the local economy with a 1in200 year (0.5% AEP) SoP being the standard considered by developers and the Local Planning Authorities to enable the majority of new developments.
- 4.7 The December 2013 storm surge event was between a 1in100 (1%) and 1in150 (0.67%) AEP event) and approximately 158 residential and 233 commercial properties were flooded in Lowestoft. The tidal flooding also resulted in the closure of key transportation links including Lowestoft railway station and the A47 through Lowestoft.
- 4.8 To effectively manage risk of flooding from all sources in Lowestoft, East Suffolk Council have developed an integrated Lowestoft Flood Protection scheme. In 2021 we completed the fluvial and pluvial elements of this scheme and in 2018 we began work on tidal defences.

4.9 However, we now need to deliver a 40m tidal barrier to complete the integrated package of works. The lack of defences are continuing to put people and property at risk, suppressing the ability of Lowestoft to develop and grow and are not allowing the deprived areas of the town to “Level Up” as per wider Government outcomes.

4.10 The lack of certainty of tidal flood risk is holding Lowestoft back and allowing social deprivation to remain a key issue for the town. To enable a tidal barrier to be constructed it is essential that a TWAO is obtained. A TWAO allows for changes to navigation and rights of access during construction and for operation and maintenance post construction.

4.11 Additionally, the scheme aims to underpin the wider development of Lowestoft port as a central hub for marine and offshore industry notably supporting an accelerated delivery programme for ABP’s LEEF project and as a marine transport hub for the Sizewell C nuclear power station (national infrastructure project).

## Appendices

Appendices:	
<b>Appendix A</b>	<a href="#">Consultation Report</a>
<b>Appendix B</b>	<a href="#">Environment Impact Assessment</a>
<b>Appendix C</b>	Outline Business Case
<b>Appendix D</b>	TWAO s.239 Notice
<b>Appendix E</b>	TWAO Full Process
<b>Appendix F</b>	Lowestoft Economic Footprint and Impact Report
<b>Appendix G</b>	Lowestoft Flood Protection Programme summary

**Full TWAO application submitted 12 October 2023, available online at:**

<https://www.eastsuffolk.gov.uk/environment/coastal-management/lowestoft-tidal-barrier-twao-application/>

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