



FULL COUNCIL

Wednesday, 15 March 2023

Subject	Lowestoft Flood Risk Management Project
Report by	Councillor David Ritchie 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 NOT in the public interest to disclose the exempt information.	Not applicable
Wards Affected:	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 is to:

- Set out that it is expedient for the Council to promote and submit an application to the Secretary of State for the Environment, Food and Rural Affairs (Secretary of State) for an Order under the ¹Transport 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;
- Approve (Subject to the above), that the Head of Planning and Coastal Management in consultation with a Cabinet Member with responsibility for the coast, take all such steps as may be necessary or expedient to carry the above recommendations into effect, including all those steps required for the Council to apply for and thereafter to promote its application for the Order; and the corporate seal of the Council being affixed to any documents required to be sealed in connection with the application for and subsequent promotion of the Order.

Background:

The Lowestoft Flood Risk Management Project (LFRMP) is developing a way forward in managing flood risk to protect residents and businesses from disruption, threat to lives and livelihoods and 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 project 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 phase will be complete in Autumn 2023. The tidal barrier is the final phase of the project 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 regeneration of Lowestoft moving positively forward, the Town cannot remain undefended from the flooding.

The town has become increasingly vulnerable to flooding from all sources for decades. 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. Tidal flooding in 2013 tidal surge when 158 residential and 233 commercial properties flooded in Lowestoft and Oulton Broad. Key transportation links such as the railway and A12 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 to a high standard.

¹ c.42

The Lowestoft Economic Footprint and Impact Report was revised in 2022 (Appendix G) 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 will recall that at the November 23 2022 Meeting of Full Council it was Resolved that

- 1) That the submission of the Outline Business Case to the Environment Agency's Large Project Review Group be supported by Full Council.
- 2) That continuing the design and construction of the 40m tidal barrier to the east of the Bascule Bridge - subject to partnership funding and ²Transport and Works Act Order approval (Option 1) be endorsed.
- 3) That the preparation of a Transport Works Act Order be supported and Full Council noted that further recommendations would be brought to Full Council throughout the Order process.

This Report is to seek a resolution to proceed with submitting the Order but Members should acknowledge that the team have progressed items 1) and 2) above. In respect of Item 4 the Funding of the Barrier is progressing. Through the Project Executive Chaired by Cllr Ritchie significant work is being undertaken by the team working with our partners and beneficiaries. Subject to gaining the Order and securing the funding it is anticipated that to meet optimum project timescales the works to deliver the barrier should be commenced late 2024 when set alongside known other activity in the port.

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

The tidal walls element of the project will be complete in Autumn 2023. The tidal barrier is the final phase of the project 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 regeneration of Lowestoft moving positively forward, the town cannot remain undefended from the flooding.

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.

² 1992 c.42

Outline Business Case:

In 2018, an Outline Business Case (OBC) (Appendix D) for the construction of the tidal walls was presented to the Environment Agency (EA) for technical assurance, which was given. A further OBC has now been provided to the Environment Agency for the construction of the tidal barrier. This iteration of the OBC has 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.

The business case OBC was reviewed and updated in 2022 which includes a significant change in overall project cost, the project cost is being re-estimated based on the updated design; it will be based on market costs and will be independently reviewed by cost managers to give us more certainty on reported figures. Following EA technical review, and the review of the project cost forecast the OBC will be amended and reported to Full Council in autumn 2023 for approval to enable the Council's Capital Programme to be revised, during ongoing conversations with East Suffolk Council's Finance Team

Transport Works Act Order:

In addition to financial and technical approval, the tidal barrier requires a ³Transport Works Act Order (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.

- The process of developing the application for the Order has begun but requires Full Council's approval to continue the application process. *Having taken legal advice, the Council needs to give their approval for two key points in the TWAo process-*
- Ahead of the Order application (under section 20 (2) of the Transport and Works Act 1992, which requires the promoting body (East Suffolk Council) to comply with any conditions which apply to its corresponding power to promote a Bill in Parliament. This date is planned for 15th March 2023.
- Once the Order application has been submitted to the Defra TWAo unit, section 20 of the Transport and Works at 1992, states a further resolution confirmed by a like majority at a further meeting which must take place 'as soon as may be after the expiry of 14 days after the TWAo application is made' and if the resolution is not confirmed, the local authority must take all necessary steps to withdraw the application. The date for this is planned for 26th July 2023.

The target date for submission is 16th May 2023. This report and its appendices highlights the risks, the environmental impacts and the consultation undertaken with stakeholders and the public ahead of TWAo application submission.

The tidal barrier requires a Transport Works Act Order. This is granted by the Secretary of State and is needed when construction can change or affect navigation. A TWAo can take up

³ 1992 c.42

to two years to be approved hence we are targeting an early date for submission to ensure we can complete the project in a timely fashion.

Legislation relating to a Local Authority:

Section 20(1) of the Transport and Works Act 1992 confers powers on bodies who can promote or oppose Bills in Parliament to apply for, or object to, an Order under that Act. In this respect, section 20(2) requires the promoting body to comply with any conditions which apply to its corresponding power to promote a Bill in Parliament.

Local authorities enjoy the power to promote Bills in Parliament under section 239 of the ⁴Local Government Act 1972 and so, in the case of a promotion by East Suffolk Council, this is the relevant provision for the purposes of section 20 of the ⁵Transport and Works Act 1992. That section specifies certain procedural requirements that must be followed before such a promotion is possible. These require that a local authority wishing to promote a Bill (in this case an Order under the Transport and Works Act 1992) must pass two resolutions as follows:

- 1. A resolution passed by a majority of the whole number of the members of the Council to promote the TWAO application; and*
- 2. A further resolution confirmed by a like majority at a further meeting which must take place 'as soon as may be after the expiry of 14 days after the TWAO application is made' and if the resolution is not confirmed, the local authority must take all necessary steps to withdraw the application.*

30 days prior notice of each of the above meetings must be provided in relevant local newspapers. [The requisite notice for the 15 March Council meeting to enable Council members to consider the first resolution required was published on 10 February 2023 in the Lowestoft Journal, the Beccles and Bungay Journal, the East Anglian Daily Times and the Eastern Daily Press.]

Should Council members resolve to make the TWAO application, it will therefore still be necessary for a further resolution of the Full Council, confirming the decision to submit the TWAO application, to take place in due course.

Key points to note:

If the council agree that it is appropriate to continue to prepare and submit the TWAO application in May 2023:

- There will be planned costs incurred from engaging with legal counsel for representing East Suffolk Council in supporting the application.
- There will be planned costs incurred from utilising specialist consultants on the TWAO application.
- There will be limited costs if we proceed, from engagement with stakeholders (residents, landowners, businesses etc).
- If full council does agree to continue with the TWAO process, even upon approval, there is no obligation to build the tidal barrier if we cannot fund it, however there is an increased likelihood that funding will be secured.
- An additional full council meeting will be needed post submission, in line with the TWAO process.

⁴ 1972 c.70

⁵ 1992 c.42

- The application can still be withdrawn at any point in the TWAO process (decision lead by council).

If the council decides to stop the TWAO process:

- Costs associated with consultants working on preparing the application and appendices will be incurred
- Aborted costs for Legal Counsel and legal team
- There will be a delay to the project programme.
- The level of costs for stopping the process will be c£400,000

If the council decides to not proceed:

- To change the navigable channel requires formal consent. Without a TWAO it would not be possible to construct a tidal barrier, this would mean that Lowestoft would still be significantly at risk of tidal flooding.

Options:

1. Preferred Option.

- 1.1 ⁶**Transport at Works Act Order (TWAO):** Fundamentally, the powers sought by the Council in the TWAO are essential to the successful delivery of the LFRMP, which has broad levels of support amongst public and local stakeholders. As such, the TWAO application is the crucial first step in obtaining these powers.
- 1.2 Applications for Orders under the Transport and Works Act 1992 are, as a result of section 20 of that Act, subject to section 239 of the ⁷Local Government Act 1972. This requires that before a local authority submits such an application, an approving resolution of that authority is passed.
- 1.3 As such, the Council is required to pass an approving resolution prior to the Application being submitted. Given the local elections in May 2023 and associated pre-election period, this meeting of the Council is the last opportunity for such a resolution to be considered if the target date for submission on or around 16th May 2023 is to be met to meet wider project timescales.
- 1.4 Under section 239 of the Local Government Act 1972, a further confirmatory resolution is required to be passed by the Council following the submission of the Application. There are no set timescales for this, but should the Application be submitted in May 2023, it is expected that such a resolution will be presented for consideration by the Council as soon as possible thereafter
- 1.5 There are no statutory timescales applicable to the regime under the Transport and Works Act 1992, but it is likely that a decision on the Application will be made by the Secretary of State etc in 2024.

Other options considered:

Harbour Revision Order (HRO), these are used to change the existing legislation governing the management of a harbour or harbours controlled by the same statutory harbour authority. The possibility of HRO application was explored with Associated British Ports (ABP) at the beginning of this project. As a statutory consultee ABP did not consider this to be an appropriate route.

⁶ 1992 c.42

⁷ 1972 c.70

It is important to note that section 3(2) of the Transport and Works Act 1992 provides that a Transport and Works Act Order (**TWAO**) cannot be made if the relevant Secretary of State is of the opinion that the primary objective of the order could be achieved by means of an order under the Harbours Act 1964.

The Council has considered whether it might possible to authorise the proposed new tidal barrier by means of an order under the Harbours Act 1964. Two types of harbour orders are possible under that Act; harbour revision orders (**HROs**) under section 14 of the 1964 Act or harbour empowerment orders (**HEOs**) under section 16 of that Act. It is not considered that either form of harbour order could be employed for the reasons set out below. In this context, it is also worth noting that other recent tidal barriers have successfully been promoted by means of Transport and Works Act Order.

An HRO may be sought in relation to a harbour which is being managed by a harbour authority by (i) that harbour authority or (ii) by another person appearing to the relevant Minister to have an interest. Whilst it might be possible to demonstrate that the Council falls within the latter of these two categories, such an Order can only be made where it is both:

- (i) desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or for facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships; and
- (ii) sought in order to achieve one or all of the objectives set out in Schedule 2 to the 1964 Act.

The primary purpose of the proposed tidal barrier is to improve the level of protection from tidal flooding in the town of Lowestoft and this does not reflect any of the objectives set out in Schedule 2 to the 1964 Act. As such, it is considered that an HRO could not be promoted to authorise a new tidal barrier.

An HEO may be made for the following purposes:

- (i) the improvement, maintenance or management of a harbour navigated by sea-going ships or of a port, haven, estuary, tidal or other river or inland waterway so navigated;
- (ii) the construction of an artificial harbour navigable by sea-going ships or an inland waterway so navigable

It should only be made by the Secretary of State if he is satisfied that it is desirable to make the HEO in the interests of 'facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships'.

As the primary purpose of the proposed tidal barrier is to improve the level of protection from tidal flooding in the town of Lowestoft, not the purposes stated above, an HEO could also not be promoted to authorise it.

Development Consent Order (DCO) application is used in the undertaking of Nationally Significant Infrastructure Projects (NSIP). The Project does not constitute a NSIP within the

meaning of the ⁸Planning Act 2008. Accordingly, it would not be possible to secure consent by means of a development consent order (DCO) unless an application was made to the Secretary of State seeking a direction under section 35 of that Act. Such a direction can enable a project to proceed by means of a development consent order notwithstanding that it does not fall within the definition of an NSIP. Whilst it is open to the Council to seek such a direction, the availability of the Transport and Works Act process to consent the scheme means that it is not considered desirable to do so.

Do not proceed. To change the navigable channel requires formal consent. Without a TWAO it would not be possible to construct a tidal barrier.

What is a ⁹Transport 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
- Powers of operation
- Protective provisions
- Repeals and disapplication’s

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

⁸ C. 29

⁹ 1992 c.42

Recommendations:

That Full Council:

1. Promote an application to the Secretary of State for the Environment, Food and Rural Affairs for an Order under the ¹⁰Transport and Works Act 1992 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. Approve that subject to the above, that the Head of Planning and Coastal Management, in consultation with a Cabinet Member who has responsibility of 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. Approve 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. Approve that the Head of Planning and Coastal Management, in consultation with a Cabinet Member who has responsibility of the coast Executive Board, comply and deal with any public local inquiry processes and procedures arising or resulting from the submission of the Application.

Corporate Impact Assessment

Governance:

The Lowestoft Flood Risk Management Project 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 will be complete at the time of the TWAO submission to assess potential impacts and mitigation measures for the tidal barrier design.

¹⁰ 1992 c.42

Equalities and Diversity:

An equality impact assessment has been undertaken for the project 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:

If the council agree that it is appropriate to continue to prepare and submit the TWAO application in May 2023:

- There will be planned costs incurred from engaging with legal counsel for representing East Suffolk Council in supporting the application.
- There will be planned costs incurred from utilising specialist consultants for the application.
- There will be limited costs if we proceed, from engagement with stakeholders (residents, landowners, businesses etc).
- If full council does agree to continue with the TWAO process, even upon approval, there is no obligation to build the tidal barrier if we cannot fund it, however there is an increased likelihood that funding will be secured.

The application can still be withdrawn at any point in the TWAO process (decision lead by council)

If the council decides to stop the TWAO process:

- Costs associated with contractors working on preparing the application and appendices
- Aborted costs for Legal Counsel and legal team

Detailed costs for the project will be established in by May 2023 following a design and cost review. The costs for the project will be covered by local and national sources.

Human Resources:

Additional funding expertise required to advocate for the project at national discussions is being managed within Coastal Partnership East (CPE). Additional Communications support may also be needed.

ICT:

No impacts,

Legal:

Ongoing legal agreement discussions with key land owners

¹¹Transport Works Act Order submission will involve significant legal support including counsel if the project is to go to Public Inquiry.

Risk:

Strategic risk register is included in Appendix B.

For risk relating to the TWAO application please see section 3 below.

¹¹ 1992 c.42

External Consultees:	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 Strategic Plan which are supported by this proposal: (Select only one primary and as many secondary as appropriate)		Primary priority	Secondary priorities
T01	Growing our Economy		
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"/>
T02	Enabling our Communities		
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"/>
T03	Maintaining Financial Sustainability		
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"/>
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"/>
T04	Delivering Digital Transformation		
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"/>
T05	Caring for our Environment		
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"/>
XXX	Governance		
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 F3) 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 project 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 project. Artwork created by local students will be incorporated into the design of the tidal flood walls.

Remaining financially sustainable: The project 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 Risk Management Project was already in the early stages of development prior to the tidal surge.
1.3	The Project 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 Environment Agency'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 project'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 project 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 ¹² Transport Works Act Order (TWAo) approved. 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 has been completed along the majority of Hamilton Road and Waveney Road. Construction is now progressing at Station Square, South Pier and the Royal Norfolk and Suffolk Yacht Club and adjacent to the Harry Levy Amusement Arcade. Completion of all floodwalls works is programmed for autumn 2023.

¹² 1992 c.42

2 Current position

2.1	<p>Current key activities being undertaken on the project include:</p> <ul style="list-style-type: none">- Updated Outline Business Case has been submitted to the Environment Agency.- Completion of all floodwalls works is programmed for autumn 2023.- Outline design is currently being reviewed and cost estimate will be updated in May 2023.- The TWAO process is underway for submission on 16 May 2023.- Discussions with Government Departments are taking place regarding additional funding - final cut off for a funding decision will be October 2023.- Ongoing consultation with key stakeholders, statutory consultees, landowners, tenants, businesses and the community.- The Draft Order, Draft Order Explanatory Memorandum, Draft Statement of Aims, Environmental Statement, Consultation Report, Book of Reference are all nearing completion and will be completed ahead of the ¹³TWAO application.
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3 Risk relating to the Order application

3.1	<p>It should be noted that the Application will present an opportunity for objectors to submit representations/objections to the Project.</p> <p>These are most likely to come from a limited set of objectors that fall into the following categories:</p> <ul style="list-style-type: none">• affected landowners.• persons that object to the proposals to close the channel and/or change navigation; and• persons affected by or objecting to adverse impacts caused by the Project as a whole (e.g., noise, vibration etc). <p>These objections 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 on an Order could be subject to legal challenge by third parties.</p> <p>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>We have engaged with ABP and the Royal Norfolk and Suffolk Yacht Club thoroughly and are currently in the process on agreeing Heads of Terms with both.</p> <p>Appendix A - Consultation Report and Appendix C - Environmental Statement refer to actions taken to raise awareness of the project, to understand concerns, take mitigating action and reduce the risk of objection to the Order application.</p>
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4	Reasons for recommendation
4.1	Full Council is being asked to agree to the submission of the Order only at this meeting, when all the preparatory work is completed. It is not committing to the actual construction of the barrier as that will be subject to future reports next year. However, the submission of the Order is a crucial stage in the process formalising, after many years of preparation, how we are going to deliver this crucial project for the town.
4.2	The main driver for the project 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 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 (ESC) have developed an integrated Lowestoft Flood Risk Management Project. In 2021 we completed the fluvial and pluvial elements of this project 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 ¹⁴ Transport Works Act Order (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	4.10 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:	
Appendix A	Consultation Report (Sub appendix 1a, 2a, 3a, 4a, 5a and 6a)
Appendix B	Strategic Risk Register
Appendix C	Environmental Statement (Early draft)
Appendix D	Outline Business Case
Appendix E	TWAO Programme
Appendix F	TWAO s.239 Notice
Appendix G	Lowestoft Economic Footprint and Impact Report
Appendix H	TWAO Full Process

Background reference papers:
None.

Definitions:

‘Application’ refers to the documents needed for the submission of a ¹⁵Transport and Works Act Order

‘Application process’ refers to the legal process in which the application should be prepared as advised by key pieces of legislation, mainly the Transport and Works Act

¹⁵ 1992 c.42